

# Investment Climate in the Indonesian Mining Business

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**Keywords:** Investment, Mining, Mineral, Coal, Regulation

**Abstract:** Minerals and coal contained in the Indonesian mining jurisdiction are non-renewable natural wealth as the gift of God Almighty which has an important role in fulfilling the livelihoods of many people, therefore management must be controlled by the State to provide real added value to the national economy in an effort to achieve prosperity and prosperity in a just manner. Mining is part or all of the stages of activities in the context of research, management and commercialization of minerals or coal which includes general investigation, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales, and post-mining activities. Mining Business is an activity in the framework of the exploitation of minerals or coal which includes the stages of general investigation, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales, and post-mining activities. The main issue: How is the Investment Climate Mining Investment in Indonesia Since the issuance of Government Regulation (PP) No. 24 of 2012 concerning the implementation of Mineral and Coal mining business activities, as well as Minister of Energy and Mineral Resources Regulation No. 7 of 2012 which was subsequently refined by 2 ESDM Ministerial Decree No. 11 of 2012 concerning Increasing Mineral Value Added through Smelter Management and Purification activities. The paper describes In order to control ore exports and encourage downstream industries, the government has issued Government Regulation (PP) No. 24 of 2012 concerning the implementation of Mineral and Coal mining business activities. Furthermore, several related regulations were issued such as Minister of Energy and Mineral Resources Regulation No. 7 of 2012 which was subsequently refined by 2 ESDM Minister Regulation No. 11 of 2012 concerning Increasing Mineral Value Added through Mineral Purification and Management (smelter) activities, where the main material contained in said mining companies can export mineral ores abroad before January 2014 if it has obtained a recommendation from the Minister of Energy and Mineral Resources. Other related regulations that have been issued in order to support the implementation of the Minerba Law, are the Minister of Trade Regulation No. 29 of 2012 concerning the provisions on mining product exports and Minister of Finance Regulation No. 75 of 2012 concerning Determination of Goods subject to Export Levy and Export Duty Tariff, the Center for Foreign Trade Policy will conduct evaluations relating to the prohibition of exports in the form of ore (raw material or ores).

## 1 INTRODUCTION

### 1.1 Background

Minerals and coal contained in the Indonesian mining jurisdiction constitute non-renewable natural wealth as a gift from God Almighty which has an important role in fulfilling the livelihoods of many people, therefore management must be controlled by the State to provide real added value. Therefore, the management of mines and minerals must add value to the national economy. To achieve this, the management of mineral mining must be based on benefits, justice and balance and alignments with the interests of the nation and state (Saleng, 2004; Sutedi, 2011; Himawan, 2003).

Mineral and coal mining activities which are mining business activities outside geothermal, oil and gas and ground water have an important role in providing tangible added value to national economic growth and sustainable regional development. In line with this, the government continues to make efforts to encourage business people to continue to improve themselves and make breakthroughs so that they can boost the added value of Indonesian mines and minerals to a position that can prosper the people and determine the trade in world mines and minerals. The government's good intention in encouraging business people to increase the added value of the said mines and minerals, as stated in Law No. 4 of 2009 concerning Mineral and Coal Mining (Minerba), in which the Act has reg-

ulated the obligation to process and refine mines and minerals which are implemented no later than 5 (five) years after the said Act was promulgated on January 12, 2009 so that the processing and refining applies mining and minerals fell in January 2014. As a result of the promulgation of Law No. 4 of 2009, nationally there has been a massive increase in mineral ore exports in the last 3 year (Manuputy et al., ; Sefriani, 2011; Salim, 2006). In order to control ore exports and encourage downstream industries, the government has issued Government Regulation (PP) No. 23 of 2010 which has been amended by PP No. 24 of 2012 concerning the implementation of Mineral and Coal mining business activities. Furthermore, several related regulations were issued such as Minister of Energy and Mineral Resources Regulation No. 7 of 2012 which was subsequently refined by 2 ESDM Minister Regulation No. 11 of 2012 concerning Increasing Mineral Value Added through Mineral Purification and Management (smelter) activities, where the main material contained in said mining companies can export mineral ores abroad before 2004 if it has obtained a 2 recommendation from the Minister of Energy and Mineral Resources. Other related regulations that have been issued in order to support the implementation of the Minerba Law, are the Minister of Trade Regulation No. 29 of 2012 concerning the provisions on mining product exports and Minister of Finance Regulation No. 75 of 2012 concerning Determination of Goods subject to Export Levy and Customs Tariff (Starke, 2014; Istanto, 2010; Utomo, 2005). In connection with these various problems, and based on the Request Letter for Cooperation in mining and mineral studies from the Directorate of Industrial and Mining Exports (DG Daglu) Number: 1022 / DAGLU.3.4 / ND / 8/2013 dated August 13, 2013, the Center for Foreign Trade Policy will evaluating the impact of the policy in question, especially relating to the prohibition of exports in the form of ore (raw material or ores) on mining and mineral commodities that will take effect in January 2014. This is in accordance with the explanation of Charles Himawan who said "These regulations are sometimes so numerous that they cause obscurity of applicable laws. To utilize multinational capital to the maximum, it requires legal clarity. Furthermore, it was stated, if the authoritative law means the law that is obeyed by people, both the person who made the law and the person against whom the law was intended, it will be seen here the connection between humans and law "(Lanini et al., ; OCallaghan, 2010; PERMANA and DREBENSTEDT, 2013).

## 1.2 Identification of Problems

Identification of problems in a study is very important because it is a guideline and makes it easier for the author to discuss the problems to be studied, so that the goals to be achieved are clearly in accordance with what is expected.

Based on the background description of the problem above, the authors formulate the problem as follows:

- How is Investment Climate Mining Investment in Indonesia Since the issuance of Government Regulation (PP) No 24 of 2012 concerning the implementation of Mineral and Coal mining business activities?
- How is the Minister of Energy and Mineral Resources Regulation No. 7 of 2012 which was subsequently refined by 2 ESDM Ministerial Decree No. 11 of 2012 concerning Increasing Mineral Value Added through Smelter?

## 1.3 Research Purpose

In this paper, the writer has specific objectives to be achieved, including knowing in depth about the business world, especially about investment in the mining sector. In this case the writer's critical thinking lies in the regulations and government policies that have an impact on investment efforts. Therefore, the writer needs to study the government regulations, especially regarding the prohibition of the export of mineral ores (raw materials ores) abroad, so that it has an impact on the upstream mining industry in Indonesia.

## 2 RESEARCH METHODS

In conducting this research, the author uses the legal normative legal research method, namely the author tries to provide a description of the research methods as follows:

### 2.1 Research Approach

Approach to the problem is the process of solving or solving problems through predetermined stages so as to achieve the research objectives. To discuss the problems contained in this study the author uses a normative juridical approach.

### 2.2 Research Specifications

The specification of this research is descriptive research. Descriptive research is intended to provide

as much preliminary data as possible about humans, circumstances or other symptoms. The point is primarily to reinforce the hypotheses, in order to be able to help strengthen old theories or within the framework of composing new theories.

### 3 RESULTS AND DISCUSSION

#### 3.1 Results and Discussion “Investment Climate Mining Investment in Indonesia Since the issuance of Government Regulation (PP) No. 24 of 2012 concerning the implementation of Mineral and Coal mining business activities”

##### 3.1.1 Regulations and Policies on the Existence of Mines and Minerals in Indonesia

Article 33 of the 1945 Constitution mandates that the earth, water and natural resources contained therein be controlled by the state and utilized as much as possible for the prosperity of the people. The mandate of the 1945 Constitution is the foundation of mining and energy development to utilize the potential wealth of mineral and energy resources that are optimally owned in supporting sustainable national development. The mines, minerals and coal contained in the Indonesian legal jurisdiction are non-renewable natural wealth as the gift of God Almighty which has an important role in fulfilling the lives of many people. Therefore, the management must be controlled by the State to provide real added value to the national economy in an effort to achieve prosperity and equitable welfare of the people. Mining is an activity of extracting precious and economically valuable deposits of deposits from the skin of the earth, both mechanically and manually on the surface of the earth, beneath the surface of the earth’s water. The Government of the Republic of Indonesia through Government Regulation No. 27 of 1980 divides the excavated material into 3 groups, namely:

1. Strategic excavation material called group A excavation consists of: petroleum, liquid bitumen, frozen wax, natural gas, solid bitumen, asphalt, anthracite, young coal, uranium radium, thorium other radioactive minerals, nickel, cobalt, tin.
2. Vital excavation is also referred to as class B excavation consisting of iron, molybden, chromium, tungsten, vanadium, titan, bauxite, copper, lead,

zinc, gold, platinum, silver, mercury, arsenic, antimony, bismuth, yttrium, rhenium, cerium, and other rare metals, beryllium, corundum, zircon, power crystals, cryolite, fluor spar, barite, iodine, bromine, chlorine, sulfur.

3. Non-strategic and non-vital excavation materials, also referred to as group C excavations. These consist of: nitrate, nitrite, phosphate, rock salt (halite), asbestos, talc, mica, graphite, magnesite, zircon, leucite, alum (alumina), ochre, gemstones, semi-gemstone, quartz sand, kaolin, feldspar, gypsum, bentonite, diatomaceous earth, absorbent soil (fuller earth), pumice, trass, obsidian, marble, slate, limestone, dolomite, calcite, granite, andesite, basalt, trachite, clay, sand, as long as they do not contain group A or group B mineral elements on a scale that is significant in terms of mining economics.

The classification of the above excavation is inseparable from the 1967 Basic Mining Law which confirms that the classification of minerals is based on different roles for the nation and state. Group A is a mineral that is very important for the country’s economy because it brings in relatively large foreign exchange. Group B is a mineral that concerns the livelihood of many people, while group C is a mineral that is needed for industrial or building materials.

Meanwhile, based on the criteria of mineral mining commodities that can be increased, the added value can be classified into 3 (three) groups, namely metal minerals, nonmetallic minerals and rocks. The description of each type of mineral mining commodity is as follows:

1. The group of metal minerals is a type of metal mineral mining commodity which includes ore: copper, gold, silver, tin, lead and zinc, chromium, molybdenum, platinum group metals, bauxite, iron ore, iron sand, nickel, cobalt, manganese and antimony.
2. Nonmetallic mineral groups consist of various types of non-metallic mineral mining commodities which include: calcite (limestone / limestone), feldspar, kaolin, bentonite, zeolite, silica, zircon and diamond.
3. The rock group is a type of rock mining commodity, among others: Toseki, Marble, Onik, Perlite, Slate (slate), Granite, Granodiorite, Gabro, Peridotite, Basalt, Opal, Chalcedony, Chert (rijang), Jasper, Chrysoprase, Garnet, Jade, Agat and Topas.

In welcoming the ban on the export of raw materials for mining and minerals in January 2014, there were 15 (fifteen) companies that stated readiness for

processing and refining facilities that would be operational in 2014. Of the 15 companies, there were 6 companies that have prepared themselves with the progress of mining and mineral processing and refining facilities have reached 100% to operate in 2014. Of the 6 (six) mining companies, including PT. Delta Prima Steel and PT. Meratur Jaya Iron Steel with its production in the form of Sponge Iron, PT. Indo Ferro with the production of Pig Iron, PT. Batutua Tembaga Raya with the results of processing in the form of Cupper Chatode, PT. Indotama Ferro Allays and PT. Century Metalindo with the processing of Silica Manganese. Meanwhile, for the other 9 companies the progress of processing and refining readiness facilities to operate in 2014 is still below 75%

In the last three years after Law No. 4 In 2009, nationally there were several types of ore and mineral ore whose realization has increased massively, including nickel ore exports increasing by 800%, iron ore increasing by 700%, and bauxite ore increasing by 500%. In order to control mineral ore exports and encourage downstream industries, the government issued a number of related regulations, including ESDM Ministerial Regulation No. 7 of 2012 as amended by PerMen No. 11 of 2012, Regulation of the Minister of Trade No. 29 of 2012 concerning Provisions on the Export of Mining Products and Regulation of the Minister of Finance No. 75 of 2012 concerning Determination of Export Prices for Calculation of Export Levy. The government requires export duties for 14 mining minerals including copper, gold, silver, tin, lead, chromium, molybdenum, platinum, bauxite, iron ore, iron sand, nickel, manganese, and antimony with an export duty range to be collected ranging from 20% to 50% depending on the type of mineral.

ESDM Ministerial Regulation No. 7 of 2012 was issued in order to secure the implementation of the mandate of Law No. 4 of 2009 concerning Mineral and Coal Mining, specifically related to the obligation to process and refine minerals in the country no later than January 12, 2014. Then Candy 07 of 2012 this was amended based on RI Minister of Energy and Mineral Resources Regulation No. 11 of 2012 dated May 16, 2012 which states that mining companies can export mineral ore or ore in this case nickel abroad before 2014 if they have obtained a recommendation from the Minister of Energy and Mineral Resources c.q Director General. These recommendations will be provided with the following conditions:

1. Status of Production Operation IUP and IPR clear and clean in the sense that each mining company is required to have an approved Production Operation IUP.

2. Mining companies must pay off financial obligations to the state.
3. Mining companies must submit work plans and or cooperation in the management and / or refining of minerals in the country.
4. Mining companies must sign an integrity pact.

### 3.1.2 Development of the Indonesian Mining Industry

There are two things that enable Indonesia to develop into an advanced industrial country. First; Indonesia is a country that has the most complete mineral wealth in the world, although it is not the world's main actor in all raw materials, but Indonesia has almost the most important mineral sources. Second, Indonesia has relatively large and diverse types of energy sources, ranging from petroleum, gas, coal and other renewable energy sources. However, until now Indonesia has not been able to develop its industry properly, because the mineral mining products exploited in the bowels of Indonesia are still exported in the form of raw materials with very low added value. On the one hand, indeed in terms of raw material and commodity trade, Indonesia holds a key position. But most mining companies have tied mining product sales contracts with developed countries, so that Indonesia cannot control the price of its mining commodities.

### 3.1.3 Policies Regarding Mining and Minerals

Starting from the issuance of Law Number 4 Year 2009 on 12 January 2013 concerning Mineral and Coal Mining, where the basic material contained in this Law regulates the removal of mineral and coal mining products and prohibits the export of raw materials until 2014. Therefore, This law mandates the construction of smelters so that domestic mining production can be processed before being exported. The purpose of the Minerba Law is intended, so that Indonesia can feel the added value of mining and mineral products so that it can boost gross domestic product and absorb labor. Based on the mandate of Law No. 4 of 2009 referred to, it will become effective in January 2014 for metal mineral mining commodities, nonmetallic minerals and rocks in the form of raw materials (raw material / ores).

In the context of implementing various articles in the Minerba Act, the government then issued Government Regulation (PP) No.23 of 2010 dated February 1, 2010 concerning the Implementation of Mineral and Coal Mining Business Activities, which in this regulation implies that holders of Mining Business Permits (IUPs) are operating production and Special

Mining Business Permit (IUPK) Production operations must prioritize the needs of minerals and / or coal for domestic interests. Therefore, in supporting the development of domestic industries, it is necessary to restructure the issuance of mining business licenses for non-metal minerals and rocks. Furthermore, in order to provide greater opportunities for Indonesian participants to participate more in mineral and coal mining activities as well as to provide legal certainty for holders of Coal Mining Concession Work Contracts and Work Agreements intending to extend in the form of Mining Business Permits, PP is then issued No. 24 of 2012 dated 21 February 2012 concerning Amendment to Government Regulation Number 23 of 2010 concerning Implementation of Mineral and Coal Mining Business Activities.

Besides that, in order to increase the effectiveness of controlling mineral ore exports and encourage downstream industries, the government has issued various regulations such as Minister of Permanent Regulation ESDM No. 7 of 2012 which was later amended by ESDM Regulation No. 11 of 2012 concerning Increasing Mineral Value Added through Mineral Processing and Purification Activities. Increasing Added Value and processing obligations with minimum processing limits, this is done with Mineral Processing and Purification Activities which include processing and refining metal minerals, processing non-metal minerals and rock processing, as well as processing and refining certain metal minerals, processing non-metallic minerals certain, and certain rock processing must meet the minimum processing limits.

Meanwhile, in order to increase the effectiveness of the export regulation of several types of mining products, the government through the Ministry of Trade has also issued Permendag No. 29 / M-AG / PER / 5/2012 as amended by Permendag No. 52 / M-AG / PER / 8/2012 concerning Provisions on the Export of Mining Products, where this regulation regulates matters relating to procedures and permits for the implementation of export activities of various types of mining products by considering the necessity to meet minimum processing limits. In addition to this, based on the consideration / proposal of the Minister of Energy and Mineral Resources as submitted through Letter Number 3038/30 / MEM.B / 2012 concerning the Policy for Control of Mineral Ore Sales (Raw Material or Ore) abroad and in order to increase added value and availability of mineral resources in the country, it is necessary to regulate the imposition of Export Levy on exported goods in the form of mineral raw materials. In this regard, on May 16, 2012 the government through the Ministry

of Finance has issued Permenkeu No. 75 / PMK.011 / 2012 which was subsequently refined by Minister of Finance Regulation No. 128 / PMK.011 / 2013 concerning changes to the regulation of the finance minister number 75 / pmk.011 / 2012 concerning the stipulation of export goods subject to export duties and export duty tariffs, wherein the main material In these changes related to the sale of various types of mineral raw materials to foreign countries subject to export export tariffs of 20%, except for Marble and Travertine products in the form of beams, 4 cm thick and Granite beam products with thickness, 4 cm is subject to an export duty of 10%. The objectives of the policy to impose export duty on mining commodities are to ensure the fulfillment of domestic needs, protect the preservation of natural resources, anticipate a drastic increase in prices from certain export commodities on the international market and or maintain the stability of certain commodity prices within country. From the description above, it can be concluded that increasing industrial excavation products requires a high precision processing process which can ultimately increase the multipurpose of the excavated material so that the marketing becomes wider. Accuracy of work is needed in all stages of activities so that a lot of useful minerals are obtained and a little bit of impurities is obtained so that the results obtained are more maximal in accordance with the results of consumer orders. With the existence of the Minerba Act, all types of ore / mineral goods and minerals must be processed and purified in advance to obtain added value and then be exported. In Article 102 of the Mining Law, Holders of IUP and IUPK are required to increase the added value of mineral and / or coal resources in the implementation of mining, processing and refining, as well as the utilization of minerals and coal. This new obligation is planned to take effect in 2014. Seeing the prohibition policy, it will only be enacted in 2014, some businesses have increased production and exports on a large scale. This is done, because in general the business actors argue that to establish a processing and refining plant in the field of mining and minerals, a high cost is needed, so that the opportunity during this transition period seems to be used by businesses to produce and export on a large scale because it feels the cost production is still relatively cheap. As is well known, the majority of raw mineral and mineral materials markets are mostly for exports, but there are also those that are marketed domestically and even to fulfill the need for further raw materials as domestic industries also carry out imports even though the original raw material comes from domestic as well.

### **3.2 Results and Discussion “Impact of the Issuance of Minister of Energy and Mineral Resources Regulation No. 7 of 2012 which was subsequently refined by 2 ESDM Ministerial Decree No. 11 of 2012 concerning Increasing Mineral Value Added through Smelter Management and Purification activities”**

#### **3.2.1 Impact of Mining and Mineral Export Prohibition Policy**

In Indonesia, the metal mineral mining industry is controlled by foreign investors and state-owned companies, as well as private companies. These companies are established based on Indonesian laws and regulations in the form of an Indonesian legal entity. In mining contract work documents, foreign mining companies are also required to release ownership shares. State ownership rights as a concept to date have not yet had a clear and explicit understanding and meaning that can be accepted by all parties in relation to the management and utilization of national natural resources so as to invite many interpretations that have implications for their implementation.<sup>5</sup> Law No. 4 of 2009 concerning Mineral and Coal Mining is a time bomb for Indonesia. This law regulates the removal of mineral and coal mining products and prohibits the export of raw materials in 2014. This law mandates the construction of smelters so that domestic mining production can be processed before being exported. The objective of the Mining Law is very noble: so that Indonesia can feel the added value of mining products, boost gross domestic product, and absorb labor.

In contrast to the initial expectations, post-determination of this law mining exploitation actually jumped sharply. Mine owners compete to mine as much as possible before being banned. As a result, production of a number of mining commodities surged. For example, bauxite production in 2009 was 783,000 mt, in 2011 it was 17,634,000 mt, or jumped 2,150 percent. The same thing happened to nickel ore commodities, where production in 2009 was only 5,802,000 wmt, but in 2011 it was 15,973,000, or a 175 percent increase.

The implementation of the ban on the export of raw materials was in sight, but Indonesia still did not have an adequate smelter to offset mine production. It is recorded that there are at least three commo-

ties that will deficit the smelter in 2014, namely copper, bauxite and nickel. National bauxite production in 2011 reached 17.6 million tons.<sup>7</sup> At present, Indonesia does not yet have a bauxite smelter. The plan to build a number of bauxite smelters, up to 2014, can only accommodate 7.1 million tons. The gap between mine production and smelter capacity is 10.5 million tons, assuming all smelter developments are smooth.

Nickel commodities experience the same thing. Indonesia's nickel mining produced 15.9 million tons of nickel in 2011. Existing nickel smelters in Indonesia have a capacity of 9.03 million tons. Until 2014, it is estimated that there will be an additional number of new smelters, with a total capacity of 4.15 million tons. The gap between mine production and smelter in 2014 reached 2.72 million tons.

For copper commodities, national copper production in 2011 reached 20.2 million tons, while existing copper smelters could only accommodate 1 million tons.<sup>8</sup> The planned construction of a number of copper smelters until 2014 only adds smelter capacity to 1.2 million tons. At least there will be 18 million tons of copper that cannot be processed.

## **4 CONCLUSION**

Implications of the lack of a first smelter, government revenues from the mining sector can be in the form of tax revenues (PPh), non-tax revenues (mining royalties), and deadrent (land rent). This revenue has the potential to drop if Minerba mine production decreases. Second, the reduction in mine production will have implications for reducing labor. With the ban on the export of raw materials, workers must be prepared to lose their jobs. Reduction of labor will also occur in companies supporting mining activities, such as shipping and heavy equipment. Third, if raw material exports decline due to export restrictions, the trade balance will be more deficit. This will have an impact on the weakening of the rupiah exchange rate which boosts import costs. The high cost of imports will affect a number of products that still rely on imported components. The Minerba Act has been stipulated since 2009, but until now the removal program has been in place. The government has not succeeded in creating a business climate that has made investors interested in building a smelter industry in Indonesia.

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