IJSSR International Journal of Social Service and Research
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Vol. 04, No. 03, March 2024
e-ISSN: 2807-8691 | p-ISSN: 2807-839X

Impact of Nominee Agreement on Mining Business Entities Against the Welfare of the People

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Keywords
Nominee Agreement, Mining, People's Welfare.

ABSTRACT

This study delves into the regulation of foreign share ownership and the prohibition of nominee agreements in the establishment of mineral and coal mining entities in Indonesia, aiming to ensure legal certainty and promote the welfare of the people, as mandated by Article 33 paragraph (3) of the 1945 Constitution. Employing three legal theories—basic legal values (Gustav Radbruch), legal system theory (Lawrence Friedman), and the welfare state—the research method incorporates both normative juridical and empirical juridical approaches. The findings reveal that nominee agreements, though legally questionable under Article 1320 of the Civil Code, serve as a means for foreign investors to secure their interests in Indonesian mining ventures. An Environmental Analysis of Law (EAL) employing the Cost-Benefit Analysis (CBA) method indicates a positive impact on the welfare of communities in Morowali and Kutai Kartanegara regencies due to these agreements. Proposing an ius constituent approach, the study advocates for relaxed foreign ownership regulations, allowing up to 51% ownership during the initial establishment period, accompanied by a mandatory divestment to 49% after ten years of exploration. Such a policy shift obviates the need for nominee agreements, ensuring both investment security and legal clarity. Supervisory mechanisms are recommended to oversee divestment and reinvestment processes, ensuring equitable distribution of mining dividends and bolstering legal certainty in mining operations. These proposed regulatory adjustments are envisioned to foster equitable resource management, thereby advancing the welfare of the Indonesian populace, particularly in Morowali and Kutai Kartanegara regencies.

INTRODUCTION

This study explores the impact of nominee agreement practices on people's welfare in the case of mineral and coal mining business entities. In Indonesia, the mining sector has great potential as a natural resource that can improve people's welfare. However, the practice of nominee agreements used by foreign investors in foreign share ownership can hamper the government's efforts to maintain state sovereignty and ensure the people enjoy the economic benefits of natural resources fairly (Masum & Prihatinah, 2023; Pertiwi, 2019; Samekto, 2019; Saypan & Nanakorn, 2019; Sumarsih, 2023). This becomes even more urgent, considering the COVID-19 pandemic has changed the dynamics of the global economy, demanding economic recovery that requires large investments from within the country.

This research pays attention to the background of the latest regulations related to investment, such as the Job Creation Law, which seeks to create a conducive business climate but still pays attention to the sovereignty and welfare of the people (Ayee et al., 2011; Djelantik et al., 2022; Sood, 2021; Torfing et al., 2019). However, the shift from the Negative Investment List (DNI) to the Investment Business

https://doi.org/10.46799/ijssr.v4i03.753

Sector (BUPM) does not necessarily address the problem of nominee agreements, which remain a challenge in managing natural resources.

This study builds upon previous research highlighting the detrimental effects of nominee agreement practices in various industries. For instance, Smith et al. (2018) underscored how nominee agreements, particularly in the energy sector, often lead to inequitable distribution of economic benefits and undermine local communities' welfare. Similarly, Adamou et.al (2021) found that nominee agreements in the agriculture sector exacerbate land tenure insecurity and hinder sustainable development efforts. By integrating insights from these studies into the context of mineral and coal mining in Indonesia, this research aims to comprehensively understand the challenges posed by nominee agreements and propose tailored solutions that balance legal compliance with socio-economic needs. Additionally, by employing the Cost-Benefit Analysis (CBA) method, this study extends prior research methodologies to assess the economic implications of nominee agreements specifically within the mining sector, thus filling a notable gap in the existing literature (Koopmans & Mouter, 2020; Mouter et al., 2020).

Through this research, wise solutions can be found in dealing with the practice of nominee agreements, which align with legal principles and pragmatic economic needs(Alamudi et al., 2022; Atmadja, 2018; Julyano & Sulistyawan, 2019; Putri & Putri, 2020). This will make a new contribution to the research literature because little research has focused on this aspect, especially in the context of mineral and coal mining. This study also considers using the Cost-Benefit Analysis (CBA) method to evaluate the economic impact and community welfare of nominee agreement practices in the mining sector (Adebayo & Werker, 2021; Chi & Bunker, 2021; De Valck et al., 2021; Hira & Busumtwi-Sam, 2018; Masur & Posner, 2018).

Thus, this research focuses on identifying problems and research urgency and tries to provide concrete solutions by considering legal, economic, and social aspects. The implications of this research are expected to guide policymakers in formulating effective regulations to overcome nominee agreement practices and ensure people's welfare is a top priority in natural resource management.

METHODS

This research uses a statute and conceptual approach to reveal and analyze the legal issues studied. The statutory approach examines all laws and regulations related to the legal issue being addressed. This allows researchers to find consistency between various laws and regulations and trace the ontological and philosophical basis of the formation of such laws. In addition, a conceptual approach is used to understand the views and doctrines that develop in legal science so that researchers can build legal arguments relevant to the issue under study.

The object of this research is the legal issues faced, which will be analyzed and understood through various laws and regulations and conceptual views in legal science. Research data sources consist of primary data and secondary data. Primary data is obtained directly from the source through field observation or limited interviews with related parties, such as the Ministry of Investment / BKPM, Ministry of Energy and Mineral Resources, Ministry of Law and Human Rights, OJK, and other informants. Meanwhile, secondary data is obtained through literature study, official and unofficial document collection, and web browsing related to the research topic.

The population in this study is all documents, regulations, and conceptual views relevant to the legal issues studied, while the sample is selectively selected based on predetermined criteria. Data collection techniques include literature study, document collection, and limited interviews. Limited interviews were conducted through various communication media such as telephone, email, zoom meetings, and Facetime to strengthen and support secondary data.

Data analysis techniques are carried out through reading and understanding the documents that have been collected, as well as by identifying and evaluating the consistency, relevance, and implications of laws and regulations and conceptual views studied. Using this method, this research can provide a deeper understanding of the legal issues under study and provide a strong argumentation basis to solve problems that arise.

RESULTS

Application of Cost and Benefit Analysis Method

Application of Cost and Benefit Analysis Method in Morowali Regency

Table 1. Number of Mines and Smelters in Morowali Regency

Information	Year				
	2017	2018	2019	2020	2021
Smelter	3	3	4	4	4
Mining**	61	48	46	85	70

Source: ESDM Office of Morowali Regency.

Until 2021, around 70 mining companies and 4 smelters in Morowali have a positive economic impact, including employment and infrastructure development. Their existence also helps manage natural disasters, such as the earthquake and tsunami in Palu Donggala 2018.

Table 2. Gross Regional Domestic Product (GDP) in Morowali Regency

Year				
2017	2018	2019	2020*	2021**
17.040.812.000.000	37.356.484.400.000	45.244.727.100.000	61.985.633.100.000	98.779.810.000

Source: Data from the Central Bureau of Statistics of Morowali Regency
Description: *Provisional Number, **Very Provisional Number

The data shows that the Morowali area's GDP has increased yearly; in 2021, it reached Rp. 98.779.810.000,- (ninety-eight billion seven hundred seventy-nine million eight hundred ten thousand rupiah). The figure obtained by BPS Morowali Regency is provisional. The existence of a roster system for mining employees resulted in high mobility in Morowali. This positively impacts the local economy; for example, the people of Morowali can enjoy vegetables and fruits from outside the area, and vice versa, mining employees can bring local produce and crafts to be taken out of Morowali.

Table 3. Regional Revenue/Royalty/PNBP in Morowali Regency

Income	Year				
	2017	2018	2019	2020	2021
Smelter		14.176.785.829.800	16.672.681.936.350	43.377.546.043.380	
Mining		10.344.010.530.360	14.148.026.164.170	11.361.966.547.230	

Source: Data from the Central Bureau of Statistics of Morowali Regency

BPS Morowali Regency has not yet obtained and uploaded on its official website the amount of Regional Revenue/Royalties/PNBP in Morowali Regency in 2021. However, judging from the Regional Revenue/Royalty/PNBP data in Morowali recorded in BPS, it can be seen that regional revenue from the mining sector, especially smelters in Morowali, has increased every year. This means that the existence of mining businesses that involve foreign investors has an important role in the economic progress of the Morowali region. Local governments use the increase in regional revenue to finance the development of regional infrastructure and regional infrastructure. In addition, it is also used to improve the local economy, for example, the provision of Bumdes that serve the buying and selling of fish catches and local community agricultural products to be sold to mining companies and smelters.

Table 4. Number of Population of Morowali Regency

Kind Gender	Year				
	2017	**2018**	**2019**	**2020**	**2021**
Man	59.919	60.895	61.898	89.174	-
Woman	57.411	58.397	59.398	72.553	-
Total	**117.330**	**119.292**	**121.296**	**161.727**	**-**

Source: Central Bureau of Statistics Morowali Regency

Description: In 2021, there is no official data

Along with the growth of the economy, Morowali also increased its population. The population of Morowali in 2020 reached 161,727 (one hundred sixty-one thousand seven hundred twenty-seven) people. This number is relatively small for a district-level area. Compared to the huge mining potential in the Morowali Regency area, the available labour force is still very limited and not balanced with the need to optimise the mine. Therefore, it is necessary to support manpower deployment from other regions. Especially for skilled labour, recruitment from other cities and districts with appropriate educational facilities, including vocational education, is needed.

Currently, mining and smelter companies need a lot of manpower, both professional and informal. For example, in the IMIP Industrial Estate, there are currently approximately 31,000 (thirty-one thousand) Indonesian workers and 5,000 (five thousand) foreign workers. In addition, the Transon Group Industrial Estate currently has approximately 2000 (two thousand) Indonesian and foreign workers. This number is not a small number, which, of course, impacts various sectors. For example, there is a need for basic commodities that the people of Morowali can supply. In line with that, a CSR/PPM program provides skills training for local communities.

Table 5. Number of Education Facilities in Morowali District

Level Education	Year				
	2017	**2018**	**2019**	**2020**	**2021**
SD/equivalent	145	148	148	148	165
Junior High School / Equivalent	46	48	48	43	43
High School/Equivalent	18	17	26	26	26
Sum	209	213	222	217	234

Source: Central Bureau of Statistics Morowali District.

The number of educational facilities in Morowali Regency from 2017 to 2021 has increased in line with the increasing population, even though it decreased in 2020. In 2021, educational facilities in Morowali Regency reached 234 (two hundred and four) schools consisting of elementary/equivalent to high school/equivalent. Morowali Regency did not have a university, but due to the need for high professional manpower, the Ministry of Industry established the Morowali Metal Industry Polytechnic in collaboration with the IMIP Industrial Estate, especially in vocational programs. Through the establishment of this polytechnic, it is hoped that Morowali Regency can meet the needs of manpower, and there will be no need to take workers from outside Morowali or Central Sulawesi Province. In addition, not a few students and local students get scholarships from mining companies to study in big cities such as Makassar, Surabaya, Yogyakarta, Bandung and Jakarta.

Moreover, the company also provides scholarship programs for outstanding students to study abroad. Thus, the mining industry in Morowali can be mottoed with the principle of "From, By and For Morowali". Included in this is the use of mines for the welfare of the people of Morowali.

Table 6. Number of Health Facilities in Morowali Regency

Level	Year

Facilities	2017	2018	2019	2020	2021
Hospital	2	2	1	2	2
Clinic	2	2	2	6	4
Phc	9	9	9	9	9
Posyandu	153	153	151	150	153
Polindes	72	72	83	-	96

Source: Central Bureau of Statistics Morowali Regency
Description: No data

The number of health facilities in Morowali from 2017 to 2021 has increased in line with the increasing population of Morowali. Of the community service facilities, hospital facilities have not increased over the last 5 (five) years. The number of clinics has increased even though in 2021, it dropped again to only 4 (four). Technically, these clinics are more likely to be upgraded to class C or B hospitals.

In addition, CSR/PPM funds from mining and smelter companies have been used to improve health quality, such as adding nutrition to posyandu activities. In addition, mining and smelter companies also have health clinics that cater not only to company employees but also to the general public. Moreover, there are social service activities in the form of health services through mobile clinics and ambulance facilities from mining companies to mining circle communities. This means that mining companies in Morowali Regency have indirectly improved the health services of the Morowali community, especially people in remote villages who are increasingly accessible.

Table 7. Road Infrastructure Within Kilometers in Morowali Regency

Managed By	Year				
	2017	2018	2019	2020	2021
Country	-	183,31	185,31	185,31	185,31
Province	185,31	46,01	46,01	46,01	46,01
Regency	717,4	671,39	717,04	717,04	717,04
Total	902,35	900,71	948,36	948,36	948,36

Source: District Public Works Office Data Processed by the Central Bureau of Statistics of Morowali Regency

The amount of road infrastructure in kilometres in Morowali in 2021 is still the same as in 2019, which is 948.36 (nine hundred forty-eight point thirty-six) kilometres. This indicates that although the population and regional income have increased, the government-owned infrastructure is still minimal and has not been added. Today, people can enjoy road facilities in remote villages built by mining companies. In the future, there needs to be a local government policy to build more road infrastructure, bridges and public transportation terminals to support the economic activities of the Morowali area. Such policies can be synergized with mining investor programs that require supporting infrastructure for their business activities.

Broadly speaking, based on the data above, it can be seen that the existence of mining and downstream mining industries can improve the welfare of the Morowali community even though there is still an imbalance between the number of mining companies and the amount of GDP contribution as well as regional revenues / PNBP and mining royalties received by Morowali Regency with the reality of the life of the Morowali community. The existence of mining and downstream mining industries still positively impacts improving the welfare of the people of Morowali. Currently, 1 (one) Morowali Metal Industry Polytechnic has been built in the IMIP Industrial Estate, and there is already an airport operating in Morowali that serves domestic routes.

Based on the CBA method, it was revealed that the presence of the mining industry from upstream to downstream in Morowali could provide benefits, namely improving the economy and welfare of the Morowali people and increasing the country's foreign exchange through taxes, PNBP and royalties. According to Gustav Radbruch's opinion on the theory of legal objectives, law must have expediency value. Although the nominee agreement is a form of legal smuggling, the nominee agreement can optimize the processing of natural resources in Morowali Regency to increase foreign exchange and regional revenue/royalties, PNBP and regional GDP increase. In addition, through optimal processing of natural resources, it can provide multiplier effects for the economy and the Morowali community, which is increasingly developed and developed. In addition to land, sea, and air traffic links, the communication system in Morowali is also adequately facilitated by the presence of mining companies that build Base Transceiver Stations (BTS). Through the development of telecommunications infrastructure that facilitates wireless communication between communication devices and operator networks," Morowali district has become less isolated. This district became connected with other cities in Indonesia and even the world.

Application of Cost and Benefit Analysis Method in Kutai Kartanegara Regency

Kutai Kartanegara Regency is one of the coal producers in East Kalimantan province. To identify the types of impacts that exist along with measurement indicators and calculations need to be based on several variables, including:

Table 8. Number of Mines and Smelters Kutai Kartanegara Regency

Information	Year				
	2017	2018	2019	2020	2021
Smelter	-	-	-	-	-
Mining**	-	-	67	-	200

Source: ESDM Office of Kutai Kartanegara Regency

The table shows that from 2017 to 2021, the number of mining companies in Kutai Kartanegara has increased. The increase in the number of IUP in Kutai Kartanegara is accompanied by an increase in regional income to improve the economy in Kutai Kartanegara.

Table 9. Gross Regional Domestic Product (GDP) Kutai Kartanegara Regency

Year				
2017	2018	2019	2020	2021
3.350.380.890.000	4.056.074.060.000	5.365.245.350.000	-	-

Source: Data from the Central Bureau of Statistics Kutai Kartanegara Regency

Information:

Based on these data, it can be seen that the GDP of the Kutai Kartanegara area reached Rp 5,365,245,350,000 (five trillion three hundred sixty-five billion two hundred forty-five million three hundred fifty thousand rupiahs) in 2019. As for 2020 and 2021, BPS Kutai Kartanegara has not updated the relevant data. PPDBRB in Kutai Kartanegara from 2017 to 2019 was greater than that of PPDRB in Morowali. This is reasonable considering that coal commodities can be exported after the company meets the DMO and the large number of coal IUP in Kutai Kartanegara. Admittedly, because of the contribution of this mining sector, Kutai Kartanegara Regency is known as one of the richest districts in Kalimantan.

Table 10. Regional Revenue/Royalties/PNBP Kutai Kartanegara Regency

Income	Year				
	2017	2018	2019	2020	2021
Land rent	60.155.630.000	16.195.260.000	9.833.360.000	-	-
Royalty	582.150.520.000	932.521.420.000	1.410.983.170.000	-	-

Source: Data from the Central Bureau of Statistics Kutai Kartanegara Regency.

BPS Kutai Kartanegara Regency has not received and uploaded data on its website, so there has been no updated data on regional revenue/royalties/PNBP Kutai Kartanegara Regency in 2020 or 2021. However, data on regional revenue/royalties/PNBP of Kutai Kartanegara Regency from 2017 to 2019 increased. Finally, in 2019 it was recorded at Rp 1,410,983,170,000.- (one trillion four hundred ten billion nine hundred eighty-three million hundred seventy thousand rupiahs). From an economic perspective, the amount of mining royalties obtained by the local government can be used to build regional infrastructure as well as facilities and infrastructure to realize equal welfare of the Kutai Kartanegara community.

Table 11. Number of Population Kutai Kartanegara Regency

Kind Gender	Year				
	2017	**2018**	**2019**	**2020**	**2021**
Man	394.876	403.825	412.529	380.560	-
Woman	357.215	365.512	373.593	348.822	-
Total	**752.091**	**769.337**	**786.122**	**729.382**	**-**

Source: Data from the Central Bureau of Statistics Kutai Kartanegara Regency
Description: In 2021 there is no official data

The population of Kutai Kartanegara in 2020 reached 729,382 (seven hundred twenty-nine thousand three hundred eighty-two) people. This number is relatively small for the size of a district-level area. This means that the potential of human resources to engage in economic activities, including the mining business sector, is also limited. Thus, this business field still requires workers from outside the district. Local labor absorbed by mining companies, for example, ranging from informal workers to experts. Given that there are already universities and high schools in Kutai Kartanegara, even though it is not sufficient for needs, local workers can be absorbed. This is an indication of the positive impact of the presence of the mining industry in Kutai Kartanegara.

Table 12. Number of Education Facilities Kutai Kartanegara Regency

Level Education	Year				
	2017	**2018**	**2019**	**2020**	**2021**
SD/equivalent	501	501	507	508	510
Junior High School / Equivalent	189	191	196	198	202
High School/Equivalent	66	66	116	112	115
Sum	756	758	819	818	827

Source: Central Bureau of Statistics Kutai Kartanegara Regency

Although the population has decreased, the number of educational facilities in Kutai Kartanegara has increased where in 2021 educational facilities in Kutai Kartanegara reached 827 (eight hundred twenty seven) schools, consisting of elementary / equivalent to high school / equivalent. Looking at the website data of the Ministry of Education, information was obtained that in Kutai Kartanegara from 1984 there was already Kutai Kartanegara Tenggarong University. The number of mining companies in Kutai Kartanegara has a positive impact on the education side. Among them, through CSR / PPM which is distributed in the form of educational scholarships intended for the local community of Kutai Kartanegara. The benefits are clear, namely so that people can receive education not only until high school but up to the college level.

Table 13. Number of Health Facilities Kutai Kartanegara Regency

Level Facilities	Year				
	2017	2018	2019	2020	2021
Hospital	3	3	3	3	3
Clinic	46	46	32	44	44
Phc	**	**	171	171	171
Posyandu	760	766	**	**	**
Polindes	66	66	**	**	**

Source: BPS Kutai Kartanegara Regency

The number of health facilities in Kutai Kartanegara from 2017 to 2021 tends to stagnate, especially posyandu and policies, which were forced to be eliminated due to the COVID-19 pandemic. Even so, the number of puskesmas in Kutai Kartanegara, which reached 171 (one hundred and seventy-one), is definitely not small. This is inseparable from the role of mining companies in remote areas that require health facilities for company employees and the community. Therefore, mining companies must prioritize CSR and PPM for communities around the mine. Companies already operating must also pay dust money for ring 1 (village/kelurahan areas) communities. In this case, dust money is mandatory compensation the company must pay society.

Table 14. Road Infrastructure Within Kilometers in Kutai Kartanegara Regency

Managed By	Year				
	2017	2018	2019	2020	2021
Country	360,65	360,65	**	**	**
Province	222,24	222,24	**	**	**
Regency	2.193,02	2.193,02	**	**	**
Total	2.775,91	2.775,91	**	**	**

Source: District Public Works Office data processed by BPS Kutai Kartanegara Regency

There is no latest data on road infrastructure in Kutai Kartanegajra Regency. The data displayed is data owned by the government. Beyond that, there are infrastructure facilities owned by private parties, especially mining companies, both land, sea, and air transportation. An example is a mining road that is also indirectly used by people in remote areas.

Although currently, in Kutai Kartanegara, there are no large companies processing mining products, from the record of many IUP in Kutai Kartanegara, it can certainly be a driver of regional economic development. The problem is that investors holding mining IUP need security guarantees for business continuity and investment. This can be fulfilled, among others, if they become the majority shareholder to become the company's controller. Given that the limitation of foreign share ownership should not exceed 49% (forty-nine per cent), investors are forced to work around this by entering into a nominee agreement.

CBA Analysis Findings

From limited data and studies on CBA, it can be seen that the nominee agreement has a greater benefit than the costs incurred, both the burden on the government and the community. It can be concluded that although the nominee agreement is a practice of legal smuggling, its existence positively impacts supporting policies to improve public welfare. This can be seen from the GDP indicator, regional revenue/PNBP, and mining royalties, which are of very large value in Morowali and Kutai Kartanegara. Admittedly, the nominee agreement is a form of legal investigation/smuggling of the share ownership limit in mining business entities. However, studies based on the CBA method are limited in Morowali and Kutai Kartanegara, resulting in the conclusion that the existence of nominee agreements needs to be tolerated because it can have an impact in the form of large benefits for the community around the mine. In this case, the purpose of making a nominee agreement is only to use legal means to ensure the interests of foreign investors can invest safely, especially to hold a position as management controller through voting control at the GMS. However, legally, they will not be able to become mine owners.

Meanwhile, being a management controller will not mean being the holder of natural resource sovereignty. For example, the state determines that companies can export coal commodities after fulfilling DMO obligations. Similarly, the state regulates HPM every month for nickel commodities. This means the state remains the controller and holder of natural resource sovereignty.

From these various problems, it is considered necessary to review the provisions regarding the prohibition of nominee agreements, especially during the economic recovery period after the COVID-19 pandemic. In addition, to further ensure legal certainty, especially to stop the practice of nominee agreements, it is necessary to review the policy option of relaxing the limit on foreign share ownership in the mining sector to a maximum of 51% (fifty-one per cent) starting from the establishment of a mineral and coal mining business entity until the deadline of 10 (ten) years. After that, foreign share ownership is limited to a maximum of 49% (forty-nine per cent). The maximum limit needs to be set so that there is no absolute control and ownership of foreign investors. That way, state control and authority over natural resources is maintained and not reduced by the limited majority of shares. Furthermore, the government needs to set up a comprehensive supervision mechanism for the implementation of divestment and supervision of dividend proceeds that must be reinvested in Indonesia for a certain period of time.

With this rationality, the purpose of mining management to prosper the people can be maximally realized. This aligns with the orientation of Jeremy Bentham's utility theory, which states, "The Greatest Happiness of The Greatest Number," which means that the law must provide the greatest benefit to society. If it does not provide benefits, then it is not a law. In the context of CBA, a pragmatic approach is needed to support policies prioritising national interests, namely, realizing the welfare of the people. The results of the CBA study justify the need for the government to take pragmatic and pro-people policy options without violating the constitution of the 1945 Constitution.

Application of Cost and Benefit Analysis Method at Policy Level

After applying the CBA method study in Morowali and Kutai Kartanegara, it can be concluded that technically juridical, to eliminate the practice of nominee agreements, a policy of relaxation of foreign share ownership restrictions in the mineral and coal mining sector is needed to a maximum of 51% (fifty-one per cent) for a period of 10 (ten) years. Furthermore, it is necessary to conduct a CBA study from a policy perspective which concerns the following aspects:

How relaxation will be applied.

The relaxation of foreign share ownership of 51% (fifty-one per cent) is applied from the establishment of mining business entities until the 10th (tenth) year. After 10 (ten) years, the company must divest its shares so that the composition of foreign shares is a maximum of 49% (forty-nine per cent). As for existing mining companies, adjustments are needed, such as making changes to the Company's Articles of Association through the GMS with a deadline set by the government.

Who will be responsible for the implementation of relaxation?

The government is responsible for implementing relaxation, in this case, the Ministry of Energy and Mineral Resources. However, the policy must be integrated with the Ministry of Investment / BKPM so that it can be socialized to invite more investors interested in doing business in the mining sector in Indonesia. In addition, it also needs to be harmonized with the authority of the Ministry of Law and Human Rights in the context of recording the Company's Articles of Association.

How to supervise the application of relaxation.

Given that currently, company registration and changes to the articles of association must be recorded in the AHU system and the RBA OSS system, the implementation of relaxation supervision is carried out through links and matches between ministries and institutions. The relevant institutions and ministries are the Ministry of Law and Human Rights c.q Directorate General of AHU, Ministry of

Investment / BKPM and Ministry of Energy and Mineral Resources c.q Directorate General of Mineral and Mineral Resources.

Who will do the relaxation supervision?

Supervision and guidance are in the Ministry of Energy and Mineral Resources c.q the Director General of Minerba. This is because this ministry is recognized by law as having authority and responsibility in managing Indonesia's natural resources. Supervision must ensure that state sovereignty over natural resources is not depleted or reduced. Through strict and effective supervision, the management of mines owned by the Indonesian nation and controlled by the state can provide maximum benefits for the welfare of the people.

How and when relaxation will be evaluated.

The relaxation policy must be evaluated every 5 (five) years, especially to ensure no absolute control of natural resources, both in business and practice by foreign investors. If the evaluation results have potential irregularities, the government can withdraw the relaxation policy. The licensing instrument, namely IUP, must be an instrument of supervisory control by the government. That is, if investors commit deviant actions or do not contribute to the welfare of the people in accordance with their obligations, the IUP can be revoked. Therefore, continuous evaluation is needed, considering that natural resources are unrenewable resources that must be wisely used to improve people's welfare.

Table 15. Foreign Share Ownership Relaxation Option 51%

No	COST	BENEFITS
1	Dominant foreign investors	Increased interest of foreign investors
2	Control of the business in foreign hands	Acceleration of national economic recovery
3	Dividends return to the investor's country	Natural resources can be managed optimally
4	Community resistance around the mine	Increase in foreign exchange/state revenue through taxes, PNBP, mining royalties
5	Reduced natural resource sovereignty	Increased employment
6	Regulatory adjustments	Improvement of road infrastructure, ports, telecommunication facilities
7	Regulation and supervision of the implementation of share divestment and re-investment	Improvement of educational facilities, health services, economic facilities and trade
8		Skill improvement and technology transfer
9		Increased legal certainty assurance
10		Eliminate nominee agreement practices

The option of relaxing foreign share ownership to 51% (fifty-one percent) for a period of 10 (ten) years, in a policy perspective has potential pros and cons. The counter stance is based on the grounds that the relaxation will result in an increase in the dominant position of foreign investors in the mining industry. Consequently, they will retain control in mining operations, including in determining not to re-invest and withhold dividends. Such conditions will encourage the emergence of resistance from the mining community. The community's objection is based more on reducing the sovereignty of natural resources. The option to relax share ownership also requires regulatory adjustments, especially Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining. Moreover, for the effectiveness of the implementation of this relaxation policy, a basis for regulation and implementation of supervision is also needed, especially from the aspects of share divestment and re-investment.

Meanwhile, the pro-policy stance of relaxation of share ownership is based more on pragmatic rationality and economic approach. Among them, relaxation policy will increase foreign investor interest which is expected to accelerate national economic recovery. In this case, the potential of mineral and coal mining resources can be maximally managed and utilized. With the entry of more foreign investors, there is an increase in the country's foreign exchange income through taxes, PNBP, and mining royalties. There is also an increase in labour absorption from the community around the mining circle and from outside the area.

Other concrete benefits include improving road infrastructure, ports, telecommunication facilities, education facilities, health services, economic facilities and trade. In terms of human resources, there are benefits in improving skills and transferring technology. The rest, what is important from the aspect of investor interests, is the guarantee of legal certainty and business certainty and the disappearance of the nominee agreement practice because the instrument is no longer needed. This needs to be supported by a supervisory mechanism so that the nominee agreement is no longer used to control more than 51% (fifty-one per cent) of the shares.

Regulation, Supervision and Law Enforcement of Nominee Agreement Practices in Mining Business Entities

In mining management, good mining practices are very important to ensure the sustainability of non-renewable natural resources and prioritize national interests. Because natural resources are God's gift owned by the Indonesian nation, their management is carried out by the state for the welfare of the people. However, in the face of economic recovery after the COVID-19 pandemic, the government must adopt pragmatic policies to support foreign investment in the mining sector. One of the main obstacles is legal certainty and inadequate investment security. Therefore, one solution is to relax restrictions on foreign shareholding temporarily. However, this step must be accompanied by strict regulation and effective oversight to ensure compliance and enforcement. Supervision is carried out through monitoring, controlling, field observation, and evaluation (P3LE) mechanisms, including supervision of share divestment and dividend reinvestment. Meanwhile, effective law enforcement of nominee agreement practices in the mining industry can be done through written reprimands, temporary suspension of activities, and even license revocation for companies that do not comply with these provisions. Thus, it is hoped that effective law enforcement can prevent and eliminate practices that harm the state and society.

Legal Certainty of Nominee Agreement Prohibition on Mining Business Entities

In Indonesia's law context, especially in the mining sector, law implementation is influenced by national economic conditions, especially when facing the global economic crisis after the COVID-19 pandemic. This leads to the need for compromising solutions in legal arrangements, including in the face of foreign investment. Despite normative prohibitions on nominee agreements, this practice persists within the mining sector due to the lack of effective enforcement before and after the pandemic. Several relevant ministries, such as the Ministry of Justice and Human Rights (Kemenkumham), the Ministry of Investment/Investment Coordinating Board (BKPM), and the Ministry of Energy and Mineral Resources (ESDM), did not conduct adequate supervision of this practice. Alternatively, several policies can be considered. The first option is to reduce shareholding restrictions for foreign investors, for example, by allowing them to own 51% of the shares for the first 10 years of operation.

Meanwhile, the second option is to maintain the 49% shareholding limit but allow foreign investors to control the company's operations. An example is the scheme used in the agreement between the Indonesian government and PT Freeport Indonesia. In both of these options, it is important to carry out strict supervision to safeguard the interests of the state and ensure legal certainty. Through the evaluation and discussion of various policy alternatives, it is hoped that appropriate and beneficial solutions can be found for all parties, both foreign investors and countries, to support the development of a sustainable and profitable mining sector for both parties.

For Indonesia today, in addition to the need for legal certainty over the prohibition of nominee agreements on the establishment of mining business entities, the same legal certainty is also needed at the operational level. As previously explained, the characteristics of mining operations that require large capital or high costs allow companies to transfer share ownership to other parties, both business entities and individuals. If supervision in the share transfer process is ineffective or weak, there will be a nominee agreement practice to circumvent foreign share ownership restrictions. At the operational level, mining companies must divest shares. However, foreign investors can legally smuggle with nominee agreements due to weak supervision of the share transfer process and divestment obligations. Technically, supervision through monitoring, control, field observation, and evaluation / P3LE of the divestment implementation must be done when the company starts operations. Attach complete new shareholder data to BO, including the annual tax return.

Furthermore, routine supervision is carried out through quarterly reports and the annual RKAB. Periodic supervision is needed to manage and control the company healthily in accordance with the principles of Good Corporate Governance, namely transparency/openness, accountability, responsibility/responsibility, independence / independence, fairness and equality. This is necessary for mining companies to create justice, and legal certainty in the mining sector to create benefits with the greatest goal of the prosperity of the people, especially the communities around the mine. With the background and facts above, the established companies and operational supervision specifically on the implementation of share divestment and supervision and monitoring of dividend re-investment of mining companies. To support the monitoring mechanism, law enforcement divests shares with the threat of tiered sanctions, ranging from written reprimands and termination of activities to license revocation.

CONCLUSION

Based on the preceding analyses, it is evident that while constitutionally, natural resources (SDA) belong to the Indonesian nation and are under state control for the benefit of the people, the utilization of nominee agreements presents challenges to maintaining sovereignty in the natural resources sector. However, despite these challenges, the use of nominee agreements by foreign investors is deemed necessary to safeguard their investments in Indonesia. Hence, strategic policies must be devised, including potential relaxation of shareholding policies with regular assessments or imposing restrictions on foreign investors' shareholding under stringent government oversight. Furthermore, the establishment of effective monitoring and enforcement mechanisms is imperative to ensure that foreign investments in the mining sector contribute to the advancement and welfare of the Indonesian populace.

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