


Legal Protection for Foreign Investors in Mining Activities According to Regulations Legislation in Indonesia

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Article Info	ABSTRACT
Keywords: Legal Protection, Foreign Investors, Mining.	The mining sector is a key pillar of the Indonesian economy, contributing significantly to state revenue and employment. Indonesia's abundant natural resource potential makes it a strategic destination for foreign investors in the mining sector. However, the investment climate in this sector still faces various challenges, such as regulatory uncertainty, expropriation, and legal conflicts. This study aims to analyze the forms of legal protection provided to foreign investors in mining activities in Indonesia. The research method used is a normative juridical approach with a statutory approach. The results show that legal regulations related to foreign investment in the mining sector are based on the principles of legal certainty and fair treatment, strict but transparent licensing, guarantees of ownership and return of capital, and social and environmental obligations. These regulations include provisions related to the legality of business entities, general licensing, and share ownership. Forms of legal protection for foreign investors in the mining sector include protection against nationalization, legal certainty through business permits, fair and equal treatment, and access to national and international dispute resolution mechanisms. All of these instruments aim to build a stable and attractive investment climate for foreign capital.
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INTRODUCTION

Indonesia, as a democratic country, adheres to the principle that the sovereignty of the state is executed by its government as a representation of the people's will (Simaremare, 2023). This aligns with Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which emphasizes that sovereignty lies in the hands of the people and is exercised in accordance with the Constitution. Furthermore, Article 1 paragraph (3) declares that Indonesia is a state based on law, meaning all activities conducted within the country must comply with prevailing legal regulations (Farhan, 2024).

In accordance with these principles, the governance system must be grounded in both the rule of law and the sovereignty of the people. This includes, and is not limited to, the management of natural resources, as stated in Article 33 paragraph (3) of the 1945 Constitution: "Land and water and the natural resources therein are controlled by the state and shall be utilized for the greatest prosperity of the people." This implies that the state holds authority to regulate, manage, and supervise the exploitation of natural resources, while

ensuring they serve the maximum welfare of its people (Saleng, 2004). The concept of state control aims to prevent the monopolization of natural resources by private capital or foreign entities, which could hinder national benefit and lead to the exploitation of resources by a select few (Rahardi, 2018).

Every nation strives to enhance the welfare and prosperity of its people. One strategic step is attracting foreign investors to inject capital domestically. Among various sectors, the mining industry plays a crucial role in driving national economic growth.

Indonesia is blessed with substantial reserves of natural resources, such as nickel, coal, oil and gas, tin ore, copper, gold, and various other minerals. This wealth has positioned the mining sector as one of the main contributors to state revenue. Nevertheless, its utilization must still follow sustainable development principles to ensure optimal and long-term public benefit. Mining activities require significant capital investment, advanced technology, skilled labor, and come with high risks. As a developing country, Indonesia lacks sufficient funding for exploration and exploitation activities, thus necessitating collaboration with foreign investors (Hasibuan, 2022).

Foreign investors are individuals, groups, or business entities from outside Indonesia who invest capital, either directly or indirectly, within the country. Article 1 point 6 of Law Number 25 of 2007 on Investment defines foreign investors as foreign individuals, foreign business entities, and/or foreign governments investing in the territory of the Republic of Indonesia.

According to Salim and Budi Sutrisno, the relationship between investors and capital recipients is very close because investors as capital owners will be willing to invest their investments in the recipient country, as long as the recipient country can provide legal certainty, legal protection and a sense of security for investors in doing business. Without a sense of security, legal protection and legal certainty, it is impossible for investors to invest their capital (HS & Sutrisno, 2008). Departing from the desire to create a conducive investment climate, the Indonesian government established a Law on Investment, namely Law Number 25 of 2007 concerning Investment which covers all direct investment activities in all sectors.

Investment is one of the economic indicators for improving national economic performance. High investment realization will boost economic growth. In fact, investment is considered an indispensable requirement for development activities, particularly economic development. Indonesia's investment trend is increasing, with mining investment ranking first in investment realization in the fourth quarter of 2022, amounting to IDR 39.8 trillion (BKPM, 2022). The substantial investment in the mining sector has demonstrated significant potential to contribute to boosting the regional and national economy. Furthermore, this sector is also a mainstay for employment, state revenue, and foreign exchange earnings (M. Rizal Taufikurahman, 2023).

Furthermore, the mining sector's contribution to national GDP continues to increase, despite a decline at the start of the COVID-19 pandemic. The mining sector's GDP contribution increased from 6.43 percent in 2020 to 8.97 percent in 2021. A massive increase in contribution occurred in 2022, reaching 12.22 percent. This increase indicates the mining

sector's increasing share of national GDP, contributing significantly to its added value. (*value added*) from the sector (M. Rizal Taufikurahman, 2023).

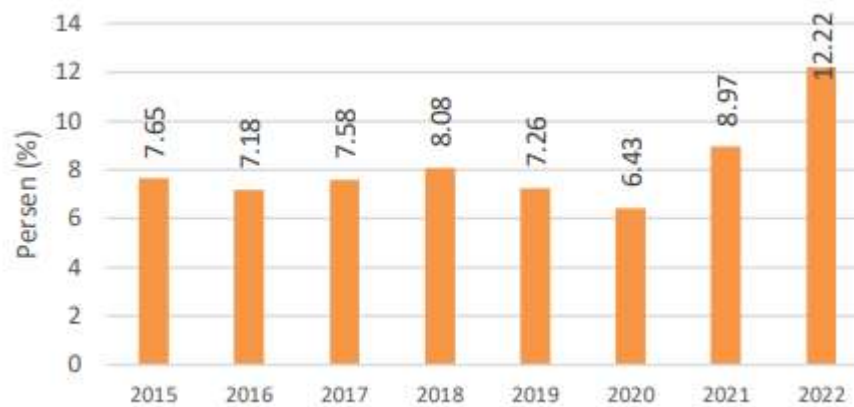


Figure 1. Development of the Mining Sector's Proportion to National GDP 2015 - 2022

Source: BPS 2023

In 2023, Indonesia recorded approximately 969 realized foreign direct investment (FDI) projects in the mining sector, a significant increase from 525 projects the previous year. This reflects increased foreign investor interest in this sector (Siahaan, 2023). Meanwhile, in 2024, Indonesia's total FDI reached IDR 900.2 trillion (approximately USD 55.33 billion), a 21% increase compared to the previous year. The base metals sector received USD 3.4 billion in investment, while the mining sector received USD 1.3 billion in the final quarter of the year (Reuters, 2024).

However, despite the increasing interest of foreign investors in the mining sector, the investment climate in this sector still faces various challenges, such as regulatory uncertainty, expropriation and legal conflicts, therefore a strong legal protection framework is needed to create legal certainty and a conducive investment climate. Based on the description above, the author is interested in conducting research with the title "Legal Protection for Foreign Investors in Mining Activities According to Indonesian Laws and Regulations".

The formulation of the problem is as follows: What are the legal regulations regarding foreign investment in the mining sector according to Indonesian laws and regulations?. What form of legal protection is provided to foreign investors in mining business practices?

RESEARCH METHODS

The research method used in this research is the normative juridical method, namely a method carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research. The normative juridical method is also known as library research, namely by studying books, laws and other documents related to this research (Soemitro, 1990). The approach used in this research is a statutory approach. This statutory approach is carried out by reviewing Law Number 25 of 2007 concerning Investment, Law Number 2 of 2025 concerning the Fourth Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining, and Government Regulation No. 9 of 2021 in conjunction with Government Regulation Number 25 of 2024 concerning Amendments to

Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities, to answer the research problems.

RESULTS

Legal Regulations Related to Foreign Investment in the Mining Sector According to Indonesian Statutory Regulations

According to Utrecht, law is a collection of life guidelines (both commands and prohibitions) that regulate order in a society that should be obeyed by members of society and if violated can result in action from the government of that society (Online, 2024). Law was created as a means or instrument to regulate the rights and obligations of legal subjects. The legal subjects referred to in this discussion are foreign investors who invest in the Indonesian mining sector. Article 1 number 6 of Law Number 25 of 2007 concerning Investment states that foreign investors (foreign investors) are individual foreign citizens, foreign business entities, and/or foreign governments that invest in the territory of the Republic of Indonesia.

M. Sornarajah defines foreign investment as *transfer of tangible or intangible assets from one country to another for the purpose of use in the country to generate wealth under the total or partial control of the owner of the assets*. Literally, the definition means that foreign investment is a transfer of capital, whether real or not, from one country to another, with the aim of being used in that country to generate profits under the supervision of the capital owner, either in whole or in part (Winata, 2018). Furthermore, in Article 1 number 3 of Law Number 25 of 2007 concerning Investment, it is stated that "foreign investment is an activity of investing capital to conduct business in the territory of the Republic of Indonesia carried out by foreign investors, whether using foreign capital completely or in association with domestic investors."

Any transfer of capital, whether domestic or not, from one country to another is referred to as foreign investment. This transfer of capital is intended to be used in whole or in part domestically to generate profits under the control of the capital owner. Private capital flows originating from abroad are used in foreign investment, both directly and indirectly (HS & Sutrisno, 2008).

The government has established legislation governing foreign investors investing in Indonesia's mining sector. These legal provisions are based on the principles of legal certainty and fair treatment, strict but transparent licensing, guaranteed ownership and return of capital, and social and environmental obligations. These legal provisions include:

1. Law Number 25 of 2007 concerning Investment

This law regulates the general principles of investment in Indonesia, including foreign investment. Article 5 paragraph (2) states that "foreign investment must be in the form of a limited liability company based on Indonesian law and domiciled within the territory of the Republic of Indonesia, unless otherwise stipulated by law." This is an absolute requirement, so it is necessary to re-confirm that the foreign business entity is a PT, unless otherwise stipulated by law, and is carried out by (Permatasari, 2023):

- a. take shares at the time of establishment of PT
- b. buy shares, and

- c. carry out other means in accordance with the provisions of laws and regulations.

To invest in Indonesia, foreign investors must establish a company that meets the business sectors defined in the Indonesian Standard Industrial Classification (KBLI). This international business is owned by at least two individuals and/or a business entity and is structured as a Limited Liability Company (Wahyuni, 2023).

2. Law Number 2 of 2025 concerning the Fourth Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining

This law is the main basis for managing the mining sector in Indonesia, including regulating business activities by foreign investors and their permits. In relation to general permits in the mining sector, Article 35 paragraph (1) states that "Mining Businesses are carried out based on Business Permits from the Central Government". Furthermore, Article 35 paragraph (2) states that the business permits referred to are implemented through the granting of: business identification numbers, standard certificates and/or permits. Then, Article 35 paragraph (3) explains that the permits referred to in paragraph (2) consist of:

- a. Mining Business Permit (IUP)
- b. Special Mining Business Permit (IUPK)
- c. IUPK as a Continuation of Contract/Agreement Operations
- d. People's Mining Permit (IPR)
- e. Rock Mining Permit (SIPB)
- f. Assignment permit
- g. Transportation and Sales Permit
- h. Mining Services Business Permit (IUJP), and
- i. IUP for Sales.

Article 9 of Government Regulation No. 9 of 2021 in conjunction with Government Regulation No. 25 of 2024 concerning Amendments to Government Regulation No. 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities explains that Mining Business Permits (IUP) are granted by the Minister of Energy and Mineral Resources (ESDM) and are submitted by:

- a. State-Owned Enterprises (BUMN)
- b. Regionally-Owned Enterprises (BUMD)
- c. Privately Owned Enterprises, consisting of national privately owned enterprises and privately owned enterprises for the purpose of foreign investment
- d. Cooperative, or
- e. Sole proprietorships include firms and limited partnerships.

Regarding share ownership in the mining sector, Article 6 paragraph (3) of Law Number 3 of 2020 in conjunction with Law Number 2 of 2025 concerning the Fourth Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining states that "the central government determines the investment value limit or the percentage of share ownership of foreign investment business entities operating in the mining sector." In the event that an investment has been made, the business entity holding an IUP or IUPK at the Production Operation stage whose shares are owned by foreigners is

required to divest 51% of its shares in stages aimed at the central government, regional government, BUMN, BUMD, and/or National Private Business Entities, this is as stated in Article 112 paragraph (1) of Law No. 20 of 2020 in conjunction with Article 147 paragraph (1) of PP No. 96 of 2021 which reads "Business Entities holding an IUP or IUPK at the Production Operation stage whose shares are owned by foreigners are required to divest 51% (fifty one percent) of their shares in stages to the Central Government, Regional Government, BUMN, regionally-owned business entities, and/or national private business entities."

Based on the discussion above, it can be concluded that the legal regulations related to foreign investment in the mining sector are based on the principles of legal certainty and fair treatment, strict but open licensing, guarantees of ownership and return of capital as well as social and environmental obligations. These regulations include those related to the legality of business entities as regulated in Article 5 paragraph (2) of Law Number 25 of 2007 concerning Investment, then include those related to general licensing as regulated in Article 35 of Law Number 2 of 2025 concerning the Fourth Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining and include those related to share ownership as regulated in Article 6 paragraph (3) of Law Number 3 of 2020 in conjunction with Law Number 2 of 2025 concerning the Fourth Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining.

Forms of Legal Protection Provided to Foreign Investors in Mining Business Practices

Law was created as a means or instrument to regulate the rights and obligations of legal subjects. Law also functions as an instrument of protection for legal subjects. Sudikno Mertokusumo stated that law functions to protect human interests (Mertokusumo, 1993). Satjipto Rahardjo stated that legal protection is providing protection for human rights (HAM) that are harmed by others and that protection is provided to society so that they can enjoy all the rights granted by law (Rahardjo, 2000).

Furthermore, according to Phillipus M. Hadjon, legal protection for the people is a government action that is both preventive and repressive. Preventive legal protection aims to prevent disputes from occurring, which directs government action to be careful in making decisions based on discretion, and repressive protection aims to prevent disputes from occurring, including their handling in judicial institutions (Rahardjo, 2000).

Legal protection for foreign investors is a guarantee provided by the state through laws and international agreements to maintain legal certainty, security, and fairness in investment activities, including in the mining sector. As previously mentioned, foreign investors in the mining sector face risks such as regulatory uncertainty, expropriation, and legal conflicts, necessitating a robust legal protection framework. Foreign investors investing in the mining sector in Indonesia receive legal protection derived from various national and international legal instruments. This protection aims to create legal certainty and a conducive investment climate. The legal protection in question includes:

1. Protection based on the Capital Investment Law, among the forms of legal protection provided are:

- a. Protection of legal certainty and non-discriminatory treatment
Foreign investors are guaranteed fair, equal and non-discriminatory legal treatment as stated in Article 6 paragraph (1) of Law Number 25 of 2007 concerning Investment which states "The government provides equal treatment to all investors from any country who carry out investment activities in Indonesia in accordance with the provisions of laws and regulations." This is important so that foreign investors are not treated differently than domestic investors, unless there are legal reasons or national interests.
 - b. Protection from unilateral nationalization actions
The state guarantees that it will not carry out nationalization or forced takeover of assets or investments belonging to foreign investors, except in the public interest and accompanied by appropriate and fair compensation as stated in Article 7 paragraph (1) of Law Number 25 of 2007 concerning Investment, which states "The government will not carry out nationalization or takeover of ownership rights of investors, except by law and accompanied by appropriate compensation." This protection is a form of guarantee for property rights and investment security.
 - c. Protection of the right to transfer profits and assets
Foreign investors have the right to transfer or assign assets such as net profits and dividends, proceeds from asset sales or liquidation, compensation for takeovers and payment of foreign debt. This transfer can be made in foreign currency, to the investor's country of origin or another country as stated in Article 8 paragraph (3) of Law Number 25 of 2007 concerning Investment which states "Investors are given the right to transfer and repatriate in foreign currency, including capital, profits, etc."
2. Protection under the Mineral and Coal Mining Law
Law Number 2 of 2025 concerning the Fourth Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining provides a comprehensive legal framework for mining business activities in Indonesia. For foreign investors, legal protection is regulated through various aspects, such as licensing, business certainty, rights to business profits, and protection against state action. The forms of legal protection are as follows:
 - a. Protection of business permits (IUP and IUPK)
Article 35 paragraph (1) which states "Mining Business is carried out based on Business Permits from the Central Government" provides legality and legal certainty to foreign investors to conduct business legally in Indonesia. Foreign investors can obtain IUP or IUPK through WIUP (Mining Business Permit Area) auctions or direct appointment in certain cases.
 - b. Protection of certainty of business term
Article 47 regulates the term of the IUP/IUPK, namely:
 - 1) Exploration IUP maximum 8 years (minerals), 7 years (coal)
 - 2) IUP Production Operations maximum 30 years, can be extended; and

- 3) IUPK is given to BUMN or private companies through auction and also has a fixed term.

Thus, these provisions can provide certainty of sufficient business time to return investments and obtain profits.

- c. Protection of certainty of legal transition

The provisions contained in Article 169A provide legal certainty for foreign investors previously using KK/PPK2B. In this case, valid Contracts of Work (KK) and PPK2B will be converted to IUPKs upon their expiration.

3. Protection based on dispute resolution

Settlement of legal disputes for foreign investors in mining business activities in Indonesia can be done through two main channels, namely disputes between foreign investors and the Indonesian government (*investor-state dispute*) and disputes between foreign investors and private parties or local business partners.

- a. Dispute between foreign investors and the Indonesian government

The resolution of disputes between foreign investors and the government is regulated in Article 32 of Law Number 25 of 2007 concerning Investment, which states:

- (1) In the event of a dispute in the investment sector between the Government and investors, the parties must first resolve the dispute through deliberation and consensus.
- (2) In the event that a dispute resolution as referred to in paragraph (1) is not achieved, the dispute can be resolved through arbitration or alternative dispute resolution or the courts in accordance with the provisions of statutory regulations.
- (3) In the event of a dispute in the investment sector between the Government and domestic investors, the parties may resolve the dispute through arbitration based on the agreement of the parties, and if settlement of the dispute through arbitration is not agreed upon, the settlement of the dispute will be carried out in court.
- (4) In the event of a dispute in the investment sector between the Government and a foreign investor, the parties will resolve the dispute through international arbitration which must be agreed upon by the parties.

The above provisions give foreign investors the right to resolve disputes with the government through international arbitration, usually used in cases of nationalization, unilateral revocation of permits, or violations of fair treatment (*fair and equitable treatment*). One example of international arbitration is *ICSID* (*International Centre for Settlement of Investment Disputes*).

- b. Disputes between foreign investors and private parties or local business partners

This dispute is civil in nature, such as breach of contract (*joint venture, shareholder agreement, offtake agreement*), land rights issues, or technical operational disputes. These disputes are resolved under Law Number 30 of 1999 concerning Arbitration

and Alternative Dispute Resolution, namely through mediation, conciliation, or the Indonesian National Arbitration Board (BANI).

To make it easier to understand the forms of legal protection provided to foreign investors in the mining sector, the following is presented in table form.

Table 1. Forms of legal protection

No	Form of Protection	Information
1	<i>Non-discriminatory</i>	Equal treatment with local investors as referred to in Article 6 paragraph (1) of Law Number 25 of 2007 concerning Investment
2	Anti-nationalization	There is no takeover without compensation as referred to in Article 7 paragraph (1) of Law Number 25 of 2007 concerning Investment.
3	Asset transfer rights	Can send profits and capital abroad as referred to in Article 8 paragraph (3) of Law Number 25 of 2007 concerning Investment
4	Legality of permits	Foreign investors receive a valid IUP/IUPK from the government as referred to in Article 35 paragraph (1) of the Mineral and Coal Mining Law.
5	Certainty of time period	The exploration and production operation period is clearly regulated as referred to in Article 47 of the Mineral and Coal Mining Law.
6	Certainty of legal transition	Conversion of KK/PPK2B to IUPK is guaranteed to remain fair as referred to in Article 169A of the Mineral and Coal Mining Law.
7	Dispute resolution	Can sue ICSID or other arbitration as referred to in Article 32 of Law Number 25 of 2007 concerning Investment

Based on the above description, it can be understood that the legal protection provided to foreign investors in mining business activities in Indonesia encompasses various aspects, from regulations supporting foreign investment to fair dispute resolution mechanisms. Some of the main forms of legal protection include clear permits, ownership rights, and dispute resolution mechanisms.

CONCLUSION

Based on the discussion above, the conclusions of this study are as follows: The legal framework related to foreign investment in the mining sector is founded on the principles of legal certainty and fair treatment, strict but transparent licensing, guarantees of ownership and return of capital, as well as social and environmental obligations. These legal provisions include regulations concerning the legality of business entities as stipulated in Article 5 paragraph (2) of Law Number 25 of 2007 on Investment; general licensing requirements as outlined in Article 35 of Law Number 2 of 2025 (the fourth amendment to Law Number 4 of 2009 on Mineral and Coal Mining); and shareholding arrangements regulated in Article 6

paragraph (3) of Law Number 3 of 2020 in conjunction with Law Number 2 of 2025. The forms of legal protection for foreign investors in the mining sector include protection against nationalization, legal certainty through business permits, fair and equal treatment, and access to both national and international dispute resolution mechanisms. These legal instruments aim to create a stable and attractive investment climate for foreign capital. Suggestion, It is recommended that the government harmonize all regulations related to foreign investment and mining to avoid overlapping provisions and to eliminate legal uncertainty. This is essential to foster a conducive and sustainable investment climate. Furthermore, the government is encouraged to strengthen legal guarantees within investment contracts to ensure that any regulatory changes do not harm investors during the duration of the agreement.

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