



POLICY BRIEF (JULY, 2020)

REVIEWING LAW NO. 3 YEAR 2020 REGARDING MINERAL AND COAL MINING

1. Background

The mining industry have increased exponentially throughout the last few decades, as it plays a significant role in the global economic stage. However, mining has both positive and negative implications in its practice. It is important to note that mining also presents critical challenges and risks for sustainability. For example, mineral resources are finite and non-renewable. Moreover, environmental and social problems are increasingly causing conflicts between mining companies and local communities. However, mining activities can also contribute to sustainable development, in particular to its economic sector. To some countries, mining provides great economic opportunities for resource-rich countries. It can bring fiscal revenues to a country, drive economic growth, create jobs and contribute to building infrastructure. Therefore, it is crucial that governments are able to balance both aspects of maintaining economic stability and sustainable development.

2. The Newly-Issued Mining Regulation in Indonesia

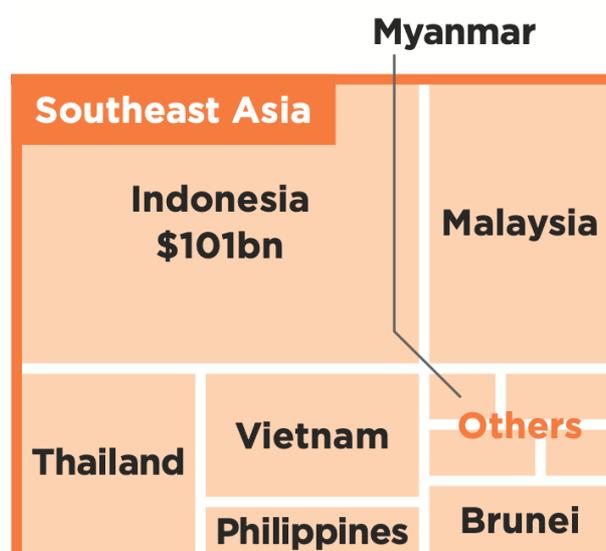


Figure 1. Average Calculations of Mineral and Energy Production in Southeast Asia from 2010-2015. source: UN Statistical Division Database.

In Indonesia, its mining industry remains to be one of the most significant player in the world. In fact, Indonesia's mining industry has been one of the key sectors that contributes to Indonesia's economic development over many decades.

Indonesia is rich in the production of coal, copper, gold, tin, bauxite, and nickel. Additionally Indonesia continued to be one of the world's largest exporters of thermal coal.¹ Globally, Indonesia is highly known and ranked in terms of its coal and mineral productions, yet the assessments of the mining policy regime and the investment climate have not been so positive.² Since then, the government had been drafting a Bill on the amendment of Law No. 4 Year 2009, of which in 2020 the Bill was passed. Under the new law, while it is now rich on economic and investment opportunities for relevant stakeholders, it still leaves room for some improvements.

Despite the crisis on the pandemic, the Bill for the amendment of Law No. 4 Year 2009 Regarding Coal and Mineral Mining has been approved and signed by The People's Representative to Law No. 3 Year 2020 Regarding Coal and Mineral ("Mining Law). One of the key improvements of the new law is that the central government has full authority to set the production levels and process of non-metal and metal minerals. As such, the previous provisions regarding the authorities of local governments and district governments are erased. The concept of Mining Jurisdiction is also added to emphasize that all jurisdictions in Indonesia are available for the activity of research and exploration on mining. Additionally, exploration activities are also encouraged for the discovery of mineral deposits. This is conducted through the appointment of investigation and research to the government's research institutions, State-Owned Enterprises (BUMN), Regionally-Owned Enterprises (BUMD), and private institutions.

3. Policy Aspects

3.1. New Mining Law to Attract Possible Investors

In essence, the new Mining Law is written specifically to expand the mining reserves and exploration activity to improve Indonesia's coal and mineral reserves. This idea targets to invite more investors to invest more in the Indonesian mining industry.

According to the Executive Director of Indonesian Coal Mining Association (APBI), Hendra Sinadia, this new regulation would provide a long-term certainty in the mining sector.³ This law will provide legal certainty, especially for companies looking to extend their mining contracts. In the previous law, there was no certainty on the extension of their contract, both the *Kontrak Karya* or Contract of Work (KK) and *Perjanjian Karya Pengusahaan Pertambangan Batubara* or Coal Contract of Work (PKP2B), which resulted in the decline of the number of investors in the mining sector. Under Article 169A of the new Mining Law, the holders of KK and PKP2B are guaranteed to have their contracts extended after expiry under certain conditions:

¹ PWC, Mining In Indonesia: Investment And Taxation Guide, 2019

² PWC, Mining In Indonesia: Investment And Taxation Guide, 2019

³ Petriella, Yanita, et al. "Mampukah UU Minerba Jadi Magnet Investasi Di Indonesia?: Ekonomi." Edited by Annisa Margrit, *Bisnis.com*, *Bisnis.com*, 13 May 2020

- a. 20-year extension (in the form of two 10-year extension) if the KK or PKP2B has never been extended;
- b. 10-year extension if the KK or PKP2B has been extended before.

Furthermore, besides the continuation of mining permits, the Production Operation is also extended. This extension is stated in Article 47 of the Mining Law, which provides that the Minister guarantees the issuance of the extension of Production Operation for *Izin Usaha Pertambangan* or Business Mining Permit (IUP). The Production Operation includes the mining activity of construction, mining, and processing or development or utilization. Under this extension, KK and PKP2B holders will be able to continue their mining operation for another 10-20 years for mineral and coal mining. Both of these extensions provides more time and certainty for mining companies to conduct and expand their exploration activities.

Moreover, the law also provides that reserve funds must be made available for mineral and coal alternatives for the exploration of new alternatives. According to Hendra Sinadia, this provision will push investment on the exploration sector, which has been stagnant since 2016.

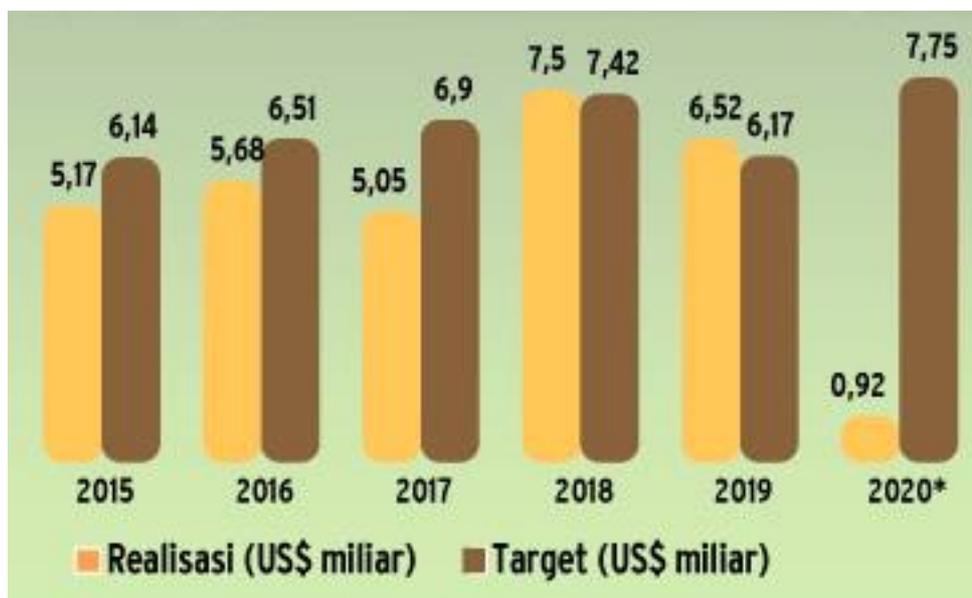


Figure 2. Amount of Investment in Mineral and Coal Sector. source: Ekonomi Bisnis.com

3.2. Adoption on Sustainable Mining Practices

Not only that the Mining Law provides certainty on the mining industries, but it also shows that these mining businesses has a larger role to play in ensuring national economy while also maintaining environmental sustainability. This is evident in the provision regarding reclamation and post-mining under the Mining Law.

Under the previous law, it was only stated that IUP and IUPK holders must reserve funds for reclamation and post-mining activities. In the event that the holders are not able to perform reclamation, the Minister, governor, or Mayor will appoint a

third party to conduct the reclamation activities.⁴ This provision gives mining companies the freedom to not perform reclamation for their own site as the responsibility were able to be transferred to another party. However, the new Mining Law has embedded a much more thorough principle of 'polluter pays', of which has become more stringent and applied in many environmental policies around the world.⁵ Under Article 123A, holders of IUP and IUPK are obligated to allocate reserve funds as well as fully-conducting reclamation or post-mining procedures before their business permits end or revoked. Those who have ended or revoked their business permits, yet did not implement reclamation practices, will be convicted for a maximum of 5 years of prison and fine for a maximum of Rp 100 billion. It is noted that the reclamation or post-mining activities must reach a 100% success rate.

Nevertheless, despite the efforts of restoration, the law lacks community engagement, especially to the indigenous communities. As mentioned previously, the concept of the Mining Jurisdiction is introduced in the new law, which covers all Indonesian landmarks. With this definition, it is implied that exploration activities are expanded with no limits, and this will endanger the indigenous community. Moreover, since the authority for local government has been revoked, the local government will not be able to participate in the monitoring of mining activities that occurs in the area. Meanwhile, community consultation and engagement helps to balance economic development consideration, leading decisions to be more sustainable and practical socially.⁶

4. Conclusion and Recommendation

While there are tensions between the purposes of attracting investment into mining and protecting the environment, it is still possible to have both a favourable investment climate and feasible provisions on sustainable development in mining. The new Law No. 3 Year 2020 Regarding Mineral and Coal Mining has recently been signed as an amendment to its predecessor, Law No. 4 Year 2009. This law is believed to attract more investors to infuse funds into Indonesian Mining Industry, as it offers certainty for permit extensions and the expansion for more exploration. Furthermore, the law also has strengthen its reclamation activities, in which mining companies will be held accountable for failing to reclaim their own mining site back to its original state. However, the law also leaves some important aspects, where it must be able to include indigenous communities who will be affected by the continuous exploration. Therefore, the law should be revised as such. The efforts to ease environmental impacts and promote social inclusion should always be taken in consideration in the mining industry. Accordingly, the Indonesian mining industry could continue playing an important role globally while also implementing sustainable mining practices.

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⁴ Article 100, Law No. 4 Year 2009

⁵ UNDP, *Managing Mining for Sustainable Development: A Sourcebook*, 2019

⁶ UNDP and UN Environment, *Managing Mining For Sustainable Development: A Sourcebook*, 2018

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Laws and Regulations

Law No. 4 Year 2009 Regarding Mineral and Coal Mining
Law No. 3 Year 2020 Regarding Mineral and Coal Mining