

Investment Policy In Mineral And Coal Mining Threatens The Existence Of Environment After The Implementation Of Job Creation Law In Indonesia

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Abstract

Indonesia possesses abundant natural resources in the form of minerals and coal mining. However, there is a need to increase investment in the mineral and coal mining sector to ensure it contributes to national development without solely relying on state revenue. Consequently, the Indonesian government introduced an investment policy that involved a comprehensive overhaul of the legal framework for mineral and coal mining. This initiative resulted in the creation of the Omnibus Law, later enacted as Law No.11 of 2020 concerning Job Creation. Nevertheless, the broad-reaching implications of this legislation on environmental sustainability are a cause for concern. The provisions within the law, which aim to simplify business licensing and facilitate land acquisition, conflict with numerous regulations in the forestry and environmental fields. As a result, this law possesses significant potential to cause widespread environmental damage, as it eliminates the requirement for environmental impact analysis (AMDAL) when obtaining business licenses and offers easy licensing for mining exploration within forest areas. It is crucial to recognize the importance of balancing economic development with environmental sustainability within the mining sector.

Keywords: mining, minerals and coal, environment.

1. Introduction

Indonesia is one of the countries with the largest potential reserves of mineral resources globally (Fifi Junita, 2015; Ismail Ramadan, 2020). The potential mineral resources include coal, tin, nickel, gold, and copper, spread throughout the Republic of Indonesia territory (Ministry of Energy and Mineral Resources (ESDM), 2023). This large natural resource potential is strategically exploited to benefit national economic development, but investment in this sector still needs to be improved. Mineral mining exploration investment in Indonesia is still relatively small (1.5% or around US\$ 57 million) compared to the scale of global exploration, for example, Latin America (21.9%), Canada (19.6%), Africa (16.1%), and Australia (14.7%) (Zeflin Angga, Purwanto, 2013). Indonesia still needs investment in the mining sector to reach Rp830 trillion in the framework of the Masterplan for the Acceleration and Expansion of Indonesian Economic Development (MP3EI). Deputy for Coordination of Energy, Mineral and Forest Resources at the Coordinating Ministry for Economic Affairs Wimpy S Tjetjep said investment needs in the mining sector are still very high, and it is hoped that the state and the private sector can participate more.

Realizing the lack of investment in mineral and coal mining in Indonesia, the Government continues to issue various policies by organizing and reforming investment legal instruments in mineral and coal resources to attract as many foreign investors as possible to invest in mineral and coal mining. The policy was then implemented by amendment of Law No. 4 of 2009 concerning Mineral and Coal Mining (2009 Mining Law) to Law No. 3 of 2020 (2020 Mining Law). The amendment of Law No. 4/2009 aimed to revive the mining sector and encourage investment in mining exploration and introduced several important changes to mineral and coal mining operations, including provisions relating to the designation of mining areas, centralization of authority, and the form of mining business licenses (Toby Grayger & Marc Rathbone, 2023).

Not only limited to changes to the structure of mining law in 2009, efforts to increase domestic investment, the Government of Indonesia also took a very radical policy by issuing an Omnibus Law, which was later stipulated as Law No.11 of 2020 concerning Job Creation (Job Creation Law) with a hope that this policy would be a big leap as a breakthrough step in improving the investment climate so that hyper-regulation both sectoral and operational which has been an obstacle to investment entry is expected to be minimized

and ensure sustainable economic growth can run as expected (Eddy Cahyono Sugiarto, 2020).

The Omnibus Law scheme is expected to be an innovative breakthrough in de-bureaucratization and deregulation efforts to break the pace of national investment because the application of the Omnibus Law will be able to lead to the creation of jobs whose substance creates an investment ecosystem conducive to strengthening the economy by creating and expanding jobs, improving the investment ecosystem and ease of doing business and protecting Micro, Small and Medium Enterprises (MSMEs). Thus, the content in the Omnibus Law includes simplification of business licensing, investment requirements, employment, ease of doing business and protection of MSMEs, support for research and innovation, government administrative arrangements, rules for imposing sanctions, spatial regulations and land acquisition, ease of government projects and provision of economic area facilities (Eddy Cahyono Sugiarto, 2020). However, the existence of the Job Creation Law has caused various problems and generated much controversy. One of the most fundamental problems is that the over-regulated and over-lapping issues that occur in the regulation of fields related to development and investment will not be resolved because the Job Creation Law requires the existence of around 500 derivative regulations so that it has the potential to create a complex hyper-regulated (Sigit Riyanto, et al, 2020).

Concerning the environmental sector, the existence of the Job Creation Law has a very broad impact on the sustainability of the environment because the regulation regarding the simplification of business licenses and land acquisition touches on many regulations in the forestry and environmental sectors. The fundamental change that occurred was the amendment of several core regulations in the forestry sector contained in Law No. 41/1999 on Forestry and Law No. 32/2009 on Environmental Protection and Management. So that this study becomes very important to analyze the correlation between three fundamental variables related to investment policy, environmental protection, and the application of the Job Creation law, where Indonesia's position is in dire need of increased investment in the mineral and coal mining sector which has not been maximally exploited for the benefit of national development, but the risk of excessive investment in natural resources has a major impact and destructive power on the environment. In contrast, the job creation law provides convenience and leeway in utilizing the environment by removing some of the terms and conditions of environmental permits for the benefit of investment in mining. The assumption is that with the government's policy to increase investment in the mineral and coal

mining sector by overhauling the structure of mining law and facilitating all forms of environmental utilization through the Job Creation Law, in the end, there is great potential for environmental damage.

In this position, the question is how to manage investment policies in the mineral and coal mining sector to benefit economic development but not threaten the environment for sustainable development in applying the Mineral and Coal Law and the Job Creation Law.

2. Changes in Mining Law Structure

On June 10, 2020, Indonesian President Joko Widodo signed a bill amending Law No. 4/2009 on Mineral and Coal Mining which was subsequently passed into Law No. 3/2020. The changes were so sweeping that they drastically altered the structure of the previous mining law regulated under the 2009 Mining Law to revive the mining sector and encourage investment in mining exploration in Indonesia. However, this change to the Mining Law has set aside various controversies because the 2020 Mining Law is considered by experts to have changed too quickly, so it does not fulfill the procedural aspects of forming laws and regulations.

In addition to raising questions on procedural aspects, the revision of the Mining Law has left substantive issues that could be more problematic. In general, the revision of the Mining Law contains massive and radical changes, where the changes occur in 143 articles out of 217 articles, or around 80 percent of the total articles in the 2009 Mining Law. At least 51 new articles were added, 83 were amended, and nine were deleted. Several fundamental things are considered to be the main problem behind the changes to the Mining Law (Ahmad Khoirul Umam, 2021).

First, the licensing debureaucratization contained in the revised Mining Law 2020 regulates the revocation of the government's obligation to consult with the DPR regarding production and export controls. In the 2020 Mining Law, paragraph 3 (article 5) states that a Government Regulation is sufficient to regulate these technical matters. The spirit of debureaucratization is also evident from the elimination of the dualism concept of Mining Business License (IUP) in the Exploration and Operation areas (in article 1 paragraph 8 and 9). This new law only regulates one IUP. Similarly, Special IUP (IUPK) does not have variants of Exploration IUPK and Operation IUPK. IUP has indeed become simpler because it includes two business activities, namely exploration and production operations, which were previously separated, requiring mining entrepreneurs to manage the two types of licenses separately. If in the past there were 24 rows of tables

that had to be fulfilled, now there are only 13 items (A to M), and exploration licenses can also be extended for 1 year, as stipulated in article 42A. Meanwhile, IUP holders are also allowed to have more than one IUP and IUPK, provided that the IUP holders are state-owned enterprises or private companies that hold non-metal and mineral commodity IUPs. In fact, the land requirement for metal mineral and coal IUP owners is no longer limited to a minimum of 5,000 hectares (ha), which means that small-scale miners can also obtain IUPs for exploration in small IUP Areas (WIUP). This has the potential to make mining actors mushroom in various regions (Ahmad Khoirul Umam, 2021).

These changes have the potential to encourage more mining activities and attract a greater number of mining actors in various regions of Indonesia. It's important to consider that while debureaucratization and simplification of licensing procedures can enhance efficiency and attract investments, it is crucial to balance them with robust environmental regulations, effective monitoring, and enforcement mechanisms to ensure responsible and sustainable mining practices.

Second, the revision of the 2020 Mining Law provides a very wide space for business actors to optimize their company's capacity. If it is not balanced with strict rules to optimize state revenues, as well as in order to preserve the environment and prioritize the welfare of local communities, then this new law is nothing like a state regulation that facilitates the power of capital to exploit national mining wealth in a structured and massive manner. For example, for the People's Mining Area (WPR), the limit of primary metal and coal reserves is expanded, not only 25 meters deep but up to 100 meters. Similarly, the maximum area of WPR is expanded from 25 hectares to 100 hectares. WPR rules, which originally had to have been worked on by the people for at least 15 years, are now softened with the provision that areas just about to be worked on can also be categorized as WPR (Ahmad Khoirul Umam, 2021).

It means that this condition will potentially open up space for the entry of local and national oligarchic forces by hijacking and acting on behalf of local community groups to exploit natural resources. The modus operandi that is likely to occur is splitting the operations of a number of large mining companies into smaller-scale but large-scale and massive exploration efforts by utilizing the flexibility of the WPR status rules.

Third, the revision of the Mining Law is carried out with the spirit of increasing investment, competitiveness, added value, and mining business results, also seen in downstream efforts in the form of separating the categories of processing and refining activities of mining products without changing their physical and chemical

properties, which were previously combined into one. Rules to increase the added value of mining products are also broken down in mining commodities of excavated goods into three types: processing and refining of metal mineral mining commodities; non-metal mineral processing; and rock mining processing, all of which processing facilities must be carried out domestically.

Fourth, the government incentivizes business actors to work more on downstream mining to increase investment and added value (Deloitte Indonesia, 2021). If the company only focuses on excavation and mining, the business permit is only valid for 20 years. Meanwhile, if the company also carries out processing and or refining activities, the operating license period can be increased to 30 years and guaranteed to be extended for another ten years. The incentive can be given provided that the company can fulfill new obligations by providing mineral and coal reserve resilience funds to finance reclamation activities, post-mining activities, and the subsequent discovery of new reserves. If the company defaults, then the company is threatened with a criminal fine of 5 years in prison and must pay a maximum fine of IDR 100 billion. Although it seems stricter, the facts are that these obligations are often abused, and their fulfillment is not transparent. So companies often have paid reclamation funds, but the obligation to carry out reclamation still needs to be carried out.

Fifth, the 2020 Mining Law has changed the status of the mining area. Article 1 paragraph (28a) states that the Mining Law Area is the entire land space, sea space, including the space inside the earth as a unit of territory, namely the Indonesian archipelago, the land under the waters, and the continental shelf. Then article 9 emphasizes that the Mining Area (Wilayah Pertambangan), as part of the Mining Law Area, is the basis for granting mining business activities. In Law 4 of 2009, the reference for WP is the National Spatial Plan (Rencana Tata Ruang Nasional) (Nur Hidayati, 2021).

The consequence of the above provisions is that the entire territory of the Unitary State of the Republic of Indonesia, which includes land, sea and air, is a mining area on which mining licenses can be granted. This provision is even worse than the previous Mining Law, namely, Law No.11 of 1967 which stipulates cemeteries, places that are considered sacred, public works, such as public roads, roads, railways, electric waterways, gas, places of other mining business work, buildings, residential houses or factories, as locations that cannot become mining areas. Law No.3 of 2020 basically makes the mining area a limitless-area.

Sixth, the next controversy related to the environment in the Mining Law 2020, which is still related to the mining area, is the consideration of determining the mining area, which is solely based

on the technical aspects of mining and does not care about environmental aspects. The determination of the area and boundaries of WIUP (Mining Activity Permitted Area) for metal minerals and coal WIUP as referred to in Article 17, must consider the national mineral and coal management plan, the availability of data on mineral or coal resources and/or reserves, and the status of the area. While previously, the criteria for determining one or more WIUP in one WP must be based on geographic location, conservation rules, carrying capacity of environmental protection, optimization of mineral/coal resources, and population density. The same applies to reclamation and post-mining activities. In Law No.4/2009, reclamation and post-mining activities are both mandatory. However, in Law No. 3 of 2020, reclamation and post-mining obligations are not mandatory for both because the provisions are not clearly regulated and give the impression of providing options to choose to do one or the other.

Based on the explanation above, it can be concluded that the spirit of environmental protection in the changes to the structure of the 2009 Mining Law is weakening because it is dominated by the spirit of providing convenience for investors who own capital to exploit mineral and coal mining resources. Environmental governance based on spatial planning, environmental carrying capacity, and conservation is increasingly marginalized in the new Mining Law No. 3 of 2020.

3. Mining Investment and Environmental Utilization in the Job Creation Law

The mining sector in Indonesia is one of the most controversial investment sectors, as it poses significant economic, environmental, and social risks to investors, developers, and local communities. While investment in the sector can be an important driver of economic growth and poverty alleviation, without regulation and adherence to environmental utilization standards, mining investments can lead to loss of access to land and livelihoods and environmental degradation (Environmental Initiative (PEI), 2010). Meanwhile, the existence of the Job Creation Law is an integral part of the investment law policy package.

To encourage increased investment, the Job Creation Law removes, amends, and establishes new rules related to business licensing regulated in Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law). One highlighted issue is the provision of an Environmental Impact Assessment (AMDAL). The Job Creation Law deletes and/or amends and combines several applicable laws into one law. The fundamental change that occurred is the amendment of several

core regulations in the forestry sector contained in Law No. 41/1999 on Forestry and Law No. 32/2009 on Environmental Protection and Management. Some important points of changes related to forestry and the environment in the Job Creation Law are as follows (Fitria Dewi Susanti, Sadam Afian Richwanudin, 2021).

3.1. Easy Permit of Forest Area Utilization

A significant change in the Job Creation Law is the licensing mechanism for forest area utilization that only applies to timber forest utilization. In contrast, it is only a formality to meet general standards for non-timber utilization and environmental services. In Law No. 41/1999 on Forestry, all types of forest area utilization licenses are listed in full, which consists of 8 points of licensing types divided according to forest functions and designations. Meanwhile, in the Job Creation Law, the licensing mechanism is simplified to only one type, namely business permit. The impact of this law is the revocation of articles 27-29 in Law No. 41/1999, so that intervention in forest areas through this business licensing scheme will be even more massive. The dominant effect will make it easier for any party, especially those with capital and power, to apply for business licenses in forest areas. The ease of granting licenses without consideration of ecological aspects is very risky for the environmental impacts that will be caused in the future.

3.2. Threats to the utilization of protected forest areas

The passage highlights the concern that the implementation of the Job Creation Law poses a threat to the existing utilization patterns in protected forests. Under the previous law (Law No. 41/1999), protected forests were primarily intended to serve as a life support system, with functions such as regulating water systems, preventing floods, controlling erosion, preventing seawater intrusion, and maintaining soil fertility

However, the Job Creation Law introduces a clause that allows for more diverse utilization of forest areas, expanding beyond environmental services and Non-Timber Forest Products (NTFPs). For instance, geothermal utilization is now possible without requiring a permit, as long as it adheres to Norms, Standards, Procedures, and Criteria (NSPK). Additionally, the law transfers authority over forest area utilization to the Central Government

This shift in utilization patterns raises concerns about potentially exploitative interests, such as conversion for mining or plantations, which can lead to the loss and destruction of protected forest areas. These forests play a crucial role as a life support system, and their destruction would have long-lasting consequences. Moreover, the

centralization of authority in the central government can result in imbalances in the benefits received between the central government and the regions.

Overall, the passage suggests that the Job Creation Law's provisions regarding protected forests may undermine their primary function and pose risks to their preservation and sustainable management

3.3. The disappearance of AMDAL as the last gateway to saving the environment

Fundamental changes in Law No. 32 of 2009 include the revocation of the terminology "environmental permit" which has implications for changing the position of AMDAL in the business licensing process where AMDAL is no longer a mandatory thing to decide the feasibility of a business permit but only a consideration. Ironically, mandatory AMDAL is only applied to business criteria whose processes and activities significantly impact the environment, society, economy, and culture. Consequently, the proliferation of business establishment licenses that do not need to carry out mandatory AMDAL has led to increasingly uncontrollable environmental impacts. The government has completely ignored environmental considerations in development activities.

3.4. Strict Liability Disorientation

The Job Creation Law changes the definition of strict liability in Article 88 of the PPLH Law where there are changes to the article. Initially, it is responsible for losses incurred without the need to prove the element of fault to be responsible for losses from its business and/or activities. However, this change does not change the meaning of strict liability to liability based on fault. This shift in the meaning of strict liability can be seen in Government Regulation No. 22 of 2021, where Article 501 paragraph (1) juncto Article 500 paragraph (3) states that what is meant by absolute liability is that the element of fault does not need to be proven by the plaintiff as a basis for payment of compensation. Proof of absolute liability is part of civil law enforcement which is carried out if the conclusion of the environmental supervisor's report states that the business actor is disobedient. It is certainly not in line with the principle of strict liability as part of liability based on fault, which can only be carried out if the supervision has found disobedience, meaning there is a need to prove the fault element. It is certainly a disorientation towards the meaning of strict liability.

Bambang Hendroyono said that Article 88 of the Job Creation Law does not remove the phrase "absolute responsibility" but puts it into the civil realm. The Forestry Law also regulates prohibition

norms and sanction norms. Suppose the corporation is proven to have violated, for example, burning the forest. In that case, it will be subject to criminal sanctions, but what is eliminated in this case is only the phrase "without proof of guilt (Bambang Hendroyono, 2021). The statement certainly makes it clear that, indeed, in the Forestry Law, the corporation will be subject to criminal sanctions. This statement certainly explains that in the case of environmental violations, the affected community must prove their guilt when taking legal action through the court (Nur Hidayati, 2021). Of course, this is very detrimental to the community. Similarly, Nur Hidayati stated that the phrase "without proof of guilt" was moved to the explanatory article, meaning that the Job Creation Law becomes weaker because it is not explicitly explained in the body. When reflecting on the 1997 UUPLH, the 2009 PPLH Law is a refinement of the previous law because proving fault will be difficult to prove when environmental pollution occurs. It means that people and the environment who have become victims of environmental pollution must prove the element of fault for the environmental pollution when suing in court. Whereas in this principle of strict liability, absolute responsibility is indeed the responsibility of the business license holder to ensure that there is no environmental pollution and destruction in its business area, this could result in a major setback if the phrase "without proof of fault" is removed.

4. Investment Policy Through the Implementation of the Mining Law and the Job Creation Law has the Potential to Damage the Environment

Based on the previous explanation related to mineral and coal mining investment policies through the overhaul of the mining activity legal structure regulated in the Mining Law 2022 in correlation with the establishment of the Job Creation Law as an effort to encourage increased investment in the mining sector with various incentive policies and the elimination of AMDAL requirements to obtain environmental utilization permits have great potential for environmental damage. This statement can be justified because before enacting these two legal products, the legal rules on environmental protection were strictly regulated in Law No. 32 of 2009 concerning Environmental Protection and Management (PPLH Law), which the 2009 Mining Law adopted. However, environmental damage still occurred massively as a result of mining exploration.

The research data you provided indicates that Indonesia, along with Brazil, is among the countries primarily responsible for a significant portion of tropical deforestation resulting from large-

scale mining activities. According to the research, Indonesia has experienced extensive deforestation due to mining, with 1,901 km² of deforested area. In fact, Indonesia ranks as the most affected country, with 58.2% of direct forest loss attributed to mining out of the 26 countries studied (Giljum, S., Maus, V., et al., 2022; Asep Saepudin, et al., 2022).

The expansion of mining, particularly for coal production, in East Kalimantan on the island of Borneo has played a significant role in driving deforestation in Indonesia (Giljum, S., Maus, V., et al., 2022). This development highlights the environmental impact of mining activities in the country. Additionally, the research indicates that both Brazil and Indonesia demonstrate a high statistical significance regarding the relationship between mining and deforestation, extending up to 50km beyond the immediate mining areas (Giljum, S., Maus, V., et al., 2022).

Regarding India, the highest deforestation rates were observed from 2010 to 2014, primarily driven by a doubling of coal production volumes due to demand from China and India (source not provided). Furthermore, the mining industry is associated with various environmental issues. It contributes to the degradation of surrounding water quality (Anggraeni, I., Nurrachmawati, A., Ifroh, R. H., Anwar, A., & Siswanto, S., 2019), soil degradation, air pollution (Syiah, 2012), and impacts on animal habitats (WALHI, 2006).

The research data highlights the importance of addressing the environmental impacts of mining, including deforestation, water quality degradation, soil degradation, air pollution, and habitat destruction. Sustainable mining practices, stringent regulations, and effective environmental management strategies are necessary to mitigate these negative consequences and ensure the preservation of ecosystems.

Several environmental damage cases have occurred in several mining companies in Indonesia. Several studies have found that the Freeport Mine does not have a tailings disposal site where discharged tailings could be stored and treated before being discharged into the river system. The Freeport Mine discharged about 10,000 tons of toxic waste per day in previous years, reaching 300,000 tons per day. In the process, it destroys nearby sago forests and the fish in the rivers on which Papuans have depended for centuries (Adolfina Kuum, 2020). The tailings flow through the Ajkwa River, located east of Timika City. The company stated that it would use the waste for road construction, but to date, no roads have been built using the waste.

The impact on the river ecosystem is generally polluted from upstream to the sea, including large areas of sago forest, fish stocks and biodiversity. The Ajkwa River is contaminated with tailings and

sedimentation from the mine. Sedimentation that accumulates along the river extends outward into the sago forest and contaminates nearby swamps and rivers. Tailings contaminate large areas of land (Adolfina Kuum, 2020).

Natural resource extraction has a direct effect on forests. Among the various extractive industries, mineral and coal mining significantly impact the country's forests and greenhouse gas emissions. Mining exploration has a limited impact on forest loss. Between 2000 and 2010, Sumatra, Kalimantan, Sulawesi, Maluku Islands and Papua lost about 14.7 million hectares (ha) of the forest, with only 2.1% of this loss occurring within mining concessions. NGO Auriga estimates that 1.74 million ha of forests are affected by coal mining today, including 1.1 million ha designated as conservation and protection forests. Furthermore, NGO Fern estimates that mining and coal permits threaten 9% of Indonesia's remaining forest cover (Sumali Agrawa, et, al, 2018).

The statement suggests that the implementation of the Job Creation Law, which provides flexibility in environmental permits and weak supervision and sanctions on mining companies, may contribute to increased and massive environmental damage from mining exploration activities. This viewpoint is supported by the argument that certain provisions in the law weaken environmental management.

One such provision mentioned is the relaxation of requirements related to Environmental Impact Assessment (AMDAL), both in its preparation and implementation, as a prerequisite for obtaining environmental permits. This relaxation implies that the level of scrutiny and assessment of potential environmental impacts may be reduced. The statement also highlights limited community participation, as the approval process is predominantly determined by the government through the EIA assessment team it has formed (Muhammad Fitranto Ismail, 2022).

These perceived changes in the regulatory framework and decision-making process regarding environmental management could contribute to concerns about increased environmental damage from mining activities. The argument implies that without robust assessments and community involvement, mining companies may face fewer barriers and oversight, potentially leading to higher levels of pollution and environmental degradation.

It is important to note that this analysis reflects a particular perspective on the potential consequences of the Job Creation Law. Evaluating the impact of legislation requires considering various viewpoints and examining the actual implementation and enforcement of the law's provisions.

Second, there is a shift in the environmental licensing regime from environmental permits to environmental permits as a condition for issuing business licenses. It means that the environmental management permit issued for its obligations does not come from the provisions stipulated in the law. However, it comes from administrative actions taken by the Government. Where the obligations imposed on the person in charge of the business will depend on the discretion of the Government as the approver.

Third, there is a change in the sanction regime. It can be seen from the increasing types of administrative sanctions. However, there are indications that the Government does not understand or is wrong in applying the concept of administrative sanctions that are trying to be launched in this law. So it is not very likely about the effectiveness of its application in environmental protection and management efforts. In addition, there are still inconsistencies in the elimination of criminal sanction provisions, misinterpretation of the concept of civil liability and the elimination of the environmental administrative lawsuit mechanism (Muhammad Fitrianto Ismail, 2022).

5. Designing environmentally friendly mining Investments

To overcome the impact of investment policies in the mining sector on massive environmental damage due to the laxity of legal rules that provide all the conditions for the use and utilization of the environment in mining activities, the last point in this study offers the application of an environmentally friendly mining investment model, because the need for investment in the mining sector is very important to maximize state revenue from the mining sector so that the need for investment in the mining sector cannot be avoided. Thus, the government can design an environmentally friendly mining investment model so that concerns over the environmental impact of mining activities can be avoided. In this context, the concept of the green mining industry should be used by the Indonesian government as it has been implemented in several countries. The green mining industry is an effort to promote energy efficiency to reduce the environmental footprint of the life cycle of mineral-based products. The aim is to enable the recovery of all valuable minerals and by-products and minimize the amount of waste (Huang, J., Yinping, L., & Yue, P, 2021). Thus it is mandatory to reduce energy and material mining, and mineral enrichment is mandatory so that mining can reduce the impact of mining at every stage of the operation. Appropriate training activities, implementation of green technology, good environmental management tools and forming sustainable partnerships help

mines improve performance and achieve sustainability (Maddala, S., et.al, 2021).

The passage highlights the importance of developing regulations to govern the implementation of the mining sector investment and avoid conflicts of interest among the central government, local governments, and mining companies. Such conflicts can undermine the effective implementation of green mining policies. By applying the concept of green mining, the aim is to address issues related to weak governance, conflicts, lack of environmental awareness, and low compliance with existing laws and regulations (Bebbington, A. J., & Bury, J. T., 2019).

Clarity regarding the regulations and standards that will be imposed on investors is emphasized as an essential factor. A study focusing on foreign-invested mining companies in Vietnam found that an equal and transparent investment environment, as well as the enforcement of the legal system, are crucial considerations for investors when making investment decisions (Vu Xuan Nguyet Hong, Ngo Minh Tuan, and Ho Cong Hoa, 2009). This suggests that clear regulations and a well-enforced legal framework provide investors with confidence and help create a favorable investment climate.

Investors and operators in the mining industry are encouraged to gain a better understanding of the regulations and standards applicable to their projects. This understanding can contribute to improving their ability to comply with these regulations, thereby promoting responsible mining practices.

In summary, the passage emphasizes the need for regulations to address conflicts of interest, promote green mining practices, enhance governance, and ensure compliance with environmental laws and standards. Clear and transparent regulations, as well as effective enforcement, are important for creating an equitable and favorable investment environment in the mining sector

As a concrete input to the government to anticipate the massive threat to environmental destruction due to the implementation of mining investment, if the government wants to make a very principle decision with full awareness to prioritize the interests of the environment in particular and the interests of the community and other natural resources, then the right decision for the government is to take concrete action by revoking and completely overhauling the two legal products that are not pro-environment, namely the Mining Law 2020 and the Job Creation Law 2021.

6. Conclusion

Investment policies in the mineral and coal mining sector through the overhaul of the mining activities legal structure stipulated in the Mining Law 2022 in correlation with the establishment of the Job Creation Law as an effort to encourage increased investment in the mining sector in Indonesia without realizing that the policies issued by President Joko Widodo have great potential for environmental damage because these two legal products perfectly regulate the various facilities provided to investors and capital owners to obtain incentives in the form of ease of obtaining environmental utilization permits in the form of eliminating the requirement for environmental impact analysis to obtain business licenses. The Job Creation Law has removed, changed, and combined several fundamental provisions related to the essence of the main regulations of the forestry sector contained in Law No. 41 of 1999 concerning Forestry and Law No. 32 of 2009 concerning Environmental Protection and Management into one work copyright law product.

The statement suggests that the Indonesian government should recognize the potential environmental damage caused by investment policies in the mining sector governed by the Mining Law and the Job Creation Law. To address the perceived threats of environmental damage resulting from mining investments, the government is urged to take concrete actions, including the revocation and revision of the environmental protection provisions within these laws. Instead, the adoption of legal rules that promote environmentally friendly mining investments is proposed.

This viewpoint emphasizes the need for a shift in policy and legal frameworks to prioritize environmental protection in the mining sector. By revoking and revising the existing laws, the government can address the perceived shortcomings and potential negative impacts on the environment. The suggested model of legal rules for environmentally friendly mining investments implies the incorporation of regulations and standards that prioritize environmental sustainability, responsible mining practices, and the mitigation of adverse impacts.

It's important to note that the implementation and revision of laws require careful consideration, balancing various stakeholders' interests, and conducting comprehensive assessments of environmental, social, and economic implications. Transitioning towards environmentally friendly mining practices involves complex challenges and trade-offs that need to be carefully addressed.

The passage expresses a perspective on the potential course of action for the Indonesian government to mitigate environmental risks associated with mining investments. Actual policy decisions

and actions should consider multiple viewpoints, stakeholder consultations, and a thorough understanding of the environmental implications and feasibility of adopting environmentally friendly mining practices.

References

- Adolfina Kuum, (2022). Freeport Mining and its Environmental Impacts on the Riverine Ecosystem, Lembaga Peduli Masyarakat Wilayah Mimika. Mimika-Papua.
<https://www.ohchr.org/sites/default/files/2022.06/Solidarity%20for%20Indigenous%20Papuan%201.pdf>. Pdf. Accessed on 25 May 2023.
- Ahmad Khoirul Umam, (2021). Reformasi Tata Kelola ataukah Resentralisasi Kekuasaan Negara? Arah Perubahan UU Minerba di Indonesia. in, Kuasa Oligarki Atas Minerba Indonesia? Post-Approval Analysis of Law Number 3 of 2020 on Mineral and Coal Mining, Universitas Paramadina, Jakarta.
<https://repository.paramadina.ac.id/152/1/Kuasa%20Oligarki%20atas%20Minerba%20Indonesia%20%28New%20Version%29.pdf>. Accessed on 25 May 2023.
- Anggraeni, I., Nurrachmawati, A., Ifroh, R. H., Anwar, A., & Siswanto, S. (2019). Environmental Quality On Surrounding Community of Coal Mining Area In Samarinda, East Kalimantan. Indonesia. Public Health of Indonesia, 5(4), 91–98.
<https://doi.org/10.36685/phi.v5i4.270>.
- Asep Saepudin, et.al, (2020). Indonesia Green Mining Industry, European Journal of Development Studies www.ej-develop.org, Vol 2 | Issue 5 | November 2022. DOI:
<http://dx.doi.org/10.24018/ejdevelop.2022.2.5.169>.
- Bebbington, A. J., & Bury, J. T. (2019). Institutional challenges for mining and sustainability in Peru. PNAS, 106(41).
www.pnas.org/cgi/content/full/.
- Deloitte Indonesia, (2020-2021). Available at:
<https://www2.deloitte.com/id/en/pages/about-deloitte/articles/investment-window-into-indonesia.html>. Accessed on 23 May 2023.
- Eddy Cahyono Sugiarto, (2020). Omnibus Law: Strategi Akselerasi Peningkatan Investasi dan Indonesia Maju, Wednesday, Available at:
https://www.setneg.go.id/baca/index/omnibus_law_strategi_akselerasi . Accessed on 25 May 2023.
- Fitranto Ismail, Muhammad. (2022). Legal Analysis of Mineral and Coal Mining Investment and Environmental Impacts in Indonesia Based on Law Number 11 Year 2020 Concerning Work Creation, Budapest International Research and Critics Institute-Journal

(BIRCI-Journal) Volume 5, No 2, May 2022, DOI:
<https://doi.org/10.33258/birci.v5i2.5122>.

- Fitria Dewi Susanti, Sadam Afian Richwanudin, (2020). Four Potential Impacts of Omnibus Law Policy on Forestry and Environment Sector, <https://sebijak.fkt.ugm.ac.id/2020/10/06/empat-potensi-dampak-kebijakan-omnibus-law-di-sektor-kehutanan-dan-lingkungan/>. Accessed May 25, 2023.
- Giljum, S., Maus, V., Kuschnig, N., Luckeneder, S., Tost, M., Sonter, L. J., & Bebbington, A. J. (2022). A pantropical assessment of deforestation caused by industrial mining. <https://doi.org/10.1073/pnas>.
- Geological Agency of the Ministry of Energy and Mineral Resources, <https://djawanews.com/bisnis/penghasil-tembaga/>. Accessed on 10 May 2023.
- Hidayati, Nur. (2021). Undang-Undang Nomor 3 Tahun 2020: Penderitaan Berkelanjutan bagi Rakyat dan Lingkungan Hidup, in, KUASA OLIGARKI ATAS MINERBA INDONESIA? Post-Approval Analysis of Law Number 3 of 2020 on Mineral and Coal Mining, Universitas Paramadina, Jakarta. <https://repository.paramadina.ac.id/152/1/Kuasa%20Oligarki%20atas%20Minerba%20Indonesia%20%28New%20Version%29.pdf>. Accessed on 25 May 2023.
- Huang, J., Yinping, L., & Yue, P. (2021). Review on the evaluation of green development of mining industry. IOP Conference Series: Earth and Environmental Science, 859(1), 012094. <https://doi.org/10.1088/1755-1315/859/1/012094>.
- International Coalition for Papua (2020). PT Freeport Indonesia and its tail of violations in Papua: human, labour and environmental rights. [https://www.tapol.org/sites/default/files/PT Freeport Indo tail of violations in Papua Dec20.pdf](https://www.tapol.org/sites/default/files/PT%20Freeport%20Indo%20tail%20of%20violations%20in%20Papua%20Dec20.pdf). Access, June 12, 2023.
- Jiskani, I. M., Cai, Q., Zhou, W., Lu, X., & Shah, S. A. A. (2022). An integrated fuzzy decision support system for analyzing challenges and pathways to promote green and climate smart mining. Expert Systems with Applications, 188. <https://doi.org/10.1016/j.eswa.2021.116062>.
- Junita. Fifi, (2015). 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, Vol 33, No 3. DOI. [10.1080/02646811.2015.1057028](https://doi.org/10.1080/02646811.2015.1057028)
- Rumadan. Ismail, (2020). Kerangka Hukum Pengelolaan Pertambangan Mineral dan Batubara di Indonesia, in book Indonesia The Mining Law, Deepublish, Yogyakarta.

- Maddala, S., Venkata Kanaka, Sharma, S., Chohan, J., Kumar, R., & Singh, S. (2021). Green mining techniques to curb environmental problems - A review. IOP Conference Series: Earth and Environmental Science, 889(1).
<https://doi.org/10.1088/17551315/889/1/012026>.
- Ministry of Energy and Mineral Resources of the Republic of Indonesia, (2016). <https://www.esdm.go.id/id/media-center/arsip-berita/cadangan-batubara-indonesia-sebesar-26-miliar-ton>. Accessed on 10 May 2023.
- Ministry of Trade of the Republic of Indonesia, (2019). <https://kemenperin.go.id/artikel/21222/Cadangan-Nikel-Melimpah,-Indonesia-Dinilai-Bakal-Perkasa-di-Era-Kendaraan-Listrik>. Accessed on 10 May 2023.
- Nur Hidayati, Executive Director of Wahana Lingkungan Hidup, Interview. Available at: <https://youtu.be/I8LLcjPQj5k> . Accessed on 25 May 2023.
- PT Newmont Nusa Tenggara. (2014). https://microsite.tempo.co/prasetiya_mulya/index-01.html. Accessed on 10 May 2023.
- Sigit Riyanto, et al, (2020). Kertas Kebijakan. Catatan kritis terhadap UU No 11 Tahun 2020 tentang Cipta Kerja. <https://rispub.law.ugm.ac.id/wp-content/uploads/sites/1049/2020/11/Kertas-kebijakan-analisis-UU-Cipta-Kerja-FH-UGM-5-November-2020-rev-1.pdf>.
- Sumali Agrawa, et, al, (2018). Impacts of Extractive Industry And Infrastructure On Forests (Assessment and Scoping of Extractive Industries and Infrastructure in Relation to Deforestation: Indonesia. <https://Indonesia-Impacts-of-EII-on-Forests-1.pdf>.
- Toby Grayger & Marc Rathbone, (2020). Indonesia updates its Mining Law and endeavours to create greater operational certainty. Available at: <https://cms-lawnow.com/en/ealerts/2020/07/indonesia-updates-its-mining-law-and-endeavours-to-create-greater-operational-certainty>. Accessed on 25 May 2023.
- Vu Xuan Nguyet Hong, Ngo Minh Tuan and Ho Cong Hoa. (2009). Sustainable Development Impact of Investment Incentives: A Case Study of the Mining Industry in Vietnam. International Institute for Sustainable Development. https://resourcegovernance.org/sites/default/files/sd_incentives_vietnam.pdf.
- Zeflin Angga, Purwanto, (2013). Analysis of Factors Affecting Foreign Direct Investment Mineral Mining Sector In Indonesia Period 2009-2012, International Conference on Law, Business and Government, Indonesia.¹ Indonesia updates its Mining Law and endeavours to create greater operational certainty. Available at: <https://cms-lawnow.com/en/ealerts/2020/07/indonesia-updates-its-mining-law-and-endeavours-to-create-greater-operational-certainty>.

[law-and-endeavours-to-create-greater-operational-certainty.](#)

Accessed on 25 May 2023.

Zhou, M., Govindan, K., Xie, X., & Yan, L. (2021). How to drive green innovation in China's mining enterprises? Under the perspective of environmental legitimacy and green absorptive capacity. *Resources Policy*, 72.

<https://doi.org/10.1016/j.resourpol.2021.102038>.