

Tinjauan kebijakan hukum pertambangan yang berkeadilan bagi investor dan pemerintah pasca berlakunya UU No 4 2009 tentang pertambangan mineral dan batubara: studi kasus PT X sebuah perusahaan penanaman modal asing di bidang pertambangan nikel =  
Review of equitable law in mining policies for both investor and government after the enactment of law No 4 year 2009 concerning mineral and coal mining: case study of PT X a foreign investing company within business scope of nickel mining

Justin Adrian, author

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Abstrak

[Undang-Undang Nomor 4 Tahun 2009 merupakan undang-undang yang dapat dikatakan cukup kontroversial bagi pertambangan mineral logam, karena merubah alur industri pertambangan logam tanah air menjadi tidak hanya mencakup kegiatan pertambangan semata, akan tetapi juga diwajibkan untuk perusahaan-perusahaan pertambangan melakukan kegiatan pengolahan dan pemurnian di dalam negeri dalam kurun waktu hanya 5 (lima) tahun saja. Keterbatasan infrastruktur di daerah-daerah, ketidaktersediaan listrik, serta kompleksnya birokrasi yang melingkupi perluasan bidang usaha lintas sektor antara pertambangan (hulu) dengan pemurnian (hilir) membuat hal tersebut menjadi terlalu sulit diwujudkan, ditambah lagi dengan inkonsistensi Pemerintah yang menetapkan kewajiban divestasi saham bagi Perusahaan Pertambangan Penanaman Modal Asing, dari 20% (dua puluh persen) di tahun 2010, menjadi 51% (lima puluh satu persen) di tahun 2012. Selain kedua hal tersebut, pada tahun ketiga sejak Undang-Undang Nomor 4 Tahun 2009 diberlakukan, Pemerintah telah melarang kegiatan ekspor mineral mentah, akan tetapi mencabutnya kembali dan menetapkan ketentuan ekspor dengan tambahan birokrasi yang semakin panjang, sehingga menyebabkan investor pertambangan penanaman modal asing kehilangan waktu dan sulit dalam merealisasikan amanah Undang-Undang Nomor 4 Tahun 2009 tersebut. Penulisan ini bertujuan untuk menampilkan fakta kesulitan-kesulitan yang dialami oleh PT. X selaku perusahaan penanaman modal asing dalam bidang pertambangan mineral nikel oleh karena kebijakan pertambangan yang tidak cukup berimbang.

.....Law Number 4 Year 2009 could be considered as a controversy for the metal mineral mining businesses, since it has changed the scheme of domestic metal mineral mining industry to not only contains mining but also obliged the mining companies to conduct mineral smelting and processing domestically within period of only 5 (five) years. The limitation of infrastructure facilities within the counties, unavailability of electrical source, and the complexity of bureaucracies that facilitates such cross borders industrial sectors between the mining (mainstream industries) , and the smelting and processing (downstream industries) has caused such policy too unreasonable to be accomplished, moreover the inconsistency of the Government whom has stipulated the divestment terms for the foreign investing mining company, from 20% (twenty percent) in 2010, and re-stipulated it to became 51% (fifty one) percent within 2012. Apart from those two main issues herein, by the third year since the enactment of Law Number 4 Year 2009, the Government has banned the raw mineral export activities, however revoked such laws and enacted a new regulation of raw mineral export policies with additional/ longer bureaucracy's mechanism process, therefore it has put the

foreign mining investors within difficult circumstances to actualize the mandate of the laws itself. This Thesis intends to display the problematic facts that experienced by PT. X as a foreign investing mining company in nickel mining by the insufficient fairness of mining policies.;Law Number 4 Year 2009 could be considered as a controversy for the metal mineral mining businesses, since it has changed the scheme of domestic metal mineral mining industry to not only contains mining but also obliged the mining companies to conduct mineral smelting and processing domestically within period of only 5 (five) years. The limitation of infrastructure facilities within the counties, unavailability of electrical source, and the complexity of bureaucracies that facilitates such cross borders industrial sectors between the mining (mainstream industries) , and the smelting and processing (downstream industries) has caused such policy too unreasonable to be accomplished, moreover the inconsistency of the Government whom has stipulated the divestment terms for the foreign investing mining company, from 20% (twenty percent) in 2010, and re-stipulated it to became 51% (fifty one) percent within 2012. Apart from those two main issues herein, by the third year since the enactment of Law Number 4 Year 2009, the Government has banned the raw mineral export activities, however revoked such laws and enacted a new regulation of raw mineral export policies with additional/ longer bureaucracy's mechanism process, therefore it has put the foreign mining investors within difficult circumstances to actualize the mandate of the laws itself. This Thesis intends to display the problematic facts that experienced by PT. X as a foreign investing mining company in nickel mining by the insufficient fairness of mining policies.;Law Number 4 Year 2009 could be considered as a controversy for the metal mineral mining businesses, since it has changed the scheme of domestic metal mineral mining industry to not only contains mining but also obliged the mining companies to conduct mineral smelting and processing domestically within period of only 5 (five) years. The limitation of infrastructure facilities within the counties, unavailability of electrical source, and the complexity of bureaucracies that facilitates such cross borders industrial sectors between the mining (mainstream industries) , and the smelting and processing (downstream industries) has caused such policy too unreasonable to be accomplished, moreover the inconsistency of the Government whom has stipulated the divestment terms for the foreign investing mining company, from 20% (twenty percent) in 2010, and re-stipulated it to became 51% (fifty one) percent within 2012. Apart from those two main issues herein, by the third year since the enactment of Law Number 4 Year 2009, the Government has banned the raw mineral export activities, however revoked such laws and enacted a new regulation of raw mineral export policies with additional/ longer bureaucracy's mechanism process, therefore it has put the foreign mining investors within difficult circumstances to actualize the mandate of the laws itself. This Thesis intends to display the problematic facts that experienced by PT. X as a foreign investing mining company in nickel mining by the insufficient fairness of mining policies., Law Number 4 Year 2009 could be considered as a controversy for the metal mineral mining businesses, since it has changed the scheme of domestic metal mineral mining industry to not only contains mining but also obliged the mining companies to conduct mineral smelting and processing domestically within period of only 5 (five) years. The limitation of infrastructure facilities within the counties, unavailability of electrical source, and the complexity of bureaucracies that facilitates such cross borders industrial sectors between the mining (mainstream industries) , and the smelting and processing (downstream industries) has caused such policy too unreasonable to be accomplished, moreover the inconsistency of the Government whom has stipulated the divestment terms for the foreign investing mining company, from 20% (twenty percent) in 2010, and re-stipulated it to became 51% (fifty one) percent within 2012. Apart from those two main issues herein, by the third year since the enactment of Law Number 4 Year 2009, the Government has banned the

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