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MINING LAW IN INDONESIA



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I. INTRODUCTION

Indonesia, a nation rich in natural resources, has long relied on its resource sector, particularly mining, as a driving force for its economy. From the time of its independence to the present day, the Indonesian government has shown relentless commitment to enhancing its governance of the mining industry. The transformation from the old mining contract system established by Law No. 11 of 1967 to the current licensing-based framework introduced by Law No. 4 of 2009, later amended by Law No. 3 of 2020 (referred to as the "**Mining Law**"), marks a significant milestone in the mining industry. The Mining Law was enacted with the primary objectives of strengthening state control over natural resources, streamlining bureaucratic processes, resolving regulatory inconsistencies at various levels, mitigating conflicts of authority between central and regional governments, and fostering a more conducive investment environment amid market volatility.

The current minerals and coal mining sector operates under a licensing framework that involves auctioning mining areas. The primary authority responsible for granting these licenses is the central government. Under the current system, a Business License (*Perizinan Berusaha*) in the mining sector can take various forms, including:

- a. Mining Business Permit (*Izin Usaha Pertambangan* or IUP)
- b. Special Mining Business Permit (*Izin Usaha Pertambangan Khusus* or IUPK)
- c. IUPK as an extension of an existing contract/agreement
- d. Transportation and Trading Permit (*Izin Pengangkutan dan Penjualan*)
- e. Mining Service Business License (*Izin Usaha Jasa Pertambangan* or IUJP)
- f. Mining Business License for Trading (*Izin Usaha Penjualan*).

The Mining Law (as amended) has also introduced three new types of permits: rock mining license (SIPB), assignment permit, and mining business license for trading. The assignment permit empowers the government to delegate the right to investigate and research the preparation of metal mineral or coal mining areas for auctioning new tenement areas. Holders of the assignment permit gain the privilege to participate in these auctions once proven to be prospective. The mining business license for trading is intended for entities not directly involved in mining but engaged in selling mined minerals and/or coal. While the central government remains the sole authorised body for issuing Business Licenses, delegation of this authority to provincial governments is permitted based on effectiveness, efficiency, accountability, and externality principles. Consequently, issuing Business Licenses like SIPB may be delegated to provincial governments in line with these principles.

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Mining is a capital and technology-intensive industry characterised by significant risk. Before embarking on any mining production activity, strict government regulations necessitate a thorough evaluation, including feasibility studies and environmental impact assessments. Additionally, the mining sector acknowledges the presence of other risk factors in Indonesia, particularly social issues, which investors cannot afford to underestimate. Given the intricate nature of mining operations and associated risks in Indonesia, the government is dedicated to incentivising investors in several ways, fiscal and non-fiscal. One such incentive involves assuring a stable zoning plan for predetermined mining areas. Additionally, holders of IUP and IUPK licenses that establish downstream facilities shall enjoy the more extended mining tenure right of an initial 30-year license period, extendable by ten years with each renewal.

The government's commitment to enhancing domestic value addition is evident in its efforts to boost the downstream mining sector, especially for essential base metals like nickel, bauxite, tin, and copper. Presently, there are 34 operational nickel smelters, with 17 more under construction for pyrometallurgy and mix hydro precipitate (MHP) processing. This downstream policy is anticipated to yield significant economic benefits for the nation. For this downstream sector, China plays a pivotal role in Indonesia, serving not only as a technology provider but also as a major off-taker for most purified commodity products. While there isn't a specific mining investment agreement with China, both nations are committed to safeguarding investments based on the existing general bilateral Investment Agreement.



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II. YEAR IN REVIEW

Despite the challenges posed by the COVID-19 pandemic and the 2022 coal export restrictions resulting from a shortage of domestic coal supply for power generation, Indonesia has managed to sustain robust coal production. As of August 2023, coal production has reached a notable 549.01 million tons, with roughly half of this output destined for the export market, according to the data of the Minister of Energy and Mineral Resources ("**MEMR**"). This has already surpassed 500 million tonnes, which accounts for approximately 80% of the annual target. This indicates a promising possibility that the actual coal production for 2023 may indeed meet its projected goal.

Much like its coal industry counterpart, Indonesia's nickel sector has experienced a remarkable surge in recent years, transforming from a significant national player into a global powerhouse. As the world's leading nickel producer, with the largest nickel reserves globally, Indonesia recognises the immense economic potential this resource offers. The growing shift towards electric vehicles and renewable energy sources has fuelled an ever-increasing demand for nickel, a critical component in lithium-ion batteries. This global trend, coupled with Indonesia's abundant nickel reserves, has propelled the nation to the forefront of global nickel production. This growth has not only significantly contributed to Indonesia's economy but has also solidified its strategic significance in the minerals and metals landscape. Indonesia's nickel production currently stands at an impressive 280,748.71 tons based on the MEMR data, all processed and refined within the country.

In recent years, the Indonesian government has also been actively enhancing its regulatory framework to attract investments while simultaneously refining mining governance to ensure a harmonious balance between social and environmental considerations. In a bid to stimulate exploration activities, the government has introduced an assignment license, granting license holders the opportunity to apply for this privilege. This license authorises its holder to conduct exploration activities, and in the event of promising results, the corresponding mining area will be subject to auction. What sets the assignment license apart is its provision of a priority position in the auction process, allowing the holder the right to match the highest bidder. This strategic incentive for exploration aims to bolster the nation's mineral resources and reserves, thereby fostering the sustainability of the mining industry.

III. LEGAL FRAMEWORK

The Indonesian government has consistently refined its mining industry regulations to enhance the business landscape, a particularly crucial endeavour amidst a global economic slowdown, fluctuating commodity prices, and protectionist practices seen in various countries. The transition from a regional autonomy system to central government control marks a significant shift in power dynamics. To ensure the effectiveness of this transition, the central government must bolster its resources and infrastructure, intensify collaboration and coordination among ministerial departments, and establish comprehensive and clear implementation regulations.

In the realm of extractive industries, including mining, maintaining consistency, clarity, certainty, streamlined bureaucracy, rigorous law enforcement, transparency, and inclusive engagement with all stakeholders are paramount. When collectively applied, these legal aspects align with Indonesia's constitutional mandate to provide the greatest benefit to its people.

The Mining Law incorporates pivotal reforms focused on facilitating ease of doing business within the mining sector. It streamlines the licensing system and centralises the licensing authority. The previous dual authority of the central and regional governments had hindered effective mining management, raising concerns about the capacity and competency of regional governments in creating a conducive environment for the mining industry. This motivated the shift of mining authority to the central government.

This centralised approach to mining authority aligns with the broader parliamentary initiative, the Omnibus Law. It aims to harness Indonesia's mineral and coal resources for the maximum benefit of its citizens, as stipulated in the constitution. These amendments are expected to alleviate issues related to intergovernmental coordination, conflicts of authority, and overlapping mining regulations.

As previously discussed, while ultimate mining authority rests with the central government, delegation of some authority to provincial governments is permitted. With this consolidated power, the central government, along with other ministries and departments, must provide robust support for the MEMR in managing the mining industry under this amended system. Adequate preparation, including resource allocation and infrastructure development, is imperative for the success of this new framework.

As the governing body overseeing mining activities in Indonesia, MEMR holds the crucial responsibility of policing and monitoring these operations. This monitoring and supervisory role is realised through the submission of regular monthly, quarterly, and annual reports by all holders of IUP.

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To enhance the efficiency and effectiveness of the monitoring and supervisory functions, MEMR has modernised its reporting system, transitioning from a manual process to an online platform. This strategic investment in technology has significantly improved the government's oversight capabilities, allowing for more streamlined and effective monitoring of mining activities.

In addition to a series of technical obligations placed on mining business license holders, the Mining Law introduces new mandates for the mining industry. These include the allocation of funds for community development programs, the requirement to conduct annual exploration programs, and the establishment of a resilience fund.

Furthermore, the Mining Law incorporates provisions aimed at incentivising exploration activities. Under these provisions, the government is empowered to grant business entities the authority to conduct investigations and research in preparation for auctioning new mining areas. Subsequently, these entities are granted the right to match the highest bid in the auction process.

One of the most significant features of the Mining Law is also regarding the provision for the continuation of the old Contract of Work (CoW) and Coal Contract of Work (CCoW) systems. This ensures that CoW and CCoW holders can extend their mining operations beyond the contract's expiration without the need for a competitive tender process. Instead, they can convert their existing contracts into a Continuation Operation IUPK, which also grants them an exemption from the maximum mining area restrictions, allowing them to retain their current mining area in its entirety.

IV. MINING RIGHTS AND REQUIRED LICENCES AND PERMITS

i Title

The mining license (IUP) is granted to Indonesian corporations, whether they are local or foreign investment companies. Considering this industry is a high-risk, high-capital industry, an IUP is not to be awarded to individuals.

Unlike the previous system, which divided the IUP into separate categories for exploration and operation production, the current system consolidates them into a single IUP that encompasses both stages.



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The duration of exploration activities, as specified in Article 36, paragraph (1), letter a of the Mining Law, spans 8 years for metal mineral mining and 7 years for coal mining. Extensions for exploration activities, as outlined in Article 42, Letter A and Letter E of the Mining Law, are permissible for 1 year at a time, subject to fulfilment of the necessary requirements.

Regarding operation production activities, as indicated in Article 36, paragraph (1), letter B of the Mining Law, they are initially granted for up to 20 years for both metal mineral and coal mining. Furthermore, the law guarantees the possibility of two extensions, each for a duration of 10 years, after fulfilling the statutory requirements. For integrated metal mineral mining, which includes processing and/or refining facilities, the initial period is 30 years, with the assurance of extensions of 10 years each, as long as the requisite requirements are met. Similarly, for integrated coal mining involving development and/or utilisation activities, the initial duration is 30 years, with the possibility of 10-year extensions after meeting the specified regulatory prerequisites.

Holders of both IUP and IUPK are strictly prohibited from transferring these licenses to third parties without obtaining prior approval from the Minister of MEMR. Such approval hinges on the license holders meeting specific requirements, including the completion of exploration activities verified by resource and reserve data endorsed by a qualified competent person and the fulfilment of administrative, technical, environmental, and financial prerequisites.

Similarly, business entities holding IUP or IUPK are barred from transferring share ownership without the Minister's consent. This approval process typically involves an assessment and profiling of the prospective transferee, with their capability and competence serving as pivotal factors in the transfer's success. In essence, those with industry expertise are favoured as eligible transferees. While this safeguards proper mining operation management, it may potentially limit opportunities for newcomers from diverse sectors.

This innovative approach is particularly advantageous and is expected to provide incentives for junior mining companies. It is hoped that this breakthrough will breathe new life into the long-stalled greenfield exploration industry in Indonesia. Additionally, this provision is anticipated to attract more qualified investors to the sector.



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ii Additional permits and obligations

While the IUP serves as the primary business license for mining operations, additional licenses may be necessary depending on the specific circumstances. For instance, if the mining area falls within a forest zone, the IUP holder must also secure a forestry license, known as IPPKH, before initiating mining activities. This requirement has posed operational risks for miners for an extended period. The Mining Law stipulates that both the Central Government and Regional Governments are responsible for ensuring the issuance of any other licenses necessary for conducting mining business activities in designated metal mineral and coal IUP areas, as long as the requisite requirements are met in accordance with statutory provisions.

In addition to obtaining relevant licenses, miners must also consider various other obligations, particularly those related to environmental and social responsibilities. These obligations align with the spirit of the Mining Law, which supports sustainable national development. One of the primary objectives of managing the mineral and coal industry is to enhance the income of local communities, regions, and the state, while simultaneously creating job opportunities for the overall welfare of the population.

To achieve this objective, the Mining Law (as amended) introduces obligations for the mining industry to allocate funds for community development programs. Specific details concerning these social obligations are yet to be defined and will be governed by a Ministerial decree. Those experienced in this industry are well aware of the intricacies and sensitivity surrounding communities residing near mining areas. Mandatory consultations between the mining industry, government at all levels, and local communities reflect the implementation principles of participation, transparency, and accountability.

Furthermore, there are obligations pertaining to the use of dedicated mining roads that miners need to consider, along with requirements to allocate funds and conduct annual exploration programs, including the establishment of a new resilience fund. The details of these additional obligations will be outlined in government regulations, and its purpose is to ensure the continuous progress of exploration activities.

iii Closure and remediation of mining projects

Reclamation encompasses a series of activities conducted at every stage of the Mining Business to systematically organise, restore, and rehabilitate the environment and ecosystem, with the ultimate aim of reinstating them to their natural and functional states. IUP holders bear the responsibility of executing reclamation efforts throughout the entire duration of their mining operations, and upon completion of their mining program, they are mandated to undertake mining closure procedures. To ensure strict adherence to environmental obligations, IUP holders are obligated to establish reclamation bonds and mining closure bonds before commencing their operation production program. These obligations represent a stringent requirement set forth by the government for all IUP holders, serving as a vital mechanism for enforcing environmental compliance.

V. ENVIRONMENTAL, SOCIAL AND GOVERNANCE CONSIDERATIONS

i Sustainable development

A standard framework for sustainable mining places a primary focus on mitigating the environmental impacts associated with mining activities. To assess the sustainability of mining operations, holders of the IUP shall apply measuring, monitoring, and enhancing various environmental performance indicators. These metrics are instrumental in determining the overall sustainability of a mining operation. Key environmental sustainability metrics within mining encompass efficient resource utilisation, reduced land disturbance, pollution mitigation, and the effective closure and reclamation of depleted mining sites.

Beyond that, the sustainable mining framework extends the focus from merely addressing the environmental footprint of mining operations to adopting a responsible approach to managing non-fuel mineral resources throughout their complete life cycle. This approach encompasses the usage phase and the end-of-life considerations, with implications for reducing the volume of extracted materials and safeguarding reserves for future generations.

The Mining Law underscores the importance of adhering to principles of good mining practices. These principles encompass obligations aimed at conducting mining activities responsibly, as well as ensuring minimal environmental and social impacts within the mining area. By adhering to these principles, the goal of sustainable mining can be realised.

ii Environmental compliance

As previously emphasised, investing in mining businesses entails significant risks, necessitating meticulous evaluations across various facets, particularly concerning the environment. One key prerequisite for IUP holders to progress to the operational production stage is the successful completion of an environmental impact assessment study, culminating in the issuance of an environmental license. Throughout the tenure of the IUP, its holder is obligated to adhere to and fulfil the commitments outlined in their environmental impact assessment study.

The Indonesian government has exhibited a stringent commitment to enforcing environmental compliance. Should an IUP holder fail to meet their environmental obligations, they may face potential consequences in the form of both administrative penalties and criminal charges.

iii Indigenous and third-party rights

In situations where a mining area is situated in a non-forest zone or in close proximity to local communities, the Mining Law mandates that IUP holders engage in consultations and discussions with the local population regarding their mining plans. This collaborative approach aims to secure the support and consensus of the surrounding community. In cases where resettlement or relocation becomes necessary, IUP holders are obligated to resolve land rights with the landowners, potentially entailing compensation to the landholders. Land acquisition matters must be amicably settled by the mining license holder and the landowner. In the event that an amicable resolution proves elusive, the central government may step in to mediate the dispute and provide recommendations for the mediation process.

This consultation requirement also extends to the use of public roads. While the obligation to use private roads persists, IUP and IUPK holders are permitted to utilise public roads and infrastructure when the designated hauling road is unavailable. The term "hauling road," as defined by mining regulation, refers to roads within a mining area and/or project area specifically designated for transporting goods or personnel in support of mining operations or mining facilities.

VI. OPERATIONS, PROCESSING AND SALE OF MINERALS

i Employment, health and safety

The guiding principle of Indonesian manpower policies is to safeguard the interests of Indonesian workers employed within the country. Therefore, in cases where mining companies have a genuine and urgent need to hire foreign workers, stringent requirements are imposed to ensure the protection of Indonesian workers from unfair competition. Any foreign worker employed by a company must possess educational qualifications aligned with the position they are to occupy, a minimum of five years of relevant work experience corresponding to the position, and a commitment to transfer their expertise to local workers.

Furthermore, foreign workers can only be employed in Indonesia for specific positions and durations, contingent upon their competence aligning with the designated roles. Mining companies seeking to employ foreign workers must develop a validated recruitment plan endorsed by the central government. Hiring a foreign worker without the requisite license/permit can result in administrative sanctions imposed by either the central or regional government, in accordance with their respective authority, in accordance with Article 42, Section (1) of Law 13/2003 concerning Manpower.

Overall, the Mining Law imposes an obligation on IUP holders to adhere to occupational health and safety regulations, which are detailed in MEMR regulations. Any workplace accidents must be promptly reported to the government, and repeated incidents during mining operations may lead to government sanctions.

ii Processing and operations

A mining company holding a valid IUP operates based on an annual work plan and budget, commonly referred to as RKAB. This RKAB is proposed by the mining company and subsequently approved by the central government, representing a binding commitment from the mining company. Consequently, any underperformance of the mining operation in relation to the RKAB can have repercussions on the working plan for the subsequent year.

Specifically, within the context of coal mining, the projected production outlined in the RKAB serves as the foundation for determining the domestic market obligation. Penalties and fines are calculated based on this projected production. Therefore, the preparation of the RKAB by a mining company is a meticulous process, given its significant implications. Additionally, discussions within the MEMR have explored the possibility of streamlining the RKAB approval process by transitioning to a three-year RKAB submission instead of an annual one.

Beyond the RKAB, holders of the IUP are obliged to comply with a comprehensive set of requirements during the operational production phase, essentially encompassing the application of good mining practices.

In the case of metal and mineral mining, the Mining Law mandates domestic processing and refining. Furthermore, the law and its derivative regulations explicitly prohibit the export of unprocessed ore. This prohibition has catalysed the establishment of smelter facilities within the country, aligning with the broader objective of enhancing the value-added component of the commodities. To incentivise the domestic downstream industry, the government offers a range of fiscal and non-fiscal incentives, as elaborated in other subsections of this article.

iii Sale and export of extracted or processed minerals

As previously discussed, the mining regulations in Indonesia prohibit the export of unprocessed ore, primarily to support the growth of the downstream industry. However, the government recognises the challenges and time constraints associated with constructing refinery facilities. Consequently, there are provisions for relaxing these export restrictions under specific circumstances, subject to tariffs.

Pursuant to Article 11 of Finance Ministry Decree No. 71/2023, the government determines the tariff rates or export duties for metal mineral concentrate products based on the physical progress of refining facility construction, which must reach at least 50%.

The stages of physical development progress for smelter construction are categorized as follows:

- a. Phase I: Physical development progress is less than 50% to less than 70% of the total development.
- b. Phase II: Physical development progress is less than 70% to less than 90% of the total development.
- c. Phase III: Physical development progress exceeds 90% and reaches 100% completion.

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These stages of physical development progress are indicated in the export recommendations issued by the Minister responsible for government affairs in the energy and mineral resources sector. The government, through PMK 71/2023, calculates tariffs based on concentrate from mining products, with the export duties gradually increasing.

The following are details of the provisions regarding export duty rates for smelter construction until 31 December 2023:

- a. Copper concentrate with a copper content of less than 15%: 10% in Phase I, 7.5% in Phase II, and 5% in Phase III.
- b. Laterite iron concentrate (gutite, hematite, magnetite) with an iron content of less than 50% and (Al₂O₃+SiO₂) content exceeding 10%: 7.5% in Phase I, 5% in Phase II, and 2.25% in Phase III.
- c. Lead concentrate with lead levels exceeding 56%: 7.5% in Phase I, 5% in Phase II, and 2.5% in Phase III.
- d. Zinc concentrates with zinc levels exceeding 51%: 7.5% in Phase I, 5% in Phase II, and 2.5% in Phase III.

Export duty rates for mining products will increase from 1 January 2024 to 31 May 2024, with the following conditions:

- a. Copper concentrate with a copper content of less than 15%: 15% in Phase I, 10% in Phase II, and 7.5% in Phase III.
- b. Laterite iron concentrate (gutite, hematite, magnetite) with an iron content of less than 50% and (Al₂O₃+SiO₂) content exceeding 10%: 10% in Phase I, 7.5% in Phase II, and 5% in Phase III.
- c. Lead concentrate with lead levels exceeding 56%: 10% in Phase I, 7.5% in Phase II, and 5% in Phase III.
- d. Zinc concentrates with zinc levels exceeding 51%: 10% in Phase I, 7.5% in Phase II, and 5% in Phase III.

iv Foreign investment

Indonesia's government warmly welcomes investment in the mining industry, whether it originates from domestic or foreign sources. While foreign investors are permitted to hold full ownership in companies holding IUP, certain conditions must be met. IUP holders, whose shares are predominantly owned by foreign entities, are required to divest their ownership down to a maximum of 49%. The Mining Law mandates that this divestiture process adhere to a specific hierarchy, with the central government having priority, followed by regional governments, state-owned enterprises, regionally owned business entities, and finally, national private enterprises.

Government Regulation No. 96 of 2021 (“**PP 96/2021**”) extends the timeline for the divestiture obligation of IUP and IUPK holders, which was previously mandated to commence in the fifth year of production. Specifically, under PP 96/2021, holders of IUP and IUPK for open-pit mines integrated with processing and refinery facilities may initiate divestment of their foreign shares by 5% in the fifteenth year of production. Subsequently, divestment obligations increase to 10% in the sixteenth year, 15% in the seventeenth year, 20% in the eighteenth year, 30% in the nineteenth year, and ultimately reaching 51% by the twentieth year, with local shareholders owning the majority.

In cases where hierarchical divestment obligations cannot be fulfilled, share divestment may be executed through the Indonesian stock exchange, with a public offering on the market serving as a last resort option.

VII. FINANCING AND CAPITAL REPATRIATION

Mining is a capital-intensive endeavor that demands robust financial backing for success. In addition to relying on equity from shareholders and debt financing, one viable source of funding comes from the capital market. Recognizing the financial demands of capital-intensive projects, the Indonesian government also supports mining companies in raising capital from the market. According to Indonesia's Stock Market Regulation I.A.1, mining companies that meet specific criteria can be listed on the stock exchange. This applies to prospective listed companies and their controlled entities, which must either hold an operational production mining business permit, have advanced to the sales stage, be in the production operations stage (before reaching the sales stage), or have plans to begin the production operations stage.

Furthermore, foreign investors in the mining industry face no specific restrictions when repatriating their capital. The Republic of Indonesia's Investment Law No. 25 of 2007 affirms the right of all investors to transfer or repatriate funds in foreign currency for various purposes, including capital, profits, dividends, raw materials, capital goods reimbursement, investment financing, loan repayment, royalties, and more. These transfers are subject to compliance with the prevailing laws and regulations, including reporting requirements for fund transfers. The government retains the authority to apply tax, royalty, and other revenue regulations, protect creditor rights, and prevent financial loss to the state.

VIII. ROYALTIES, TAXES AND DUTIES

Holders of the IUP bear various fiscal obligations to both the central and regional governments, encompassing dead rent, production royalties, and taxes. Despite these fiscal obligations, the government also extends incentives to miners under specific circumstances. For instance, a recent incentive allows coal with added value to receive preferential treatment, including a 0% royalty rate, taking into account energy self-sufficiency and industrial raw material requirements.

For dead rent in coal and mineral mining, the government applies different rates based on the project stage. During the exploration stage, the dead rent is set at IDR 30,000 per year per hectare, while it increases to IDR 60,000 per year per hectare during the operational production stage. Coal production royalties range from 5% to 13.5%, contingent on the calorific value of the coal and the reference price. For minerals, production royalties vary from 1% to 10%, depending on the type of commodity and the nature of the refined end product.

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Value-added tax, levied at a rate of 11%, applies to the delivery of goods and services, while the income tax rate typically applicable to Indonesian limited liability companies stands at 22%. Export duties are imposed on specific metal exports, depending on the mineral specifications and the progress of refining facility construction (see further discussion in subsection VI(iii)).

IX. OUTLOOK AND CONCLUSIONS

The Mining Law signifies a significant departure from the state's prior approach, reflecting its commitment to enhancing the management of the mining industry. It seeks to provide greater business certainty while also ensuring significant benefits for the country. The law represents a substantial step towards establishing robust mining governance. While this governance framework remains a work in progress, it is essential, given the increasing challenges faced by both the government and mining companies in Indonesia. These challenges encompass the imperative to support sustainable national development and the global drive towards achieving net-zero emissions.

Despite the hurdles presented by industry trends and the future landscape of the sector, it is fitting to acknowledge the Indonesian government's commendable efforts. They have successfully navigated the complex terrain of this industry, carefully balanced the interests of multiple stakeholders and charted a course for its sustainable evolution.



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