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Foreign Investment and the Battle for Fair Competition: Assessing the Gaps in Indonesia's Mineral Mining Regulations

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Abstract

Foreign direct investment in Indonesia's mineral and coal mining sector has increased considerably, owing to rising global demand and the country's important position as a source of resources, especially in the context of the energy transition. Nevertheless, this increase brings with it two major problems. On the one hand, the investment regulatory system is still fragmented and inconsistent, which leads to gaps that allow foreign investors to take control of strategically important national resources without adequate protection for local stakeholders. On the other hand, the weak enforcement of competition law results in unfair business practices such as the formation of cartels, the abuse of a dominant market position, collusive tendering, and the manipulation of regulations by exerting undue influence over public officials. Such practices damage fair competition, are detrimental to local businesses, lower state revenues, and jeopardise environmental sustainability. The present study makes a critical examination of the flaws in Indonesia's investment and competition legal frameworks and at how these frameworks interact in the mining sector. By means of a normative and comparative legal analysis, it shows how weaknesses in governance lead to imbalances in the business relationships between foreign and domestic parties. The key contribution of the study is to propose a legal policy reform programme aimed at striking a balance between the requirement to attract foreign capital and the need to ensure equitable competition as well as responsible resource management. The recommendations highlight the importance of achieving regulatory harmonisation, of strengthening the institutions, and of implementing effective sanctions so as to establish a transparent, fair and sustainable investment environment. The research is timely given Indonesia's important position in the global mineral supply chain and its commitment to sustainable development.

KEYWORDS *Foreign Investment, Mining Law, Unfair Competition, Investment Regulation, Law Enforcement*

Introduction

Indonesia is home to some of the most strategic minerals in the world, including nickel, copper, bauxite, tin, and many more minerals whose importance in global manufacturing and energy transition industry increases with each passing day. Mineral investment has thus become one of the key aspects of Indonesia's economic policy. Foreign investments bring capital, technology, management skills, access to the international market and industrial infrastructure which may be beyond the reach of domestic companies. Mining is, however, different from regular business activity as what is being invested in is a natural resource which is intrinsically connected to the welfare of the community.[1] Article 33 of the 1945 Constitution thus brings natural resources

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[1] Rachana Somsak, Amelia Johnson, and Nadia Putri. "Eco-Justice in Indonesia's Mining Law: The Indonesian Mining Law and Its Conflict With Climate Justice in Indigenous Territories". *Indonesian Climate Justice Review* 2, no. 4 (2025): 539-568. https://doi.org/10.65815/jws85440; Asmarani Ramli, Aprila Niravita, and Suhadi Suhadi. "Between Justice and Development: How the Indonesian Courts Are Handling Land Disputes in the Face of Industrial Expansion". *Indonesian Court and Justice Review* 2. no. 3 (2025). https://doi.org/10.65815/56wg3592; Eliza Carrington, and Abdullah Farhan Mubarak. "Economic Justice and Indigenous Land Rights: The Role of the State in Balancing Development and Justice for Indigenous Communities". *Indonesian Economic Justice Review* 2, no. 3 (2025). https://doi.org/10.65815/agyp1v77. For more broader real

within the unique ambit of public law. The core issue is not whether foreign investment is allowed in Indonesia, but how domestic and foreign investments can participate in mining without resulting in concentration, privilege, environmental effects and access to strategic resources.[2]

The development of mining regulation in Indonesia is a typical example of the tradeoff between attracting investments and exercising regulatory power over resources. In accordance with the policy of the New Order government, investments were used as means of development; specifically, Law No. 1 of 1967 on Foreign Investment and the mining regulatory structure that formed the basis of contracts of work. Such an approach was adopted because the system of contracts of work provided legal guarantees for investors in a sector that was highly risky due to both geological and political factors. However, it faced criticism due to the unequal distribution of rights among the participants of the contracts of work that restricted the state's regulatory authority and produced an unfair distribution of benefits gained from mining activities. The subsequent change to a licensing system according to Law No. 4 of 2009 meant that there was a significant change in the legal relationship between the state and mining companies.

Indeed, the existing regulation demonstrates an elaborated structure of overlapping regimes. Thus, Law No. 25 of 2007 establishes a general investment regime. Law No. 4 of 2009, amending Law No. 3 of 2020 and other legislative acts, regulates the regime of mineral and coal mining. Monopolistic actions and unfair competition are regulated by Law No. 5 of 1999. Environmental activities are subject to Law No. 32 of 2009, while the corporate governance regime is established in Law No. 40 of 2007. Finally, the issue of beneficial ownership is covered by Presidential Regulation No. 13 of 2018. Additionally, Government Regulation No. 96 of 2021, amending Government Regulation No. 25 of 2024, and Presidential Regulation No. 55 of 2022 regulate the issue of delegated mining licensing authority. Such complexity of law cannot be

condition, please also see Muhammad Ali. "Corruption and Natural Resource Governance in Indonesia: Transparency Challenges in Coal Mining Licensing in East Kalimantan". *Indonesian Anti Corruption Studies* 3, no. 1 (2026): 69-82. https://doi.org/10.65815/00ytry59; Andi Luhur Pribadi, and Albertus Kusuma Dananjaya. "Community Legal Advocacy for Environmental Protection: A Case Study on Illegal Mining in South Sulawesi: Advokasi Hukum Komunitas Untuk Perlindungan Lingkungan: Studi Kasus Tentang Penambangan Ilegal di Sulawesi Selatan". *Lentera Masyarakat Hukum* 2, no. 3 (2025). https://doi.org/10.65815/w19xjg80.

[2] *See* Simon Butt, and Tim Lindsey. "Economic Reform When the Constitution Matters: Indonesia's Constitutional Court and Article 33." *Bulletin of Indonesian Economic Studies* 44, no. 2 (2008): 239-262. https://doi.org/10.1080/00074910802169004

explained by the number of regulatory acts only, as these acts cover various aspects of the same economic activity without establishing proper interaction among them.

The development of foreign investment in Indonesia's mineral mining industry, as well as the overall growth of foreign investment in Indonesia, has to be viewed from the perspective of how the constitution governs the management of natural resources. The 1945 Constitution of the Republic of Indonesia states in Article 33(3) that "*the land, water and all natural wealth contained therein are controlled by the state and used for the greatest benefit of the people*." This provision is an expression of a philosophical position on social justice and on ensuring fairness in distributing resources and prioritizing the public good over mere economic interest.[3] Yet, the increasing dependence on foreign capital, technology and knowledge in the mineral sector creates a dilemma regarding whether the pursuit of investment and economic efficiency can be reconciled with the constitutional ideal of fair resource governance. A major philosophical issue is created when there is a conflict between making investments attractive to foreign investors and achieving substantial economic justice. Although foreign investment can contribute to speeding up industrialization and downstream processing activities, regulations must be developed to ensure that the profits generated from mineral extraction are equitably distributed and that local economic players do not become structurally disadvantaged.

From a legal point of view, Indonesia has established a comprehensive set of regulations covering foreign investment, mining and coal mining, licensing, ownership, downstream processing, and competition. However, the fact that there are a number of legal instruments which are constantly changing does not mean that all economic participants are treated in a substantively equal manner. Although the principle of equal treatment may grant foreign and local investors formally identical legal rights, large differences in access to capital, technology, mining concessions, infrastructure, and global markets can still result in unequal competitive positions.[4] This leads to a regulatory dilemma involving formal

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[3] *See* Suparto Suparto. "Interpreting The State's Right to Control in the Provisions of Article 33 Paragraph (3), The Constitution of 1945 Republic of Indonesia." *UIR Law Review* 4, no. 2 (2020): 1-8. https://doi.org/10.25299/uirlrev.2020.vol4(2).6889

[4] Jennifer McKay, and Balbir Bhasin. "Mining Law and Policy in Indonesia: Issues in Current Practice that Need Reform." *Journal of Energy & Natural Resources Law* 19, no. 4 (2001): 329-343. https://doi.org/10.1080/02646811.2001.11433242. *See also* Richard O. Miller, "Mining, Environmental Protection, and Sustainable Development in

equality and genuine fair competition. Furthermore, the way in which investment regulation, mining law, and competition law interact raises issues about the consistency and effectiveness of the current system in preventing preferential treatment, market concentration, and regulatory advantages that could distort competition. The juridical research gap therefore concerns whether Indonesia's mineral mining regulations have adequately integrated the principles of fair competition and substantive equality into the governance of foreign investment, while simultaneously preserving the State's constitutional authority over strategic natural resources.

The sociological aspect also shows that the effects of regulatory decisions cannot be evaluated just by looking at investment realization, export performance, or state revenue. Since mineral mining has a direct impact on local communities through employment, land use, environmental effects, access to resources, and the way economic benefits are distributed, situations may arise in which foreign investment produces a great deal of economic value but local communities and domestic businesses feel that they have little involvement or receive unequal benefits, thereby leading to a weakening of regulatory legitimacy and the emergence of social tensions. The sociological gap, therefore, concerns the extent to which the existing legal framework reflects the realities and interests of communities and domestic economic actors affected by the expansion of foreign investment in the mining sector.[5]

These concerns have been considered to some degree in previous research. Junita[6] explores the regime of foreign mining investment from the perspectives

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Indonesia." In *The Global Environment*. (London: Routledge, 2023), pp. 317-332. https://doi.org/10.4324/9781003421368

[5] *See* A. Setiawan, "The socio-economic impact of national and foreign oil mining companies existences and activities in Tjepu 1967-2004." *IOP Conference Series: Earth and Environmental Science*. Vol. 325. No. 1. IOP Publishing, 2019. https://doi.org/10.1088/1755-1315/325/1/012011; Rezki Syahrir, Frances Wall, and Penda Diallo. "Socio-economic impacts and sustainability of mining, a case study of the historical tin mining in Singkep Island-Indonesia." *The Extractive Industries and Society* 7, no. 4 (2020): 1525-1533. https://doi.org/10.1016/j.exis.2020.07.023; Ami A. Meutia, Royke Lumowa, and Masayuki Sakakibara. "Indonesian Artisanal and Small-Scale Gold Mining—A Narrative Literature Review." *International Journal of Environmental Research and Public Health* 19, no. 7 (2022): 3955. https://doi.org/10.3390/ijerph19073955; Samuel J. Spiegel, et al. "Phasing Out Mercury? Ecological Economics and Indonesia's Small-Scale Gold Mining Sector." *Ecological Economics* 144 (2018): 1-11. https://doi.org/10.1016/j.ecolecon.2017.07.025

[6] Fifi Junita, "The Foreign Mining Investment Regime in Indonesia: Regulatory Risk under Resource Nationalism Policy and How International Investment Treaties Provide

of regulatory risk and resource nationalism, showing how the shift in the policies of mining has led to considerable uncertainty in the case of foreign investment. Junita also considers the question of regulatory risk in relation to the emergence of resource nationalism.[7] Warburton[8] makes an important contribution to political-economy considerations in arguing that resource nationalism in Indonesia emerges in relation not just to the relationship between the state and foreign investors but also to domestic ownership and business arrangements. Kadir and Murray[9] examine the question of resource nationalism within the framework of the constitutional relationship between the state, foreign investors, and indigenous peoples.

Other studies concern legal certainty, licensing, and governance problems. Yuniar[10] highlights the need for legal certainty and foreign investment protection in mineral and coal mining sectors. Redi and Marfungah[11] review the development of mineral and coal mining policy in Indonesia, showing how the transformation of the licensing system continues. Candra[12] discusses the impacts of the replacement of the contract of work by mining business permits and their impact on governmental power and social benefits. Lelisari et al.[13]

Protection." *Journal of Energy & Natural Resources Law* 33, no. 3 (2015): 241–265. https://doi.org/10.1080/02646811.2015.1057028.

7 Fifi Junita, "Foreign Mining Investment Regime in Indonesia: Regulatory Risk under the Revival of Resource Nationalism Policy." *International Journal of Private Law* 8, no. 3–4 (2017): 181–204. https://doi.org/10.1504/IJPL.2017.087329.

8 Eve Warburton, "Resource Nationalism in Indonesia: Ownership Structures and Sectoral Variation in Mining and Palm Oil." *Journal of East Asian Studies* 17, no. 3 (2017): 285–312. https://doi.org/10.1017/jea.2017.13.

9 M. Y. Aiyub Kadir, and Alexander Murray. "Resource Nationalism in the Law and Policies of Indonesia: A Contest of State, Foreign Investors, and Indigenous Peoples." *Asian Journal of International Law* 9, no. 1 (2019): 298-333. https://doi.org/10.1017/S204425131900002X

10 Vania Shafira Yuniar, "Legal Protection for Foreign Investment in the Mineral and Coal Mining Sector in Indonesia." *Dialogia Iuridica* 12, no. 2 (2021): 102–114. https://doi.org/10.28932/di.v12i2.3555.

11 Ahmad Redi, and Luthfi Marfungah. "Perkembangan Kebijakan Hukum Pertambangan Mineral dan Batubara di Indonesia." *Undang: Jurnal Hukum* 4, no. 2 (2021): 473–506. https://doi.org/10.22437/ujh.4.2.473-506.

12 Achmad Beni Candra, "Implications of Changing the Terminology of a Contract of Work to a Mining Business Permit for Mineral and Coal Mining." *Journal of Law and Legal Reform* 3, no. 2 (2022): 215–242. https://doi.org/10.15294/jllr.v3i2.55214.

13 Ridho Aulia Tanjung Lelisari, Zainal Abidin Pakpahan, Imawanto, and Hamdi. "Implications of the Constitutional Court Decision Number 91/PUU-XVIII/2020 Toward Job Creation Law in the Mineral and Coal Mining Sector." *Jurnal IUS Kajian*

examine the constitutional consequences of regulatory reform in the context of Constitutional Court Decision No. 91/PUU-XVIII/2020. Recent research still emphasizes conflicts of powers, licensing problems, environmental challenges, low levels of participation, and weak enforcement as important governance problems. [14]

Nevertheless, there is a deficiency in the competition dimension within the literature that exists. The concentration in the mining sector is usually studied from the point of view of ownership and investment, and competition law is considered to be another sphere and is focused on cartelizing practices, monopoly, dominance, and collusion in tenders. However, this approach is flawed because the markets of mining activities are heavily influenced by governmental policies concerning mining territories, licensing, infrastructure, export quotas, downstreaming, and state owned enterprises. In other words, market structure in the mining industry is partially determined by regulations. It means that a license determines market entrance; ownership laws determine market players; downstreaming determines access to processing; and government procurement determines demand.

The gap is addressed in this study through the proposition that "the most important problem for Indonesia regulation is not the foreign ownership itself, but its combination with foreign investments, market concentration, discretionary regulation, opacity of beneficial ownership, and weak enforcement." Whereas resource nationalism might be both legal under the Constitution and rational in terms of economics, it must not be understood as a justification for the replacement of foreign concentration with the concentrated domestic power connected to political interests. In the same vein, the investment protection must not be viewed as immunity from legal competition, environmental, tax, and ownership regulation. Hence, the purpose of the present study is to examine whether there is a proper balance achieved between investment protection, national control over the minerals, and competition and to suggest the necessary legal changes in order to achieve it.

Hukum dan Keadilan 10, no. 3 (2022): 555–570. https://doi.org/10.29303/ius.v10i3.1132.

[14] Dening Putri Fadhilah, and Atha Difa Saputri. "Ensuring the Legal Safeguarding of Foreign Investments in Indonesia's Mineral and Coal Mining Sector." *Law Research Review Quarterly* 10, no. 1 (2025). https://doi.org/10.15294/llrq.v10i1.2914; Irsan Rahman, Basrawi Basrawi, Anis Widyawati, Leony Sondang Suryani, and Iyan Nurdiyan Haris. "Mineral and Coal Mining Regulatory Reform in Indonesia." *Journal of Law and Legal Reform* 6, no. 2 (2025). https://doi.org/10.15294/jllr.v6i2.19040.

The approach taken in this research is a normative juridical approach based on statutory, conceptual, and comparative methodologies. The statutory methodology involves analyzing the Indonesian Constitution enacted in 1945, Investment Law No. 25/2007, Law on Competition No. 5/1999, laws on mining, laws on environment, laws on corporations, laws on anti-corruption, and corresponding implementing rules. Conceptual methodology is used for distinguishing resource nationalism from protectionism and distinguishing investment protection from investor privilege. Comparative methodology looks into selected aspects of foreign investment regulation and competition policy in countries rich in natural resources, namely, Australia and Canada, without the presumption that their institutional arrangements could easily be transplanted to Indonesia. Legal secondary sources consist of journal articles and policy papers.

Foreign Investment, Resource Nationalism, and the Constitutional Limits of Market Access

The Indonesian constitutional system does not oblige the state to achieve complete economic openness in the mineral sector. Since Article 33 of the 1945 Constitution assigns the state a special responsibility for natural resources because their exploitation must in the end serve the public's welfare, it is constitutionally acceptable to adopt different treatments towards economic actors provided that such measures are based on law and aim at legitimate public objectives. The legal question therefore is not whether foreign investors and local investors must always be treated in the same way. Rather, the issue to be considered is whether any differential treatment has an objective justification, is proportionate to the policy aim, is transparent and is applied in a consistent manner. This distinction is important since a strict interpretation of equal treatment might stop the state from carrying out legitimate industrial and resource policies, while unlimited discretion could cause resource nationalism to degenerate into discriminatory protectionism.

Junita shows that Indonesia's mining policy has on numerous occasions faced tensions between resource nationalism and the need to protect foreign investment.[15] Although international investment law usually acknowledges the host state's right to regulate, investors can challenge measures which are

[15] *See* Junita, "The Foreign Mining Investment Regime in Indonesia: Regulatory Risk under Resource Nationalism Policy and How International Investment Treaties Provide Protection."

arbitrary, discriminatory, or inconsistent with the obligations contained in the relevant treaties. This gives Indonesia an important room for policy action. The government does not have to halt its mining legislation in order to protect foreign investment; it only needs to make sure that any changes to the regulations are introduced through legal procedures, are based on clear objectives, and are applied without making arbitrary distinctions. Legal certainty should therefore be seen as the predictability of the regulatory process and not as the permanent preservation of a specific regulatory setup.

This principle is clearly shown by the shift from a contract of work to one based on IUP licensing. In the previous contractual system, legal certainty was linked to the stability of the contract; in the licensing system, it is much more dependent on the clarity of the statute, the administrative procedure, the competence of the institutions involved, and the possibility of judicial review. Candra[16] notes that replacing the contract of work with mining business permits altered the distribution of governmental authority and had wider consequences for social and economic interests. As a result, state sovereignty was enhanced, although at the same time the role of administrative law became more important. In cases where the government has considerable discretion in granting, extending, modifying, or supervising licences, arbitrary administration can become just as serious a threat to the certainty of investment as excessive contractual rigidity.

Resource nationalism cannot be taken to mean domestic ownership simply and automatically. Warburton shows that the ownership arrangements in Indonesia's mining sector result from the interaction between state policy and the interests of domestic businesses.[17] This point reveals a significant flaw in simple nationalist arguments. Even if foreign ownership is reduced but the resulting assets end up in a small number of politically connected domestic companies, the constitutional aim of public welfare might still not be reached. The beneficiaries of resource nationalism could in this case just shift from foreign corporations to domestic elites. A legally defensible ownership policy must therefore look not only at the nationality of the shareholders but also at the ultimate beneficial owners, their political connections, their market position, and the competitive effects of the transaction.

The same can be said of divestment. It may be reasonable for domestic companies to take part in strategic mining enterprises as a means of asserting

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[16] *See* Candra, "Implications of Changing the Terminology of a Contract of Work to a Mining Business Permit for Mineral and Coal Mining."

[17] Warburton, "Resource Nationalism in Indonesia: Ownership Structures and Sectoral Variation in Mining and Palm Oil."

resource sovereignty, accumulating capital, and promoting national industrial development. However, divestment should not be used as a way of shifting economic rents via unclear transactions. A fair divestment system should include independent valuation, clear eligibility criteria, disclosure of beneficial ownership, screening for possible conflicts of interest, and competitive procedures. The aim in law should be to ensure real domestic participation rather than merely having nominal Indonesian ownership. If such protections are not in place, divestment might result in formal adherence to resource-nationalist policy without actually altering the existing concentration of economic power.

Mining Licensing, Regulatory Capture, and the Distortion of Competition

The licensing system is one of the key areas where investment regulation comes into contact with competition law. In contrast to normal markets, entry into the mining sector requires approval from the government since mineral deposits are spatially limited and mining activities have a direct impact on public resources and the environment. As a result, the government's decisions about mining areas and the issuance of licences affect both the number and the identities of the participants in the market. This does not imply that awarding a mining licence amounts to an infringement of antitrust rules; on the other hand, it means that licensing decisions can lead to market structures in which later anticompetitive behaviour is more easily maintained. Competition analysis must therefore take into account the interaction between administrative decisions and private actions.

The material given for this study shows that the granting of licences and the assignment of mining areas are especially susceptible to collusion since the officials have the power to bestow significant economic benefits. The legal issue becomes especially serious when administrative discretion is coupled with a lack of transparency. A company which gets a licence on the basis of legitimate competitive or regulatory criteria must be treated differently from one which acquires an advantage through bribery, through undisclosed political connections, or by manipulating administrative procedures. In the first case we have a legitimate exercise of market entry; in the latter case corruption, abuse of authority, or, in some instances, a breach of competition law may be involved. Effective enforcement therefore demands that the conduct be classified in accordance with the relevant legal framework rather than considering all kinds of unfairness as one offence.

In this situation the anti-corruption framework is of particular importance since payments or benefits given to officials in return for favourable licensing decisions could be covered by the prohibitions set out in Law No. 31 of 1999 as amended by Law No. 20 of 2001. Although the competitive effects might be significant, the fact that such effects exist does not alter the fundamental legal nature of the bribery. On the other hand, agreements between competing companies to manipulate tenders, divide markets or coordinate their bids could directly violate Law No. 5 of 1999. Institutionally, this distinction is important since corruption inquiries and competition inquiries require different kinds of evidence and are managed by different authorities. The material submitted correctly points out that tender collusion is a area where competition law can apply in conjunction with anti-corruption law.

The main problem relating to governance is therefore regulatory capture. O'Callaghan [18] points out the weaknesses in the regulatory governance concerning mining in Indonesia, such as inadequate institutional capacity, corruption, decentralisation, and regulatory uncertainty. These flaws are particularly significant in a sector in which one administrative decision can decide access to resources amounting to billions of dollars. Regulatory capture should not be seen merely as foreign companies affecting officials; domestic companies, state-owned enterprises, political figures, and intermediaries might all aim to secure regulatory advantages. A mining system that is sensitive to competition should therefore concentrate on the origin and effects of such influence rather than on the nationality of the influence.

The situation is made worse by the lack of complete information. It has been stated that in order to carry out an effective competition analysis, the KPPU needs access to licensing, production, and transaction information from the mining authorities. If reliable information is not available on who controls a mining company, what licenses it holds, how much it produces, where it sells its products, and which other related companies are involved in the value chain, then enforcement action will have to be mostly reactive. The solution is not merely to impose heavier penalties after violations have taken place; it is instead to achieve preventive transparency. Licensing, ownership, production, and data on major transactions should be combined into an interinstitutional system that is available to regulators and, where legally allowed, also to the public.

[18] Terry O'Callaghan, "Patience Is a Virtue: Problems of Regulatory Governance in the Indonesian Mining Sector." *Resources Policy* 35, no. 3 (2010): 218–225. https://doi.org/10.1016/j.resourpol.2010.05.001.

Competition Law, Market Concentration, and the Role of KPPU

The legal framework for preventing monopolistic practices and unfair competition, as set out in Law No. 5 of 1999, faces structural problems when it comes to mining. It is common in mining markets for there to be legitimate reasons for concentration since mineral deposits are in fixed geographical locations, large amounts of capital are required and economies of scale can make it economically sensible for only a small number of producers to operate. As a result, concentration alone cannot be taken as proof of an unlawful act. What must be examined instead is whether market power has been acquired or kept by means of prohibited agreements, exclusionary conduct, discriminatory access, or other practices which undermine competition on the merits.

The difference between natural concentration and regulatory concentration is especially significant. Natural concentration is the result of geological and economic factors, while regulatory concentration occurs when legal or administrative measures systematically benefit certain enterprises or restrict market access without sufficient public justification. In the case of mining in Indonesia, the second type of concentration warrants more attention. The ways in which licensing decisions, ownership requirements, state participation, access to infrastructure, downstreaming policies, and procurement arrangements are handled may together shape the competitive environment. Wulandari and Jati[19] have also identified market concentration and regulatory fragmentation as major barriers to competition and sustainability in the mining industry. The role of KPPU should therefore go beyond simply responding to explicit cartels and should include contributing competition expertise to the design and evaluation of sectoral regulation.

It is not necessary for KPPU to take over the role of the mining regulator. ESDM has the relevant technical knowledge in the areas of geological resources, production, mine safety, processing, and resource management, while KPPU has different expertise relating to market definition, market power, anticompetitive agreements, abuse of dominance, and competitive effects. The two bodies' responsibilities are complementary. The material provided shows that KPPU and ESDM have already talked about market structure and the position of MIND ID and its subsidiary companies, but it also points out discrepancies in their institutional views and the lack of a sufficiently systematic

[19] Maria Mu'ti Wulandari, and Baginda Khalid Hidayat Jati. "Peran KPPU Mengawasi Persaingan Usaha di Sektor Pertambangan dalam Konteks Green Economy." *Jurnal Persaingan Usaha* 5, no. 2 (2025): 101–115. https://doi.org/10.55869/kppu.v5i2.197.

mechanism for coordination. The proper course of action is to institutionalise rather than to duplicate.

A better model would make it a requirement for the KPPU to consult on major regulatory decisions that have an impact on strategic mineral markets. Consultation would be mandatory in cases such as large-scale acquisitions, important divestments, exclusive arrangements with respect to infrastructure, major changes to policy concerning downstream processing, and other decisions which could greatly change the market structure. The consultation process would not grant the KPPU a veto over sectoral policy; rather, it would require the government to take into account the competition effects and to make a public explanation of why a potentially restrictive arrangement is acceptable. This approach would enhance administrative accountability without undermining the technical ministry's statutory powers.

Merger issues and those relating to vertical integration also need to be given more attention. A mining company might take control of extraction, transportation, processing, and marketing at the same time. Although vertical integration can lead to efficiency by lowering transaction costs and promoting investment, it can also allow a firm to engage in foreclosure if a dominant company controls an essential input or piece of infrastructure that competitors need. Competition analysis should therefore look into whether vertically integrated mining groups are able to deny or put competitors at a disadvantage when it comes to access to processing capacity, transportation networks, ports, energy, or other strategically important facilities. The right legal approach is not to automatically ban integration, but rather to require that such integration be examined where there is a substantial risk of exclusionary effects.

Tender collusion constitutes a significant challenge to the realization of effective competition within Indonesia's mineral mining sector. Article 22 of Law No. 5 of 1999 prohibits business actors from conspiring with other parties to determine the winner of a tender in a manner that may result in unfair business competition. The relevance of this provision extends beyond the direct procurement of mining rights, as competition-related risks may arise throughout the mining value chain, including the procurement of mining equipment, construction of processing and smelting facilities, transportation, logistics, and mining services. Collusive practices may take the form of coordination among prospective bidders, bid rotation, complementary bidding, exchange of commercially sensitive information, or the manipulation of tender specifications to favor a particular participant. From a competition-law perspective, such practices undermine the competitive process by creating the appearance of competition while, in substance, eliminating uncertainty regarding the outcome of the tender. The resulting harm is not limited to competing business actors; it may also reduce allocative efficiency, increase procurement costs, and diminish the quality of goods or services obtained by the State or other contracting entities.

The fact that Article 22 is applied also shows the legal complexity involved in dealing with tender collusion when the behaviour includes parties who are not the competing business enterprises. By its decision No. 85/PUU-XIV/2016, the Constitutional Court stated that the expression "other party" in Article 22 should be understood more broadly, thus acknowledging that tender collusion can involve parties other than the bidders themselves. This kind of interpretation is especially pertinent to procurement in the mining sector, since the competitive procedure might be affected through the drawing up of technical specifications, by gaining access to confidential procurement information, or by administrative decisions that favour a particular pre-determined participant. Therefore, it cannot be limited to merely checking whether there is an explicit agreement among the bidders for the assessment of collusion. The legal analysis must take into account all the circumstances relating to the tender process, such as patterns of behaviour, similarities in the bid documents, coordination between the participants, and any irregularities in the formulation or carrying out of the procurement requirements. However, since there are several legal regimes that apply to the same behaviour, this situation presents an institutional problem. Behaviour which is a concern under competition law may at the same time amount to a breach of the rules on public procurement or, in cases where public officials are involved and the necessary elements are met, constitute an offence under anti-corruption legislation. The fact that there is such overlap shows that the effectiveness of Article 22 depends not only on the prohibition set out in the article itself but also on the ability of the relevant institutions to detect and deal with different forms of unlawful conduct that are connected with each other.

The need for an integrated enforcement approach is particularly pronounced in the mineral mining sector because procurement activities associated with mining projects may involve substantial public expenditure and strategic infrastructure. Bid rigging in such circumstances can generate consequences extending beyond the immediate contractual relationship, including inflated procurement prices, inefficient allocation of public resources, reduced quality of infrastructure or services, and diminished economic benefits to the State and affected communities. Consequently, reliance solely upon competition sanctions may be insufficient where the underlying conduct also involves manipulation of procurement procedures or abuse of public authority.

A more coherent method of regulation would need better coordination between the authorities responsible for enforcing competition policy, those who supervise public procurement, the auditing systems, and those in charge of anti-corruption enforcement. It is important to achieve this coordination not in order to avoid imposing overlapping sanctions, but so that the various legal systems can deal with the different aspects of the same behaviour in accordance with their own responsibilities. The main regulatory gap is therefore not simply the fact that there is no prohibition against collusive tendering, but rather the possibility of fragmentation in the way enforcement is carried out among the competition, procurement, and anti-corruption frameworks. As a result, promoting fair competition in Indonesia's mineral mining sector demands an enforcement structure that is able to treat collusion as a multi-faceted regulatory issue rather than seeing it merely as a breach of competition law.

Downstreaming, Environmental Costs, and a New Conception of Fair Competition

Indonesia's downstreaming policy illustrates the difficulty of distinguishing legitimate industrial policy from market distortion. The government's restrictions on exports of certain unprocessed minerals and its promotion of domestic processing are designed to increase domestic value added, encourage industrialization, develop technological capabilities, and strengthen Indonesia's position in global mineral supply chains. Östensson[20] characterizes downstream processing as potentially combining resource nationalism and industrial policy. Lahadalia et al.[21] similarly view nickel downstreaming as part of a developmental-state strategy for building an electric-vehicle industry in ASEAN. From this perspective, intervention in the market is not inherently inconsistent with competition because the state may legitimately pursue long-term structural objectives.

The evaluation of Indonesia's downstreaming policy should not merely focus on whether the State has the authority to require domestic mineral processing. It should also look into whether the policy's implementation ensures

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[20] Olle Östensson, "Promoting Downstream Processing: Resource Nationalism or Industrial Policy?" *Mineral Economics* 32 (2019): 205–212. https://doi.org/10.1007/s13563-019-00170-x.

[21] Bahlil Lahadalia, Chandra Wijaya, Teguh Dartanto, and Athor Subroto. "Nickel Downstreaming in Indonesia: Reinventing Sustainable Industrial Policy and Developmental State in Building the EV Industry in ASEAN." *Journal of ASEAN Studies* 12, no. 1 (2024): 79–106. https://doi.org/10.21512/jas.v12i1.11128.

competitive neutrality among the various market participants. The idea of competitive neutrality offers a suitable framework for this analysis. The OECD[22] states that competitive neutrality means that enterprises should have the opportunity to operate on a level playing field, no matter their ownership, nationality, or legal status, and that it aims to prevent state intervention from giving rise to excessive competitive advantages or disadvantages. The principle does not forbid government intervention in markets; instead, it requires any such intervention to aim at achieving legitimate public-policy objectives while at the same time minimizing any unnecessary distortions of competition.[23] This distinction is particularly relevant to Indonesia's mineral downstreaming policy. The State may legitimately intervene to promote domestic processing, technological development, and greater value creation from mineral resources. However, such intervention becomes problematic where regulatory measures or State support selectively improve the competitive position of particular enterprises without an objective and proportionate justification. The central legal issue is therefore not whether the State may intervene, but whether the manner in which it intervenes remains consistent with the principles of equal treatment, efficiency with justice, and fair competition.

This approach may be used in relation to Articles 102 and 103 of Law No. 3 of 2020 on Mineral and Coal Mining. According to Article 102, holders of IUP and IUPK are required to increase the added value of minerals by means of processing and/or refining, and Article 103 mandates that such processing and refining must take place within the country. These provisions provide a clear legal basis for downstreaming and may be regarded as measures intended to promote structural economic change. Yet the fact that the policy aim is legitimate does not mean that each and every regulatory measure taken to achieve it is valid. Rodrik[24] maintains that effective industrial policy should consist of identifying and removing the structural barriers which hinder economic transformation through strategic cooperation between the government and the private sector, rather than simply choosing specific firms to receive state support. From this point of view, downstreaming can be considered justifiable in so far as it deals with identifiable structural obstacles, for example insufficient processing capacity, technological limitations,

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22 OECD. *Competitive Neutrality Toolkit: Promoting a Level Playing Field.* (Paris France: OECD Publishing, 2024). https://doi.org/10.1787/3247ba44-en

23 *See* OECD. *Competitive Neutrality Toolkit: Promoting a Level Playing Field.*

24 Dani Rodrik, *Industrial Policy for the Twenty-first Century* (KSG Faculty Research Working Paper Series RWP04-047). (Cambridge, MA: John F. Kennedy School of Government, Harvard University, 2004).

deficiencies in infrastructure, high capital requirements, or problems relating to coordination. A legal problem occurs when these objectives are achieved by means of measures which in effect grant access to mineral resources, to infrastructure, to energy, to fiscal incentives or to government support for a specific group of enterprises. In such a case the industrial policy in question might become a system of selective protection. It follows that the way in which Articles 102 and 103 are applied should be assessed not just on the basis of whether domestic processing has been obtained, but also on the basis of whether the regulatory framework allows genuine competition among enterprises that are able to meet the relevant downstreaming requirements.

The idea of competitive neutrality is especially important when it comes to the distribution of state support. According to the OECD, state support can be acceptable if it is aimed at correcting market failures or achieving legitimate public objectives, but the OECD also cautions that it can distort competition whenever it gives some enterprises artificially lower costs or a stronger financial position than that of their competitors.[25] This kind of support can occur through grants, preferential financing, tax incentives, guarantees, or by providing access to public resources on terms more favourable than those available to other firms.[26] This issue is very relevant to the mineral sector in Indonesia since downstream development usually involves large amounts of both public and private investment in energy, infrastructure, land, financing, and processing facilities. If such resources are distributed in a selective manner, the resulting competitive advantage will not be due to better efficiency, technology, or productivity, but rather to regulatory privileges. There is thus a difference between supporting an industry and supporting specific firms; the first can be regarded as part of industrial policy, while the second needs to be subject to much more careful examination since it might strengthen existing companies and limit the ability of new or foreign investors to enter the market on a competitive basis.

The situation is made more complicated by the part played by state-owned enterprises (SOEs) in Indonesia’s strategy for processing minerals. In the case where the State carries out all the roles of policymaker, regulator, controller of resources, and owner of the enterprises taking part in downstream activities, the risk of conflicts of interest becomes especially great. According to the OECD, it is important to separate the State's functions of ownership, policy-making and regulation if a fair playing field is to be maintained, especially in cases where

[25] *See* OECD. *Competitive Neutrality Toolkit: Promoting a Level Playing Field.*
[26] OECD.

SOEs are competing with privately owned enterprises.[27] The OECD also advises that SOEs should not be given more favourable access to finance, land, energy, infrastructure, concessions or other inputs than is available to private competitors, unless the advantages in question represent transparent compensation for real public-service obligations.[28] When this principle is applied to Indonesia's mineral industry, it gives rise to a major legal issue: if a state-owned enterprise or a company linked to the state is given preferential access to strategic mineral inputs, infrastructure, financing, or other kinds of government assistance, can this treatment be defended on the grounds of a clearly stated public interest objective, or does it instead give an unfair competitive edge? This question in particular becomes important in the case where the same government that grants the advantage is also the one that regulates the market in which the enterprise receiving the advantage takes part.

The investment-law framework includes an extra normative requirement. Article 3 of the Investment Law No. 25 of 2007 contains principles such as legal certainty, openness, accountability, equal treatment, efficiency coupled with justice, sustainability, independence, and balance in national economic development. These principles indicate that Indonesia's industrial policy cannot be evaluated solely from the point of view of national industrial interests; it also has to take into account the need for investment regulations to offer a predictable and non-arbitrary environment for economic actors. While equal treatment does not mean that all forms of differential treatment must be banned, distinctions may still be justified if they aim at achieving legitimate public objectives and are grounded in objective regulatory criteria.

The proper legal distinction is thus between justifiable differentiation and arbitrary or protectionist differentiation. For instance, it may be a legitimate regulatory condition to require all enterprises operating at the downstream level to meet minimum standards in the areas of processing, the environment, technology, or local value, since the requirements are based on the objective characteristics of the activity and not on the nationality of the investor. On the other hand, giving access to strategic infrastructure or to the supply of minerals only to certain enterprises without clear eligibility criteria may lead to concerns about discriminatory treatment and regulatory exclusion.

The competition-law aspects are especially important in cases where industrial-policy measures cause or strengthen market concentration. According to Article 25 of Law No. 5 of 1999, it is prohibited to abuse a dominant

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[27] *See* OECD.

[28] OECD.

position, this covering any action which restricts market access, technological development, or the entry of potential competitors. Yet the simple fact of having a dominant position does not mean that Article 25 has been violated; what is relevant from a legal point of view is whether the dominant position has been abused by means of exclusionary or otherwise forbidden conduct. This difference is significant when assessing downstreaming since economies of scale, high capital requirements and technological complexity may naturally lead to a fairly concentrated processing market. Such concentration should not be regarded as illegal by itself. A competition problem only arises when a company's position is strengthened by state-granted advantages and is then used to restrict competitors or potential new entrants. In this regard, the principle of competitive neutrality supplements traditional competition law by focusing on the regulatory conditions that come before firm-level actions. Although Article 25 mainly deals with the behaviour of firms that are in a dominant position, the competitive-neutrality approach examines whether the regulatory environment itself has given one firm an unfair advantage that distorts the competitive process.[29]

Rodrik's idea of industrial policy is also helpful in telling the difference between productive intervention and rent-seeking protection; for him, effective industrial policy involves an institutional process by which both the government and private parties identify market failures and find the right kind of intervention, not a fixed model in which the government merely picks out "winning" firms.[30] Industrial policy should therefore be kept under review and subject to feedback and adjustment as information regarding its effects becomes available.[31] When applied to Indonesia's downstreaming system, this approach favours the use of performance-based incentives over indefinite privileges.

For instance, government support could be tied to objectively measurable results such as increased processing capacity, technological upgrading, research and development, employment generation, environmental performance, or the creation of domestic value. By attaching conditions of this kind, the state would be able to promote industrial transformation while at the same time lowering the risk that companies become dependent on ongoing regulatory protection. On the other hand, unrestricted or indefinite advantages may lead to rent-seeking behaviour and diminish competitive incentives since firms could keep

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[29] *See* OECD.

[30] *See* Rodrik, *Industrial Policy for the Twenty-first Century.*

[31] Rodrik.

their market position by means of regulatory privileges instead of through productive efficiency.

The same concern can be seen when viewed from the standpoint of economic justice. The constitutional foundation of Indonesia's policy on natural resources, especially Article 33(3) of the 1945 Constitution, states that natural resources must be controlled by the State and used in order to achieve the greatest prosperity for the people, while Article 33(4) requires the national economy to be organised on the basis of, among other things, the principles of economic democracy, efficiency combined with justice, sustainability, independence, and balance in national economic development. These provisions offer a normative basis for downstream processing since domestic processing can enhance value creation and strengthen the nation's economic capacity. Yet the constitutional aim of public prosperity cannot be equated with overall increases in investment or industrial output. The way in which opportunities and benefits are distributed is just as important. If an industrial policy leads to greater domestic processing but at the same time results in highly concentrated ownership, restricts market entry, or systematically disadvantages smaller domestic businesses and potential foreign firms, it might lead to economic growth without necessarily realizing the constitutional aim of "efficiency with justice". Competitive neutrality thus serves as an important link between the constitutional goal of resource-based development and the practical needs of market competition.

Hence, the main legal issue is not whether Indonesia ought to carry out mineral downstreaming, but whether its regulatory framework includes adequate safeguards to prevent legitimate industrial policy from being turned into selective market protection. When competitive-neutrality theory[32], developmental industrial-policy theory[33], investment-law principles and competition-law provisions are all taken into account, state intervention should meet at least four conditions: a legitimate public-policy aim, objective and transparent eligibility criteria, a proportionality between the intervention and the policy objective, and measurable performance conditions which are subject to regular review. This method would allow Indonesia to keep an active industrial policy while making sure that the policy results in productive capacity and competitive markets rather than in the permanent protection of certain firms. The gap that remains is the lack of a sufficiently integrated legal test for deciding when downstreaming measures amount to legitimate state

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32 *See* OECD. *Competitive Neutrality Toolkit: Promoting a Level Playing Field.*

33 *See* Rodrik, *Industrial Policy for the Twenty-first Century.*

intervention and when they lead to unjustified competitive advantages. It is essential to develop such a framework if Indonesia is to achieve its aims of resource sovereignty, industrial development, foreign investment and fair competition.

In further, the international dimension of downstreaming also demonstrates why regulatory design matters. Indonesia's restrictions on nickel ore exports generated a dispute before the World Trade Organization. Although the WTO dispute concerns international trade law rather than domestic competition law, it illustrates that resource-nationalist measures operate within multiple legal orders. Christwan and Kusnowibowo [34] examine the legal uncertainty surrounding Indonesia's nickel downstreaming policy in light of the European Union's challenge. The appropriate lesson is not that Indonesia must abandon downstreaming, but that industrial policies should be designed with awareness of their interaction with international trade commitments and investment obligations. A coherent regulatory framework reduces the risk that one policy objective is pursued at the expense of another.

Fair competition should also take into account environmental costs. A firm which gains a competitive edge by avoiding its reclamation duties, environmental safeguards, occupational safety requirements, or its commitments to the community is not genuinely competing on the basis of merit; it is in effect passing part of its production costs onto society. Although Law No. 32 of 2009 and the mining legislation lay down environmental and reclamation obligations, effective enforcement is still essential. Rahman et al. point out the weaknesses concerning transparency, environmental protection, reclamation, and enforcement in Indonesia's mining regulatory system. It follows that a competition-sensitive approach should regard regulatory compliance as part of the competitive environment and not as an external matter.

The environmental aspect is especially important in areas that produce nickel. Recent empirical research shows that nickel mining can bring about economic and infrastructure advantages together with considerable environmental costs, such as the loss of forests and unequal welfare effects. These findings cast doubt on an approach to assessing mining success that focuses only on investment. If the environmental costs are not taken into account, companies that are able to pass on those costs may gain an artificial

[34] Christwan Christwan, and Ahmad Saleh Kusnowibowo. "Legal Certainty of Indonesia's Nickel Downstream Policy Due to the European Union's Lawsuit at the WTO." *Jurnal Indonesia Sosial Sains* 5, no. 11 (2024): 2992–3010. https://doi.org/10.59141/jiss.v5i11.1513.

edge over firms which comply with environmental requirements. The principle of fair competition thus demands that environmental obligations should be applied in the same way to foreign, domestic and state-owned companies. Without such uniform enforcement, environmental deregulation becomes an indirect means of distorting competition.

The same argument can be said to hold true in the case of local communities. Even though mining projects may have formal legal authorization, they can still cause disputes concerning land, compensation, participation, and access to natural resources. The material used in this study points out instances in which local people are unable to prove their formal land rights even though mining companies are able to meet the documentary legal requirements, thus leading to both vertical and horizontal conflicts. This shows a key weakness of relying solely on formal legality. Fair competition does not simply mean permitting companies to fulfill their licensing requirements; it also has to make sure that regulatory procedures do not systematically shift the social costs onto those who have weaker bargaining power.

Regulatory Harmonization and the Reform of Mining Competition Governance

As shown by the earlier analysis, the main weakness of Indonesia is regulatory fragmentation, not the lack of legislation. Although laws relating to investment, mining, competition, the environment, corporate matters, administrative procedures, and anti-corruption each cover legitimate areas of mining activity, their enforcement is not adequately coordinated. This results in the situation where a company can formally adhere to one set of regulations while still facing significant risks under another. The problem then becomes one of setting up an integrated system of governance without getting rid of the specific responsibilities of the sectoral institutions.

The first reform should be the setting up of an integrated mining regulatory information system. At the very least, the regulators must be able to check mining licences, concession areas, the shareholders of companies, the beneficial owners, the volumes produced, the related companies, the environmental obligations, the divestment transactions, and the major corporate acquisitions. Although Presidential Regulation No. 13 of 2018 offers the necessary normative basis for beneficial-owner transparency, its effectiveness will depend on verification. Disclosure should not stay merely a formal obligation of companies; it should instead become a practical requirement in the cases of licensing, divestment, major acquisitions, and participation in strategic mining transactions.

The second reform must address licensing integrity. Each important licensing decision should be backed by documented reasons, objective criteria for eligibility, traceable administrative procedures, and suitable opportunities for review. While the move to centralised mining licensing can help to eliminate fragmented decision-making, centralisation by itself does not ensure integrity. Hartati and Ayub[35] show that it is necessary to balance regional interests with national mining policy. The right approach is therefore not unregulated decentralisation nor complete centralisation, but rather a system in which authority is clearly allocated together with transparency, accountability, local participation, and effective administrative review.

Thirdly, divestment and transactions involving strategic ownership should be subject to competition-related safeguards. While the government may require Indonesia to take part in strategic mining companies, acquisition opportunities must not be distributed via unclear political channels. It is essential that beneficial ownership be verified, conflicts of interest be screened, independent valuations be carried out, and transparent transaction procedures be followed. When a domestic buyer already has considerable market power in the relevant mineral market, the transaction should be subjected to extra competition scrutiny; this would avoid the possibility of a resource-nationalist policy accidentally leading to the establishment of domestic monopolies or oligopolies.

Fourthly, institutional coordination should be made formal. The KPPU, ESDM, the investment authority, the environmental authorities, the tax authorities and the relevant law-enforcement bodies need mechanisms for structured data exchange and for jointly identifying risks. The material provided in this study already points out that limited data access and ad hoc coordination are major obstacles. A formal mechanism could set up indicators for high-risk transactions, for example those involving unusually concentrated ownership, repeated licensing between connected companies, rapid transfers of mining rights, unusual tender patterns, or acquisitions which greatly increase vertical integration. These indicators would enable enforcement agencies to take action before market distortions become firmly established.

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[35] Hartati Hartati, and Zainal Amin Ayub. "Jurisdictional Disputes between Central and Local Governments in the Management of Coal Mining." *Sriwijaya Law Review* 8, no. 2 (2024): 269-285. https://doi.org/10.28946/slrev.Vol8.Iss2.3003.pp269-285

Additionally, the sanctions imposed must be functionally complementary: violations of competition rules should lead to consequences under competition law; cases of bribery should be dealt with according to anti-corruption laws; unlawful licences should still be subject to administrative and judicial remedies; and breaches of the environment should result in environmental and mining sanctions. The reason why enforcement is weak is not that there are no sanctions in place but rather that the various institutions fail to link the facts across different legal systems. A company which acquires a dominant market position by means of corruption in connection with the manipulation of licensing, then takes advantage of that position should not be regarded as having committed three separate offences. The legal system should be able to identify the connection between the various acts while at the same time respecting the jurisdiction and evidentiary requirements of each individual institution.

Some experiences show that foreign investment screening and competition law can act as complementary regulatory mechanisms without confusing foreign ownership with anticompetitive behaviour. Australia is a relevant example of such a distinction. Investments from abroad are examined under the Foreign Acquisitions and Takeovers Act 1975 and within the wider foreign investment framework, mainly in relation to their impact on the national interest and national security. On the other hand, competition issues are handled by the Competition and Consumer Act 2010, with the Australian Competition and Consumer Commission (ACCC) being in charge of assessing the competitive effects of mergers and acquisitions. The importance of Australia's approach is that the regulatory aims are separated: foreign investment screening looks at the wider implications of foreign ownership, while competition law focuses on whether a given transaction is likely to substantially reduce competition. Therefore, foreign investment is not automatically considered to be anticompetitive just because the investor is foreign; instead, the regulatory review is based on the actual consequences of the transaction.[36]

At this time, Indonesia's mineral mining sector does not have this division of institutions and as a result there appear regulatory gaps which allow state-supported or foreign-controlled consortia to attain a high level of market concentration without there being any specific antitrust review before they enter the market or before they consolidate.[37] Although Indonesia does not have to copy the legal frameworks of Australia or Canada word for word, the two

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[36] *See* Australian Competition and Consumer Commission. *Merger Guidelines And Market Concentration Assessment in Resource Sectors*. Commonwealth of Australia, 2021.

[37] *See* Komisi Pengawas Persaingan Usaha (KPPU). *Laporan Pengawasan Persaingan Usaha Pada Sektor Pertambangan dan Energi di Indonesia*. (Jakarta: KPPU RI, 2021).

examples do show an important economic and administrative principle, namely that state sovereignty and market efficiency are both improved when foreign investment screening and general competition policy function as complementary and independent pillars.[38] It follows that Indonesia's legislative reform should aim at adopting a proportional system of governance. In this approach, high-value foreign direct investment in strategic critical minerals (such as nickel, copper and bauxite) is encouraged because of the capital it brings and the technology it transfers, but any proposed transaction that threatens market concentration, national energy security or wider public welfare must still undergo a clear and objective pre-merger review.[39]

Canada also makes a similar distinction in its institutions, but offers a more clear rationale for taking competition-related factors into account when reviewing investments. The Investment Canada Act provides that certain foreign investments are examined on the basis of a 'net benefit' criterion, this criterion including considerations such as productivity, technological development, resource processing, and the investor's contribution to Canada's international competitiveness. Furthermore, national security reviews may be carried out where specific risks emerge. Nevertheless, competition effects are still subject to independent examination under the Competition Act. Thus, the Canadian system shows that investment review can consider wider economic consequences, including those that might be related to market structure, without overriding the separate assessment required by competition law to determine whether a transaction is likely to prevent or substantially lessen competition.[40]

It is especially pertinent in the case of Indonesia for the distinction between these regulatory functions, since foreign investment, the management of mineral resources, and competition are each governed by separate legal and institutional arrangements. Foreign investment is mainly regulated by the investment regime, whereas activities relating to minerals and coal mining are

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[38] *See* United Nations Conference on Trade and Development (UNCTAD). *World Investment Report 2019: Special Economic Zones and Competition Policy*. (United Nations, 2019).

[39] *See* World Bank. *Indonesia Economic Prospect: Financial Sector Reform for Economic Transformation and Critical Mineral Governance*. (World Bank Group, 2022).

[40] *See* Competition Bureau Canada. *Merger Review Procedures Manual*. Innovation, Science and Economic Development Canada, 2022; Government of Canada. *Investment Canada Act: Annual Report 2022–2023*. Innovation, Science and Economic Development Canada, 2023.

governed by sector-specific rules covering licensing, downstream processing, divestment, and state control of mineral resources. Separate regulations, set out in Law No. 5 of 1999 and the regulations made under that law, cover competition issues such as mergers, consolidations and acquisitions which could lead to monopolistic practices or unfair competition in the course of business. The fact that there are these separate systems by themselves does not amount to a regulatory deficiency; the more important point is how well they are able to deal with transactions in which foreign investment has implications both for control over strategic resources and for market concentration.

The comparative dimensions of these regulatory frameworks are explained in Table 1. As the table shows, the main difference is not whether foreign investment is allowed, but rather the way the legal system identifies and reacts to transactions which could give rise to risks extending beyond the original investment transaction. Australia stresses the national-interest and national-security aspects of foreign investment while at the same time retaining a separate competition review. Canada too separates investment review from competition enforcement, but allows wider economic considerations to influence the assessment of significant investments. These approaches prove that a legal framework can be open to foreign capital and yet still include procedures for dealing with transactions that pose material risks to competition or to strategic economic interests.

TABLE 1. Comparative Framework for Foreign Investment Screening and Competition Regulation in Strategic Mineral Markets

Regulatory dimension	Australia	Canada	Indonesia
Foreign investment screening	Foreign investments are assessed under the *Foreign Acquisitions and Takeovers Act 1975* and the broader foreign investment framework, principally according to national-interest and national-security considerations.	Significant investments may be reviewed under the *Investment Canada Act* according to a “net benefit” test, while investments may also be subject to national-security review.	Foreign investment is generally permitted subject to investment restrictions and conditions established by legislation and sector-specific regulations.

Regulatory dimension	Australia	Canada	Indonesia
Competition review	Competition effects are assessed under the *Competition and Consumer Act 2010*, with the ACCC responsible for merger review.	Competition effects are assessed independently under the *Competition Act* by the Competition Bureau and the Commissioner of Competition.	Mergers, consolidations, and acquisitions are primarily governed by Law No. 5 of 1999 and Government Regulation No. 57 of 2010, with KPPU exercising competition-law authority.
Institutional relationship	Foreign investment screening and competition review remain institutionally distinct but may address different dimensions of the same transaction.	Investment review and competition review are institutionally distinct, although economic and competition-related considerations may intersect within the investment review process.	Investment, mining, and competition regulation operate through separate regulatory regimes, with less explicit integration in assessing the cumulative effects of foreign investment on strategic mineral markets.
Treatment of foreign ownership	Foreign ownership is not, by itself, treated as evidence of anticompetitive conduct; scrutiny depends on the transaction's broader regulatory implications.	Foreign investment is assessed according to its economic and national-security implications rather than being presumed harmful because of its foreign character.	Foreign investment is generally facilitated subject to applicable restrictions; competition concerns are assessed principally through the competition-law framework.
Strategic-resource considerations	Strategic and national-security concerns may form part of foreign investment review.	Resource-related and broader economic considerations may be relevant to the "net benefit" assessment and	Strategic mineral resources are regulated extensively through the mining regime, but the interaction between resource control, foreign investment,

Regulatory dimension	Australia	Canada	Indonesia
		national-security review.	and competition is not comprehensively integrated.
Regulatory orientation	Open investment combined with risk-based screening and separate competition review.	Investment facilitation combined with economic-benefit, national-security, and competition oversight.	Investment facilitation, resource governance, and competition regulation coexist, but their intersection remains comparatively underdeveloped.
Relevance for Indonesia	Demonstrates the value of maintaining separate regulatory objectives while enabling institutional coordination.	Demonstrates how broader economic considerations can inform investment review without replacing competition analysis.	Suggests the need for a more explicit mechanism to identify and assess foreign investments that may materially affect competition and control over strategic mineral resources.

Source: Authors' compilation based on the Australian Treasury, the Australian Competition and Consumer Commission (ACCC), Innovation, Science and Economic Development Canada (ISED), the Competition Bureau Canada, and Indonesian legislation.

As shown in Table 1, Indonesia's regulatory problem should not be seen as merely involving the lack of foreign investment control or competition regulation. The country already has separate legal measures covering both investment and competition, along with a great deal of sectoral regulation relating to mineral resources. The more significant regulatory gap lies in the way these different regulatory systems interact. A foreign acquisition in the mineral sector could at the same time change the ownership structure, lead to greater market concentration, reinforce vertical integration, and have an impact on control of strategically important resources. If the various consequences of such a transaction are evaluated only within the separate regulatory frameworks, the overall effects of the transaction will not be properly taken into account.

TABLE 2. Comparative Analysis of Foreign Investment Screening and Competition Oversight Frameworks

Jurisdiction	Primary Investment Screening Statute & Regulator	Primary Competition Statute & Regulator	Key Institutional Governance Principles
Australia	*Foreign Acquisitions and Takeovers Act 1975* (FATA) Foreign Investment Review Board (FIRB)	*Competition and Consumer Act 2010* (CCA) Australian Competition and Consumer Commission (ACCC)	Clear structural separation between national interest review (FIRB) and antitrust evaluation (ACCC). FDI is not presumed anti-competitive per se.
Canada	*Investment Canada Act 1985* (ICA) Innovation, Science and Economic Development Canada (ISED)	*Competition Act 1985* Competition Bureau Canada	Dual-track authorization: "Net benefit" and national security tests under ICA run parallel to non-discriminatory market dominance checks under the Competition Act.
Indonesia *(Proposed Model)*	*Law No. 25/2007 (Investment) & Law No. 3/2020 (Minerba)* Ministry of Investment (BKPM) / ESDM	*Law No. 5/1999 (Anti-Monopoly)* Business Competition Supervisory Commission (KPPU)	**Proposed Dual-Track Integration:** Transparent screening for national security/strategic resources, combined with mandatory pre-merger notification for mining sector market concentration.

Source: Various sources, compiled and analysed by authors.

The comparative analysis shown in Table 2 shows a basic structural similarity between Australia and Canada in that in both countries there is a clear separation of institutions between the review of foreign investment for national security purposes and the enforcement of anti-trust rules. In Australia the statutory duties of the Foreign Investment Review Board (FIRB) under the Foreign Acquisitions and Takeovers Act 1975 are strictly limited to examining transactions in relation to national security and public interest criteria. This review of national interest operates separately from the role of the Australian Competition and Consumer Commission (ACCC), which is given powers under the Competition and Consumer Act 2010 to look at market concentration and any potentially anti-competitive behaviour, no matter what the investor's nationality is. In a similar way, Canada puts into practice a two-track system in which the net benefit and national security assessments carried out by Innovation, Science and Economic Development Canada (ISED) under the Investment Canada Act 1985 do not replace or prevent the independent merger review carried out by the Competition Bureau under the Competition Act 1985. This kind of structural separation guarantees that foreign direct investment is judged on sovereign strategic grounds without treating foreign capital in itself as inherently anti-competitive or distorting of the market.

On the other hand, Indonesia's approach to regulating foreign investment in the mineral mining sector is based on a regulatory system that is not integrated and does not include such an institutional division. The Ministry of Investment/BKPM and the Ministry of Energy and Mineral Resources (ESDM) are responsible respectively for regulating foreign entry and the granting of mining concessions under Law No. 25/2007 and Law No. 3/2020, but their supervision still mainly concentrates on administrative licensing, the requirements relating to downstream processing (*hilirisasi*), and commitments of capital, rather than on structural competition risks.[41] At the same time, the Business Competition Supervisory Commission (KPPU), which operates under Law No. 5/1999, has no special pre-merger notification procedures or mandatory rules requiring consultation between institutions that are specifically designed for large-scale cross-border mining acquisitions. In order to overcome this regulatory gap, the proposed model for Indonesia calls for a modernized dual-track system. In this system, state investment regulators would keep in place transparent screening procedures concerning critical mineral security and national interests, while the KPPU would be given the power to exercise ex-ante merger control in order to prevent excessive market concentration and to ensure fair competition in strategic resource markets.On the other hand, Indonesia's approach to foreign investment in the mineral mining sector is currently based

[41] *See* Armadani Rizki Illahi, "Hilirisasi Pertambangan dan Dampaknya Terhadap Aspek Ekonomis Lingkungan Hidup di Indonesia." *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora* 9, no. 3 (2022): 1436-1444. https://doi.org/10.31604/justitia.v9i3.1436-1444

on a regulatory system that is not integrated and does not include such an institutional division. The Ministry of Investment/BKPM and the Ministry of Energy and Mineral Resources (ESDM) are responsible respectively for regulating foreign entry and the granting of mining concessions under Law No. 25/2007 and Law No. 3/2020, yet their supervision continues to be mainly concerned with administrative licensing, the requirements for downstream processing (hilirisasi), and capital commitments, rather than with structural competition risks. At the same time, the Business Competition Supervisory Commission (KPPU), which operates under Law No. 5/1999, has no special pre-merger notification procedures or mandatory rules requiring consultation between institutions that are specifically designed for large-scale cross-border mining acquisitions.[42] In order to overcome this regulatory deficiency, the suggested model for Indonesia calls for a modernized dual-track system. In this system, state investment regulators would keep in place transparent screening procedures relating to critical mineral security and national interests, while the KPPU would be given the power to exercise ex-ante merger control in order to avoid excessive market concentration and to ensure fair competition in strategic resource markets.

Therefore, the lessons from other countries indicate that it is better to establish a risk-oriented and institutionally co-ordinated approach rather than to adopt a general rule opposing foreign investment. Indonesia could keep an investment-friendly system for cases in which capital, technology, infrastructure and downstream industrial capacity are provided, but investments involving strategically important minerals, major changes in market concentration, significant vertical integration, or critical mineral infrastructure should be subject to greater examination. This kind of examination must be based on clear and legally established criteria in order to prevent excessive administrative discretion. The aim should be to tell the difference between foreign investment which enhances Indonesia's productive capacity and that which, because of its scale, structure or strategic importance, might weaken competitive conditions or lead to excessive dependence on a particular investor. In this regard, the experience of Australia and Canada offers a basis not for simply copying it, but for creating an Indonesian regulatory model that balances investment openness with competition, strategic-resource management and long-term economic resilience.

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[42] *See also* Muhammad Agus Subandi. "Economic Efficiency and Legal Certainty in Indonesia's Downstream Mining Policy". *The Indonesian Journal of Economic Analysis of Law* 1, no. 1 (2026): 1-18. https://inleads.id/publications/index.php/IJEAL/article/view/6.

Conclusion

The system for mineral mining in Indonesia shows that foreign investment and fair competition are not necessarily in conflict. Foreign investment can offer capital, technology, job opportunities, infrastructure, and access to international markets, whereas the state still has the constitutional power to make sure that mineral resources are managed in the public interest. The main legal problem occurs when resource nationalism, licensing discretion, ownership policies, and downstreaming function within a badly fragmented system of institutions. Although the change from the contract of work system to a licensing system has increased the state's authority, it has also made administrative legality, transparency, and institutional accountability more important. Resource-nationalist measures such as divestment and downstreaming may therefore be legitimate means of achieving economic sovereignty, but their legitimacy will depend on whether they bring about wide-ranging public benefits rather than simply substituting foreign concentration with domestic or state-related concentration.

The reform that is needed is therefore not the withdrawal of foreign investment but rather the restructuring of the regulatory framework which oversees it. Indonesia should combine the verification of beneficial ownership with mining licensing and divestment, make competition assessments a permanent feature of strategic mining transactions and policies, strengthen the data sharing between KPPU and ESDM, improve the transparency of licensing decisions, and ensure that there is coordination between competition, anti-corruption, environmental, and administrative enforcement. Fair competition must also mean competition on the merits, so that companies should not obtain an unfair advantage through political connections, corruption, manipulation of the regulatory system, the externalisation of environmental costs, or by being given preferential access to strategic infrastructure. These reforms would enable Indonesia to keep to its constitutional obligation to maintain resource sovereignty while at the same time offering both foreign and local investors a more reliable legal environment. Finally, the success of Indonesia's mineral policy should not be judged simply by the amount of foreign capital it attracts or by the extent of downstream investment, but rather by the extent to which the resulting resource governance leads to competitive markets, accountable institutions, environmental sustainability, and a clearly wider sharing of national prosperity.

References

Ali, Muhammad. "Corruption and Natural Resource Governance in Indonesia: Transparency Challenges in Coal Mining Licensing in East Kalimantan". *Indonesian Anti Corruption Studies* 3, no. 1 (2026): 69-82. https://doi.org/10.65815/00ytry59

Arnold-Keifer, Sonja, Jasper Müller, and Tim Mandel." Integrating Environmental Costs When Calculating The Energy Efficiency Potential." *Cleaner Environmental Systems* 17 (2025): 100281. https://doi.org/10.1016/j.cesys.2025.100281

Australian Competition and Consumer Commission. *Merger Guidelines And Market Concentration Assessment in Resource Sectors*. Commonwealth of Australia, 2021.

Butt, Simon, and Tim Lindsey. "Economic Reform When the Constitution Matters: Indonesia's Constitutional Court and Article 33." *Bulletin of Indonesian Economic Studies* 44, no. 2 (2008): 239-262. https://doi.org/10.1080/00074910802169004

Candra, Achmad Beni. "Implications of Changing the Terminology of a Contract of Work to a Mining Business Permit for Mineral and Coal Mining." *Journal of Law and Legal Reform* 3, no. 2 (2022): 215–242. https://doi.org/10.15294/jllr.v3i2.55214.

Carrington, Eliza, and Abdullah Farhan Mubarak. "Economic Justice and Indigenous Land Rights: The Role of the State in Balancing Development and Justice for Indigenous Communities". *Indonesian Economic Justice Review* 2, no. 3 (2025). https://doi.org/10.65815/agyp1v77

Christwan, Christwan, and Ahmad Saleh Kusnowibowo. "Legal Certainty of Indonesia's Nickel Downstream Policy Due to the European Union's Lawsuit at the WTO." *Jurnal Indonesia Sosial Sains* 5, no. 11 (2024): 2992–3010. https://doi.org/10.59141/jiss.v5i11.1513.

Competition Bureau Canada. *Merger Review Procedures Manual*. Innovation, Science and Economic Development Canada, 2022.

Fadhilah, Dening Putri, and Atha Difa Saputri. "Ensuring the Legal Safeguarding of Foreign Investments in Indonesia's Mineral and Coal Mining Sector." *Law Research Review Quarterly* 10, no. 1 (2025). https://doi.org/10.15294/llrq.v10i1.2914.

Farawansa, Syukron Mahal, and Elfrida Ratnawati Gultom. "Diagnosis of Nickel Industry Downstreaming Policy in Export Restriction Towards Increasing Economic Added Value in Indonesia." *Jurnal Legalitas* 17, no. 1 (2024): 1–16. https://doi.org/10.33756/jelta.v17i1.19688.

Foreign Investment Review Board. *Foreign Investment Framework: Guidance Note on National Security and Strategic Assets*. Australian Department of the Treasury, 2023.

Government of Canada. *Investment Canada Act: Annual Report 2022–2023*. Innovation, Science and Economic Development Canada, 2023.

Hartati, Hartati, and Zainal Amin Ayub. "Jurisdictional Disputes between Central and Local Governments in the Management of Coal Mining." *Sriwijaya Law Review* 8, no. 2 (2024): 269-285. https://doi.org/10.28946/slrev.Vol8.Iss2.3003.pp269-285

Illahi, Armadani Rizki. "Hilirisasi Pertambangan dan Dampaknya Terhadap Aspek Ekonomis Lingkungan Hidup di Indonesia." *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora* 9, no. 3 (2022): 1436-1444. https://doi.org/10.31604/justitia.v9i3.1436-1444

Junita, Fifi. "Foreign Mining Investment Regime in Indonesia: Regulatory Risk under the Revival of Resource Nationalism Policy." *International Journal of Private Law* 8, no. 3–4 (2017): 181–204. https://doi.org/10.1504/IJPL.2017.087329.

Junita, Fifi. "The Foreign Mining Investment Regime in Indonesia: Regulatory Risk under Resource Nationalism Policy and How International Investment Treaties Provide Protection." *Journal of Energy & Natural Resources Law* 33, no. 3 (2015): 241–265. https://doi.org/10.1080/02646811.2015.1057028.

Kadir, M. Y. Aiyub, and Alexander Murray. "Resource Nationalism in the Law and Policies of Indonesia: A Contest of State, Foreign Investors, and Indigenous Peoples." *Asian Journal of International Law* 9, no. 1 (2019): 298-333. https://doi.org/10.1017/S204425131900002X

Komisi Pengawas Persaingan Usaha (KPPU). *Laporan Pengawasan Persaingan Usaha Pada Sektor Pertambangan dan Energi di Indonesia*. (Jakarta: KPPU RI, 2021).

Lahadalia, Bahlil, Chandra Wijaya, Teguh Dartanto, and Athor Subroto. "Nickel Downstreaming in Indonesia: Reinventing Sustainable Industrial Policy and Developmental State in Building the EV Industry in ASEAN." *Journal of ASEAN Studies* 12, no. 1 (2024): 79–106. https://doi.org/10.21512/jas.v12i1.11128.

Lelisari, Ridho Aulia Tanjung, Zainal Abidin Pakpahan, Imawanto, and Hamdi. "Implications of the Constitutional Court Decision Number 91/PUU-XVIII/2020 Toward Job Creation Law in the Mineral and Coal Mining Sector." *Jurnal IUS Kajian Hukum dan Keadilan* 10, no. 3 (2022): 555–570. https://doi.org/10.29303/ius.v10i3.1132.

McKay, Jennifer, and Balbir Bhasin. "Mining Law and Policy in Indonesia: Issues in Current Practice that Need Reform." *Journal of Energy & Natural Resources Law* 19, no. 4 (2001): 329-343. https://doi.org/10.1080/02646811.2001.11433242

McKay, Jennifer, and Balbir Bhasin. "Mining Law and Policy in Indonesia: Issues in Current Practice that Need Reform." *Journal of Energy & Natural Resources Law* 19, no. 4 (2001): 329-343. https://doi.org/10.1080/02646811.2001.11433242.

Meutia, Ami A., Royke Lumowa, and Masayuki Sakakibara. "Indonesian Artisanal and Small-Scale Gold Mining—A Narrative Literature Review." *International Journal of Environmental Research and Public Health* 19, no. 7 (2022): 3955. https://doi.org/10.3390/ijerph19073955

Miller, Richard O. "Mining, Environmental Protection, and Sustainable Development in Indonesia." In *The Global Environment*. (London: Routledge, 2023), pp. 317-332. https://doi.org/10.4324/9781003421368

Natsir, Muhammad, Andi Hidayat Anugrah Ilahi, and Titien Pratiwi Adnas. "Political and Legal Developments in Mineral and Coal Mining Laws: A Critical Review." *Diponegoro Law Review* 9, no. 2 (2024): 186-203. https://doi.org/10.14710/dilrev.9.2.2024.186-203

O'Callaghan, Terry. "Patience Is a Virtue: Problems of Regulatory Governance in the Indonesian Mining Sector." *Resources Policy* 35, no. 3 (2010): 218–225. https://doi.org/10.1016/j.resourpol.2010.05.001.

OECD. *Competitive Neutrality Toolkit: Promoting a Level Playing Field*. (Paris France: OECD Publishing, 2024). https://doi.org/10.1787/3247ba44-en

Organisation for Economic Co-operation and Development. *OECD Investment Policy Reviews: Foreign Investment Screening Mechanisms and Competitive Neutrality*. (Paris, France: OECD Publishing, 2020). https://doi.org/10.1787/19990723

Östensson, Olle. "Promoting Downstream Processing: Resource Nationalism or Industrial Policy?" *Mineral Economics* 32 (2019): 205–212. https://doi.org/10.1007/s13563-019-00170-x.

Pribadi, Andi Luhur, and Albertus Kusuma Dananjaya. "Community Legal Advocacy for Environmental Protection: A Case Study on Illegal Mining in South Sulawesi: Advokasi Hukum Komunitas Untuk Perlindungan Lingkungan: Studi Kasus Tentang Penambangan Ilegal di Sulawesi Selatan". *Lentera Masyarakat Hukum* 2, no. 3 (2025). https://doi.org/10.65815/w19xjg80.

Rahman, Irsan, Basrawi Basrawi, Anis Widyawati, Leony Sondang Suryani, and Iyan Nurdiyan Haris. "Mineral and Coal Mining Regulatory Reform in Indonesia." *Journal of Law and Legal Reform* 6, no. 2 (2025). https://doi.org/10.15294/jllr.v6i2.19040.

Ramli, Asmarani, Aprila Niravita, and Suhadi Suhadi. "Between Justice and Development: How the Indonesian Courts Are Handling Land Disputes in the Face of Industrial Expansion". *Indonesian Court and Justice Review* 2. no. 3 (2025). https://doi.org/10.65815/56wg3592

Redi, Ahmad, and Luthfi Marfungah. "Perkembangan Kebijakan Hukum Pertambangan Mineral dan Batubara di Indonesia." *Undang: Jurnal Hukum* 4, no. 2 (2021): 473–506. https://doi.org/10.22437/ujh.4.2.473-506.

Republic of Indonesia. Government Regulation No. 25 of 2024 on Amendment to Government Regulation No. 96 of 2021.

Republic of Indonesia. Government Regulation No. 96 of 2021 on the Implementation of Mineral and Coal Mining Business Activities.

Republic of Indonesia. Law No. 25 of 2007 on Investment.

Republic of Indonesia. Law No. 3 of 2020 on Amendment to Law No. 4 of 2009 on Mineral and Coal Mining.

Republic of Indonesia. Law No. 30 of 2014 on Government Administration.

Republic of Indonesia. Law No. 31 of 1999 on the Eradication of Criminal Acts of Corruption, as amended by Law No. 20 of 2001.

Republic of Indonesia. Law No. 32 of 2009 on Environmental Protection and Management.

Republic of Indonesia. Law No. 4 of 2009 on Mineral and Coal Mining.

Republic of Indonesia. Law No. 40 of 2007 on Limited Liability Companies.

Republic of Indonesia. Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.

Republic of Indonesia. Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law.

Republic of Indonesia. Presidential Regulation No. 13 of 2018 on the Implementation of the Principle of Recognizing Beneficial Owners of Corporations.

Republic of Indonesia. Presidential Regulation No. 55 of 2022 on Delegation of Business Licensing Authority in the Mineral and Coal Mining Sector.

Republic of Indonesia. *The 1945 Constitution of the Republic of Indonesia*.

Rodrik, Dani. *Industrial Policy for the Twenty-first Century* (KSG Faculty Research Working Paper Series RWP04-047). (Cambridge, MA: John F. Kennedy School of Government, Harvard University, 2004).

Setiawan, A. "The socio-economic impact of national and foreign oil mining companies existences and activities in Tjepu 1967-2004." *IOP Conference Series: Earth and Environmental Science*. Vol. 325. No. 1. IOP Publishing, 2019. https://doi.org/10.1088/1755-1315/325/1/012011

Shahab, Alwi Mohamad, Novritsar Hasitongan Pakpahan, and Agung Satryo Wibowo. "Monopoly Supervision and Competition Law Enforcement in the Natural Resources Sector." *Journal of Social Science Studies* 4, no. 1 (2024): 145-154. https://jos3journals.id/index.php/jos3/article/view/301

Somsak, Rachana, Amelia Johnson, and Nadia Putri. "Eco-Justice in Indonesia's Mining Law: The Indonesian Mining Law and Its Conflict With Climate Justice in Indigenous Territories". *Indonesian Climate Justice Review* 2, no. 4 (2025): 539-568. https://doi.org/10.65815/jws85440

Spiegel, Samuel J., et al. "Phasing Out Mercury? Ecological Economics and Indonesia's Small-Scale Gold Mining Sector." *Ecological Economics* 144 (2018): 1-11. https://doi.org/10.1016/j.ecolecon.2017.07.025

Subandi, Muhammad Agus. "Economic Efficiency and Legal Certainty in Indonesia's Downstream Mining Policy". *The Indonesian Journal of Economic Analysis of Law* 1, no. 1 (2026): 1-18. https://inleads.id/publications/index.php/IJEAL/article/view/6.

Suhartana, Lalu Wira Pria, Zainal Asikin, L. Muh. Hayyanul Haq, and Mabarroh Azizah. "Risk-Based Mining Investment in the Framework of Fair Legal Certainty." *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 8, no. 1 (2025): 63-85. https://doi.org/10.24090/volksgeist.v8i1.12894.

Suparto, Suparto. "Interpreting The State's Right to Control in the Provisions of Article 33 Paragraph (3), The Constitution of 1945 Republic of Indonesia." *UIR Law Review* 4, no. 2 (2020): 1-8. https://doi.org/10.25299/uirlrev.2020.vol4(2).6889

Syahrir, Rezki, Frances Wall, and Penda Diallo. "Socio-economic impacts and sustainability of mining, a case study of the historical tin mining in Singkep Island-Indonesia." *The Extractive Industries and Society* 7, no. 4 (2020): 1525-1533. https://doi.org/10.1016/j.exis.2020.07.023

Tegnan, Hilaire, Lego Karjoko, Jaco Barkhuizen, and Anis H. Bajrektarevic. "Mining Corruption and Environmental Degradation in Indonesia: Critical Legal Issues." *Bestuur* 9, no. 2 (2021): 90-100. https://doi.org/10.20961/bestuur.v9i2.55219

United Nations Conference on Trade and Development (UNCTAD). *World Investment Report 2019: Special Economic Zones and Competition Policy.* (United Nations, 2019).

Velentina, Rouli Anita. "Legal Certainty for Foreign Investors in Coal Mining in Indonesia." *Jurnal Hukum dan Pembangunan* 49, no. 4 (2020): 923-941. https://doi.org/10.21143/jhp.vol49.no4.1219

Warburton, Eve. "Resource Nationalism in Indonesia: Ownership Structures and Sectoral Variation in Mining and Palm Oil." *Journal of East Asian Studies* 17, no. 3 (2017): 285–312. https://doi.org/10.1017/jea.2017.13.

World Bank. *Indonesia Economic Prospect: Financial Sector Reform for Economic Transformation*

Wulandari, Maria Mu'ti, and Baginda Khalid Hidayat Jati. "Peran KPPU Mengawasi Persaingan Usaha di Sektor Pertambangan dalam Konteks Green Economy." *Jurnal Persaingan Usaha* 5, no. 2 (2025): 101–115. https://doi.org/10.55869/kppu.v5i2.197.

Yuniar, Vania Shafira. "Legal Protection for Foreign Investment in the Mineral and Coal Mining Sector in Indonesia." *Dialogia Iuridica* 12, no. 2 (2021): 102–114. https://doi.org/10.28932/di.v12i2.3555.

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"Mining conflicts are fundamentally conflicts over environmental justice, as they involve struggles over the distribution of environmental costs and benefits, the recognition of different values of nature, and the power to determine how environmental damages are assessed."

— Based on Martínez-Alier (2001)

Joan Martínez-Alier is a Spanish ecological economist and professor emeritus at the Universitat Autònoma de Barcelona. He is internationally recognized for his work on ecological economics, political ecology, environmental conflicts, and environmental justice. His research has particularly examined conflicts surrounding natural resource extraction, including mining.

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