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# **ENSURING THE LEGAL SAFEGUARDING OF FOREIGN INVESTMENTS IN INDONESIA'S MINERAL AND COAL MINING SECTOR**

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## **Abstract**

Foreign investment in Indonesia's mineral and coal mining sector necessitates robust legal protection mechanisms. This paper explores the complexities surrounding legal frameworks and regulations governing foreign investment, aiming to ensure investor security and safeguarding. Methodologically, it examines relevant Indonesian laws, including Law Number 25 of 2007 and Law Number 3 of 2020, concerning Capital Investment and Mineral and Coal Mining, respectively. Results reveal ongoing challenges, including authority conflicts and licensing processes, hindering optimal sectoral contributions to national economic growth. Nonetheless, opportunities for foreign investment persist, particularly through work contract agreements. Adherence to Indonesian legal requirements, collaboration with local entities, and compliance with



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ownership structures and investment amounts are imperative for foreign investors. The paper underscores the government's commitment to enforcing compliance through administrative and criminal sanctions, promoting domestic participation in the sector. Overall, continual evaluation and adaptation of regulations are vital to ensuring sustainable and mutually beneficial foreign investment in Indonesia's mineral and coal mining sector.

## **KEYWORDS**

Foreign investment, legal protection, mineral and coal mining, Indonesia.

## **Introduction**

According to Article 33 paragraph (3) of the 1945 Constitution, the state holds the authority over land, water, and natural resources therein, with the goal of enhancing the populace's welfare.<sup>1</sup> This principle forms the foundation of the government's approach to coal and mineral resource management in Indonesia. Prioritizing the well-being of the community is the fundamental tenet of the mineral and coal mining sector, aligning with the government's aim of responsibly managing the nation's natural assets to advance general welfare.

Indonesia is currently included in the developing country category, which is characterized by holistic development efforts. Investment is considered the key to advancing economic development. Investment itself is the act of placing capital, either directly or indirectly, with the hope of gaining profits in the future.

All types of investment activities, whether carried out by local or international investors, are considered investment actions. This activity involves allocating money from these investors into business activities. The government also plays a role in the investment process, apart from the private sector. For example, the government can acquire assets and improve

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<sup>1</sup> mkri, "UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA 1945," n.d., [https://www.mkri.id/public/content/infoumum/regulation/pdf/UUD45 ASLI.pdf](https://www.mkri.id/public/content/infoumum/regulation/pdf/UUD45%20ASLI.pdf).

infrastructure through financing often referred to as capital expenditures. Capital expenditure refers to expenditure related to government investment initiatives to achieve development goals.

The arrival of foreign investment to Indonesia brings various benefits. One of them is the flow of fresh funds that helps support industries that need additional funding. In addition, foreign investment creates new jobs in large numbers and reduces the unemployment rate. Technology transfer also often occurs alongside foreign investment, introducing new technical information that will be useful in the future. The possibility of collaboration between micro, small and medium enterprises (MSMEs) and international investors is also not closed.<sup>2</sup>

MSME participation is considered an indisputable boost for local economic development. MSMEs and domestic business actors have the opportunity to market their products to international markets. One of the most obvious benefits of foreign investment is increasing tax revenues for the country, as well as strengthening the economic partnership between the two countries. Mining is one of the natural resources that can have a positive impact on the standard of living of Indonesian people.<sup>3</sup>

Indonesia's economic development initiatives, especially in the mining context, will greatly benefit from this industry. Types of minerals such as coal, oil and gas, silver, gold, copper and others are an important part of natural resources that can be utilized. The state has responsibility for the management of these mining resources. To develop and use mining resources optimally, long-term planning and collaboration with parties who have the necessary knowledge and skills are needed, including international investors.

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<sup>2</sup> Bayu Baskoro, "Return of Sinamot Money from the Perspective of Al ' Adu Muhakkamah ( Analysis of the Decision of the Padangsidempuan City Religious Court Number" 6, no. 225 (2024): 1–17.

<sup>3</sup> Rizqiani Purwaningtiyas R, Diajeng Dwi Oktaverina, and Bhim Prakoso, "Politik Hukum Investasi Pertambangan Di Indonesia" 2, no. 1 (2024).

Apart from playing a role in national economic progress, foreign investors also play a role in job creation and technology transfer. However, in the second quarter of 2019, there was a decline in investment in the mining sector which was in line with the decline in prices on the global coal market. Nevertheless, the mining sector should be able to make a significant contribution to foreign investment, because it is a vital sector in expanding domestic economic expansion to improve community welfare.

Drawing from the provided example, several factors contribute to the decrease in foreign investor participation within Indonesia's mining industry. Key factors highlighted encompass the nation's mining sector policies, regulatory consistency, and the level of legal protection and predictability afforded. The persisting perception of legal instability and inconsistency concerning investor protection poses challenges for international investors seeking to secure their investments in Indonesia. Nevertheless, governmental efforts to establish regulatory clarity, notably through the enactment of Law Number 3 of 2020 amending Law Number 4 of 2009 concerning Mineral and Coal Mining, aim to bolster legal certainty for foreign investors.<sup>4</sup> This legislation serves as a pivotal guideline for both the government and foreign investors navigating investment endeavors within the mineral and coal mining sector. Consequently, research addressing the legal safeguarding of foreign investment in Indonesia's mineral and coal mining sector remains pertinent and valuable to explore further.

## Methods

The author aims to delve deeper into normative legal research concerning the safeguarding of foreign investors in Indonesia's coal and mineral mining sector, as outlined previously. According to Peter Mahmud Marzuki, normative legal research involves the exploration of legal rules,

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<sup>4</sup> Indonesia, "Undang-Undang Nomor 3 Tahun 2020 Tentang Pertambangan Mineral Dan Batubara," *Pemerintah Pusat* 2, no. 4 (2020): 255.

principles, and doctrines to address pertinent legal issues. This method, also referred to as library research, relies on document analysis, utilizing secondary data sourced from legal literature such as statutes, judicial rulings, and legal theory. Additionally, insights from various expert sources including books, journals, legal lexicons, and electronic databases are considered. These perspectives will pertain to aspects concerning the legal protection of foreign investment within Indonesia's mineral and coal mining sector.

## Result and Discussion

Protection of foreign investments in Indonesia's mineral and coal mining sector holds significant importance and warrants thorough scrutiny. The legal concept of "capital investment" encompasses "capital participation" and covers investment activities open to individuals, corporations, or entities, whether domestic or international.<sup>5</sup> As Indonesia remains an attractive destination for foreign investment in its abundant mineral resources, ensuring the safety and legal protection of these investments is paramount. Given the intricate nature of legal frameworks, regulations, and associated risks, comprehending the scope and efficacy of legal protection mechanisms becomes essential. This introductory passage lays the groundwork for an exploration into the diverse facets of legal safeguarding for foreign investments within Indonesia's mineral and coal mining industry.

Capital can take various forms, including cash, intangible assets, machinery, expertise, or intellectual property rights. Investors typically classify investments into two main categories: domestic and foreign investment. Domestic investment originates from within a country, while

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<sup>5</sup> N Ariatmoko, "Analisa Politik Hukum Undang-Undang Minerba Sektor Batubara Indonesia," *Strata Law Review* 1, no. 1 (2023): 53–63, <https://journals.stratapersada.com/index.php/slr/article/view/v1n153-63%0Ahttps://journals.stratapersada.com/index.php/slr/article/download/v1n153-63/5>.

foreign investment involves funding from individuals or entities abroad, either independently or in partnership with domestic parties. According to Muthucumaraswamy Sornarajah in his publication "International Law on Foreign Investment," foreign investment denotes the transfer of tangible and intangible assets across borders, supported by legal guarantees, with responsibility resting on the asset owner.<sup>6</sup>

Foreign investment plays a pivotal role in the advancement of a nation's development, as evidenced by the regulations governing Foreign Direct Investment (FDI) in Indonesia. These regulations were initially established in Law Number 1 of 1967, marking the foundational legal framework for foreign investment practices in the country, aimed at ensuring legal certainty in investment execution.<sup>7</sup> Over time, regulations pertaining to FDI in Indonesia have undergone multiple revisions and amendments, including those introduced in Law Number 11 of 1970 and Law Number 25 of 2007 concerning Capital Investment. The latest iteration of these regulations, Law Number 25 of 2007, encompasses comprehensive provisions governing both foreign and domestic investment activities within a unified legal framework regulating investment practices.

## **1. Regulation of Foreign Investment in Indonesia**

Foreign investment, whether authentic or not, denotes the movement of capital from one nation to another. The objective behind this capital transfer is its utilization within the receiving country, either wholly or partially, with the intention of yielding profits under the oversight of the capital owner. Capital sourced from the private sector abroad is employed in foreign investment endeavors, either directly or indirectly through portfolios. Such investment activities occur within the territory of the

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<sup>6</sup> Suartini Maulvi Ratri Adinda Putri, Sadino, "Tinjauan Hukum Atas Kebijakan Minerba One Data Indonesia Bagi Pemegang Izin Usaha Pertambangan," *Sang Pencerah*, no. 2 (2021): 465–75, [https://id.wikipedia.org/wiki/Sang\\_Pencerah#/media/Berkas:Sang\\_Pencerah.jpg](https://id.wikipedia.org/wiki/Sang_Pencerah#/media/Berkas:Sang_Pencerah.jpg).

<sup>7</sup> Firdaus Ridhan Zafhari, "Tinjauan Yuridis Terhadap Keabsahan Perjanjian Nominee Dalam Penanaman Modal Asing (PMA) Di PT. Tadjahan Antang Mineral," *Civilia: Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 3, no. 2 (2023).

Unitary State of the Republic of Indonesia, involving collaboration between foreign investors and local counterparts.<sup>8</sup> Foreign investment assumes a critical role in bolstering the economies of developing nations. Serving as a principal driver of economic growth, foreign investment influences various facets such as employment dynamics, output levels, pricing mechanisms, income distribution, trade balances, overall societal welfare, and the equilibrium of payments.

The rationale behind the enactment of the Investment Law aligns with the state's objectives of fostering a fair and prosperous society rooted in Pancasila and the 1945 Constitution of the Republic of Indonesia. Aiming to realize these objectives, the promotion of sustainable national economic development grounded in economic democracy holds paramount importance.<sup>9</sup> This objective finds expression in the decree issued by the People's Consultative Assembly of the Republic of Indonesia governing capital investment. The evolution of laws, such as Law Number 1 of 1967 concerning Foreign Investment, subsequently amended by Law Number 11 of 1970, and Law Number 6 of 1968 concerning Domestic Investment, amended by Law Number 12 of 1970, underscores the necessity of updates to accommodate economic advancements and shifts in national legislation, particularly within the realm of investment. These considerations contributed to the formulation of the Investment Law.<sup>10</sup>

Efforts have been made by the government to streamline business activities in Indonesia, particularly within the mining sector, through the

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<sup>8</sup> Bagus Prasetyawan, "Pelaksanaan Kewajiban Divestasi Saham Dalam Rangka Penanaman Modal Asing Di Bidang Pertambangan Mineral Dan Batubara Pasca Terbitnya Undang-Undang Nomor 3 Tahun 2020 Tentang Perubahan Atas Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral Dan Batubara" 5, no. 4 (2023): 3728, <https://doi.org/10.31933/unesrev.v5i4>.

<sup>9</sup> Bintang Maha Putra, Naura Amalia, and Haryo Laksono Bimo, "Implementasi Undang-Undang Minerba Terhadap Perizinan Pembangunan Proyek Strategis Nasional," *Innovative: Journal Of Social Science Research* 3, no. 2 (2023): 2311–21, <https://j-innovative.org/index.php/Innovative/article/view/507>.

<sup>10</sup> Feby Wahyuni, "Perlindungan Hukum Bagi Penanaman Modal Asing Di Sektor Pertambangan Mineral Dan Batubara Di Indonesia," *Simbur Cahaya* 30, no. 2 (2024): 301–16, <https://doi.org/10.28946/sc.v30i2.2832>.

implementation of investment policies, with a focus on accommodating investors, including foreign entities. Given its global nature, the mining industry is subject to the influence of diverse stakeholders, whose decisions can significantly shape its trajectory. In Indonesia, investment regulations, particularly delineated in Law Number 25 of 2007, provide comprehensive guidance on foreign investment, reflecting the government's commitment to regulating investment practices within the country.<sup>11</sup>

As per the definition provided in Article 1 Paragraph 9 regarding Investment, "Foreign investment entails the deployment of capital for operating a business within the territory of the Republic of Indonesia, conducted by foreign investors, whether exclusively utilizing foreign capital or in conjunction with domestic investors." This influx of foreign capital holds the potential to invigorate the economy and enhance state revenues through entrepreneurial endeavors undertaken by foreign investors. Within this context, the term "foreign investor" encompasses individuals, companies, or governments from foreign jurisdictions. Hence, besides foreign legal entities, foreign individuals desiring to engage in business activities in Indonesia must also adhere to the stipulations outlined in the Foreign Investment Law and its associated implementation protocols.

The definition of the pertinent business entity can be elaborated as follows: "Domestic investment may take the form of a business entity, including legal entities, non-legal entities, or individual businesses, as outlined in statutory regulations" (Article 5, paragraph (1) of Law Number 25 of 2007 concerning Capital Investment).<sup>12</sup> Unless specified otherwise by law, foreign investment is required to be conducted through a limited liability company established under Indonesian law and situated within the

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<sup>11</sup> Muhammad Adhe Agassi, Rikki Hendrawan, and Arkan Aziz Mubarak, "Analisis Politik Hukum Undang-Undang Nomor 3 Tahun 2020 Tentang Perubahan Atas Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral Dan Batubara," *Jurnal Ilmiah Multidisiplin* 1, no. 11 (2023): 397–412, <https://doi.org/10.5281/zenodo.10282684>.

<sup>12</sup> Republik Indonesia, "UNDANG UNDANG NO 25 TAHUN 2007," *UU No. 25 Tahun 2007* 2 *UU No. 25*, no. 8 (2007): 132–37.



Republic of Indonesia. Both domestic and foreign investors opting to invest their capital via a limited liability company have flexibility in their approach, subject to statutory provisions.<sup>13</sup>

Previous investment laws, such as Law Number 1 of 1967 concerning Foreign Investment and Law Number 6 of 1968 concerning Domestic Investment, which have been effective for approximately 40 years, are deemed outdated and necessitate replacement with the enactment of Law Number 25 of 2007. Reflecting on historical perspectives, the cherished values of living freely and fostering a prosperous society amidst abundant natural resources are deeply ingrained in the Indonesian ethos. The preamble of the 1945 Constitution epitomizes the lofty ideals of the Indonesian nation, serving as the bedrock of its principles. Article 5, paragraphs 1 and 2 of the aforementioned law govern investment practices through the establishment of business entities, which may take the form of either individual legal entities or corporate entities, as stipulated in Law Number 25 of 2007 concerning Capital Investment.<sup>14</sup>

As per this legislation, domestic investment is permissible in diverse formats, including individual enterprises, non-corporate legal entities, or commercial enterprises, as prescribed by legal statutes. Conversely, foreign investment, unless specified otherwise by law, is required to adopt the structure of a limited liability company established under Indonesian law and situated within the territory of the Republic of Indonesia.

To engage in investment activities in Indonesia, foreign investors are required to establish a company in accordance with the business sector specified in the Standard Classification of Indonesian Business Fields (KBLI). This company must be structured as a Limited Liability Company

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<sup>13</sup> Raid Fikri Naufal and Icha cahyaning Fitri, "Kajian Yuridis Kebijakan Pengelolaan Tambang Di Wilayah Kabupaten Situbondo Ditinjau Berdasarkan Undang-Undang Nomor 3 Tahun 2020 Tentang Pertambangan Mineral Dan Batubara," *Indonesian Journal of Law and Justice* 1, no. 2 (2023): 13, <https://doi.org/10.47134/ijlj.v1i2.2010>.

<sup>14</sup> Republik Indonesia, "UNDANG UNDANG NO 25 TAHUN 2007."

(PT) and must be jointly owned by a minimum of two individuals and/or business entities. Additionally, investors must adhere to the regulations outlined in Presidential Regulation Number 44 of 2016, which delineates requirements for foreigners operating in both closed and open business sectors.<sup>15</sup> Foreign ownership of shares can attain full ownership (up to 100%) if the company's sector is not listed in the closed business areas. The minimum investment threshold for foreign investors in Indonesia is set at IDR 10 billion, excluding expenses related to land and buildings. Moreover, Indonesian banks are mandated to accept a minimum capital deposit of IDR 2.5 billion.

## **2. Legal Safeguards for Overseas Investors in Indonesia's Coal and Mineral Mining Industry**

1) The government formulates fundamental investment policies with the objectives of:

- a. Expediting investment expansion.
- b. Enhancing national economic competitiveness.
- c. Cultivating an investment-friendly business environment.

2) In devising these fundamental policies, the Government is obligated to:

a. Treat local and international investors equitably, while considering national interests.

b. Ensure legal clarity, stability of companies, and business security throughout the licensing process and investment execution, in alignment with applicable regulations.

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<sup>15</sup> Velinka Permatasari, "Fair Mining Legal Policy for Investors Regarding Unilateral Revocation of Licenses by The Government Post The Enforcement of Law Number 3 Of 2020," *Veteran Law Review*, 2020, 223–40.

c. Foster the growth of small, medium, and cooperative enterprises by fostering commercial opportunities and extending protection.<sup>16</sup>

Coal and mineral reserves are regarded as valuable assets of the nation, requiring responsible and efficient management to safeguard community welfare. As of November 2015, the Ministry of Energy and Mineral Resources (ESDM) reported coal reserves of 11,494,091 tons and combined mineral and coal supplies of 401,218,566 tons. Given the ample coal and mineral resources, Indonesia possesses the capacity to enhance its economic prospects through the mining sector, catering to both domestic and international markets.<sup>17</sup>

Mining in Indonesia presents significant profit opportunities, contributing substantially to the country's economy. However, its management falls short of expected standards due to the industry's high capital requirements and insufficient human resources for overseeing extensive mining operations. To address these challenges, the Indonesian government has engaged in partnerships with the private sector to manage mining resources. Nevertheless, the implementation of mineral and coal mining activities faces obstacles, including issues regarding jurisdiction between Central and Regional Governments, complex licensing procedures, community protection concerns, data management, supervision, and enforcement of sanctions. Consequently, the mining sector has yet to make an optimal contribution to national economic growth and sustainable regional development. Previously, Law Number 4 of 2009 regulated various aspects of mineral and coal mining but was deemed inadequate in addressing industry challenges, developments, and legal requirements. Hence, amendments were made through the ratification of Law Number 3

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<sup>16</sup> Siti Maryam and Andri Brawijaya, "Penyelundupan Hukum Investasi Asing Langsung Di Indonesia," *Jurnal Ilmiah Living Law* 15, no. 2 (2023): 157–65, <https://doi.org/10.30997/jill.v15i02.9712>.

<sup>17</sup> Yulian Dwi Nurwanti, M Aziz Zaelani, and Dina Irawati, "Penegakan Sanksi Pidana Dalam Kasus Usaha Tambang Mineral Dan Batubara," *Amnesti: Jurnal Hukum* 4, no. 2 (2022): 133–43, <https://doi.org/10.37729/amnesti.v4i2.2097>.

of 2020 concerning Amendments to Law Number 4 of 2009, ensuring a more comprehensive, effective, and efficient legal framework for regulating the mineral and coal mining sector. These legislative actions were conducted in compliance with relevant legal provisions, acknowledging the significance of mining as a state asset and its crucial role in sustaining livelihoods within communities.<sup>18</sup>

Effective management of mineral resources, particularly in the mining sector, demands substantial investments, advanced technology, and skilled personnel, alongside inherent risks for workers. However, Indonesia faces financial limitations in its exploration and exploitation endeavors, necessitating collaboration with international investors. These factors underscore the significance for the government to formulate regulations and policies governing coal and mineral mining. In this regard, the government has established fundamental investment policies aimed at fostering a conducive business environment, enhancing national economic competitiveness, and promoting investment growth, as outlined in Article 4 of Law Number 25 of 2007 concerning Investment. Through these policies, the government aims to provide legal certainty, business stability, and investor protection throughout the investment process, ensuring compliance with applicable legal provisions. Moreover, this framework fosters business opportunities and safeguards the interests of micro, small, medium, and cooperative enterprises, all while safeguarding national interests.

Collaborative management of mines involves the government, local businesses, and sometimes international partners with ownership stakes. Typically, these collaborations are formalized through work contract agreements, which necessitate a mining business permit (IUP) to ensure smooth cooperation and mitigate potential future issues. As per Article 6a

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<sup>18</sup> Wahyu Nugroho, "Persoalan Hukum Penyelesaian Hak Atas Tanah Dan Lingkungan Berdasarkan Perubahan Undang-Undang Minerba," *Jurnal Hukum Ius Quia Iustum* 27, no. 3 (2020): 568–91, <https://doi.org/10.20885/iustum.vol27.iss3.art7>.

of Law Number 3 of 2020 concerning Minerals and Coal, the Contract of Work entails an arrangement between the Indonesian government and local legal entities to engage in mineral mining activities. This contractual framework represents a cooperative effort between the government and private entities, whether domestic or foreign, to undertake mining operations.<sup>19</sup> These contracts are typically categorized into general mining work contracts and specific coal mining business agreements tailored for coal exploitation. Often, such partnerships involve joint fundraising efforts among business entities. Notably, these agreements encompass mining activities across all sectors excluding natural gas, oil, and gas exploration.<sup>20</sup>

A formal agreement between the Indonesian government and a foreign contractor, whether through exclusive or joint venture arrangements involving foreign and domestic legal entities, is established to conduct exploration and exploitation activities in the general mining sector for a defined duration, forming the basis of a work contract. Unlike the Work Contract, the Special Mining Business Permit (IUPK) differs in that both parties, the Foreign Investor and the Indonesian government, hold equal positions; however, such parity does not exist in the latter case. Instead, the government holds superiority over the company holding the IUPK permit.

Conversely, the Government of the Republic of Indonesia and Indonesian legal entities enter into agreements to undertake coal mining operations, known as the Coal Mining Concession Work Agreement. The distinctions among Mining Authorization, Coal Mining Concession Work Agreement, and Work Contract primarily revolve around several factors, including the size of the area, the processing procedures, and approvals,

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<sup>19</sup> R, Oktaverina, and Prakoso, "Politik Hukum Investasi Pertambangan Di Indonesia."

<sup>20</sup> Ivo Vera Wahyu Ningsih, Sugiharto Sugiharto, and Setio Utomo, "Perbandingan Return Investasi Emas Dan Investasi Saham (Capital Gain) PT. Aneka Tambang Tbk Pada Periode Januari 2019 – April 2020," *Smart Business Journal* 1, no. 1 (2022): 19, <https://doi.org/10.20527/sbj.v1i1.12786>.

activities conducted by the company before permit ratification, the stages and duration of these activities, as well as the fees and taxes levied.

The issue of potential hurdles encountered by foreign investors engaging in coal mining ventures necessitates careful consideration prior to investment in this sector. Presidential Regulation Number 36 of 2010 delineates the List of Closed Business Fields and Open Business Fields with Requirements in the Investment Sector, offering insights into these constraints. According to the DNI Presidential Decree, there are no impediments to foreign involvement in coal mining, enabling foreign investors to hold up to 90% ownership of the company's shares.<sup>21</sup> However, authorization from the Investment Coordinating Board is mandatory for the company, a requirement streamlined by the BKPM licensing procedure. In compliance with Law Number 25 of 2007 concerning Capital Investment, Article 5 Paragraph 2, international investments necessitate the establishment of a limited liability company. Consequently, forthcoming commercial agreements between foreign investors and local entities must adopt this corporate structure. Moreover, it is essential to acknowledge the existence of a divestment mechanism for foreign investors within the mining industry. Pursuant to the regulations outlined in Law Number 3 of 2020 concerning Mineral and Coal Mining (UU Minerba), entities holding mining business permits with foreign ownership must divest at least 51% of their shares after five years of production. This divestment process involves various stakeholders including the Central Government, Regional Government, State-Owned Enterprises (BUMN), local enterprises, and/or national private companies.<sup>22</sup>

Article 112A within Law Number 3 of 2020 concerning Mineral and Coal Mining mandates that holders of special mining business permits (IUPK) or

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<sup>21</sup> Triyanchy Afaz and Mulya Gusman, "Analisis Kelayakan Investasi Menggunakan Metode Discounted Cash Flow Pada Tambang Aspal PT," *Jurnal Bina Tambang* 6, no. 6 (2021): 84–95.

<sup>22</sup> Sanawiah and Istani, "PENEGAKAN HUKUM PERTAMBANGAN TANPA IZIN BERBASIS TRANSENDENTAL," *Satya Dharma: Jurnal Ilmu Hukum* 5, no. 1 (2022): 27–39.

mining business permits (IUP), inclusive of both domestic and international investors, are required to contribute funds to ensure the sustainability of coal and mineral reserves during the production phase. Activities aimed at adding reserves are funded through the Mineral and Coal Reserve Resilience Fund. Law Number 3 of 2020 typically encompasses two types of penalties: administrative sanctions and criminal penalties for investors found to be in violation of the law. Nevertheless, the principle of *uti remedium* (last resort) remains in effect in both Law Number 4 of 2009 and Number 3 of 2020.<sup>23</sup> Hence, it is commonplace for administrative sanctions to be invoked more frequently than criminal sanctions. This aligns with Article 151, granting the Minister authority to impose administrative penalties on holders of mining business permits (IUP), special mining business permits (IUPK), people's mining permits (IPR), rock mining business permits (IUP), or mining sales permits who contravene the stipulated provisions.

Articles 158 and 161 delineate criminal penalties, specifying that individuals engaging in mining activities without the requisite permit or possessing, utilizing, or conducting mining-related operations without authorization may face imprisonment and/or fines. These provisions also outline penalties for permit holders found to be in breach of legal regulations concerning mining. Available data indicates that investment in the mining services sector reached IDR 70.31 trillion by the third quarter of 2020 subsequent to the enactment of Law No.3. This represents a 25.4% increase from 2019, amounting to the current value of IDR 56.07 trillion. Despite the socio-economic repercussions of the Covid-19 pandemic, the mining services industry has continued to expand, significantly contributing to government revenue through tax receipts.<sup>24</sup>

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<sup>23</sup> Indonesia, "Undang-Undang Nomor 3 Tahun 2020 Tentang Pertambangan Mineral Dan Batubara."

<sup>24</sup> Tamara Sujarwo Putri and Sri Setyadji, "Tinjauan Hukum Pelaku Usaha Tanpa Izin Usaha Pertambangan" 4 (2024): 12000–7.

The IUPJ enables its holders to engage in mining activities in accordance with the provisions of Law Number 3 of 2020 concerning Mineral and Coal Mining. Article 24 Paragraph 3 delineates these prerequisites, while Article 124 mandates IUP or IUPK holders to engage local or national mining service companies. In instances where such entities are unavailable, IUP or IUPK holders may engage in partnerships with Indonesian legal entity mining service enterprises for foreign investments.<sup>25</sup>

## Conclusion

In conclusion, the legal protection for foreign investment in Indonesia's mineral and coal mining sector is a multifaceted issue that demands careful examination. The Indonesian government has taken significant steps to create a conducive investment climate through various legal frameworks and regulations. Foreign investment plays a crucial role in Indonesia's economic development, influencing aspects such as employment, output, prices, income, and the balance of payments. The enactment of Law Number 25 of 2007 concerning Capital Investment aimed to provide legal certainty and stability for both domestic and foreign investors. However, challenges persist, particularly in the mineral and coal mining sector. Issues such as authority conflicts between central and regional governments, licensing processes, community protection, data management, and supervision hinder optimal sectoral contributions to national economic growth. Consequently, the need for comprehensive legal frameworks, as evidenced by the enactment of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, becomes imperative. Foreign investors must navigate various regulations, including those governing ownership structures, investment amounts, and divestment mechanisms. While opportunities for foreign

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<sup>25</sup> Indonesia, "Undang-Undang Nomor 3 Tahun 2020 Tentang Pertambangan Mineral Dan Batubara."



investment exist, such as through work contract agreements, adherence to Indonesian legal requirements and collaboration with local entities are essential. Furthermore, the implementation of administrative and criminal sanctions underscores the government's commitment to enforcing compliance and protecting national interests. Despite challenges, the mining services industry continues to grow, contributing significantly to state revenue. The utilization of local or national mining service companies by permit holders further underscores efforts to promote domestic participation in the sector. In essence, while legal protection mechanisms exist, continual evaluation and adaptation of regulations are necessary to address evolving challenges and ensure sustainable and mutually beneficial foreign investment in Indonesia's mineral and coal mining sector.

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