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Implementation of Article 33 Paragraphs 2 and 3 of the 1945 Constitution in Granting Concessions for Natural Resource Management to Foreign Companies from International Private Law Perspective: A Case Study of PT XYZ

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Abstract: The Indonesian Constitution of 1945, particularly Article 33 paragraphs 2 and 3, establishes the fundamental principles governing the management of the nation's natural resources. These clauses stipulate that the state controls and utilizes natural resources for the maximum benefit of the people. However, the implementation of these constitutional principles in practice, especially in the context of granting concessions to foreign companies, raises complex legal and policy challenges. This research paper examines the implementation of Article 33 in the case of PT XYZ Indonesia, a foreign mining company operating in Indonesia, from the perspective of international private law. The study analyses the legal and regulatory frameworks governing the management of natural resources, the mechanisms for granting concessions to foreign companies, and the implications for the welfare of the Indonesian people. The findings shed light on the delicate balance between upholding the state's sovereignty over natural resources and attracting foreign investment and the role of international private law in shaping this dynamic.

Keywords: Law, Implementation, Company Foreign

INTRODUCTION

The Importance of Natural Resources in Indonesia Economy**.** Indonesia's natural resources sector is critical to the country's economic development, prosperity, and sustainability. In 2023, the sector generated substantial non-tax state revenue of IDR 254.81 trillion, exceeding the state budget target by 130.02%. This underscores the strategic importance of natural resources, which include oil and gas as well as mining and coal. While oil and gas revenue decreased by 21.47%, the non-oil and gas segment, particularly mining and

coal, saw growth of 14.96%, highlighting its increasing significance in supporting Indonesia's economy (Anggraeni et al., 2020).

From the mining and coal sector alone, state revenue reached IDR 129.14 trillion, representing a 16.56% increase. This significant contribution from the natural resources sector highlights its importance in supporting Indonesia's economy, including government revenue used to finance development and social welfare programs (Purnomo et al., 2023). The natural resources sector plays a crucial role in job creation in Indonesia, contributing employment opportunities across various industries. In 2023, the mining sector alone employed approximately 308,107 Indonesian workers and 2,074 foreign workers. This substantial employment is largely driven by increased investment in the mining sector, reaching USD 7.46 billion by the end of 2023, nearly meeting the target of USD 7.7 billion. The surge in investment has led to increased production and sales of mining commodities, thereby necessitating a larger workforce (Rahnema et al., 2023).

Overall, the natural resources sector, including mining and forest products, not only boosts state revenue through taxes and royalties but also plays a vital role in job creation, supporting local economies, and fostering socio-economic development across Indonesia.

The History and Philosophy of Article 33 Paragraphs 2 and 3 of the 1945 Indonesian Constitution. The drafters of the 1945 Indonesian Constitution, including figures like Soepomo, Muhammad Hatta, and Soekarno, were heavily influenced by socialist economic concepts and familial principles. They believed the economy should be organized around cooperative and familial principles, rather than individual profit-seeking, to prevent exploitation and ensure economic activities benefit the entire population. (Notowidigdo, 1958).

The key paragraphs of Article 33 emphasized the state's role in controlling important sectors of production, as well as land, water, and natural resources, with the goal of utilizing these resources for the greatest prosperity of the Indonesian people. This reflects the founders' desire to build a fair and equitable economic system, where the management of natural wealth is not dominated by a few individuals or foreign entities but is managed for the benefit of all Indonesians. (Suwardi, 2018) (Kardiman et al., 2020).

Problem Formulation the case study of PT XYZ concession agreement illustrates the difficulties in reconciling the principles of Article 33 with the realities of foreign investment and international private law. Over the years, the Indonesian government has sought to renegotiate the terms of PT XYZ concession to better align with the principles of Article 33, particularly in terms of state control, revenue sharing, and environmental and social responsibility. These efforts have led to protracted negotiations, disputes, and even temporary halts in PT XYZ operations, as both sides have sought to balance their respective interests and interpretations of the constitution (Rustan et al., 2021). The case of PT XYZ illustrates the inherent tension between the constitutional mandate to manage natural resources for the benefit of the people and the practical realities of foreign investment agreements. On one hand, the government has a duty to ensure that the exploitation of Indonesia's natural wealth maximizes public welfare, as per Article 33. On the other hand, foreign investors like PT XYZ require stable and predictable regulatory environments to justify the significant capital investments required for large-scale mining projects. From the perspective of international private law, PT XYZ case also raises questions about the extent to which a nation's sovereign rights over its natural resources can be constrained by pre-existing contractual obligations and the potential influence of foreign legal systems and arbitration tribunals (Spiegel, 2012).

Research Objectives

This research paper aims to:

Analyze the implementation of Article 33 Paragraphs 2 and 3 of the 1945 Indonesian Constitution in the context of granting natural resource concessions to foreign companies, with a focus on the case study of PT XYZ Indonesia.

Examine the tensions and challenges that arise when reconciling the constitutional principles of state control and public welfare with the realities of international private law and foreign investment agreements.

Article 33 Paragraphs 2 and 3 of the 1945 Constitution

Article 33 Paragraphs 2 and 3 of the 1945 Constitution outline the Indonesian state's authority and responsibility over key sectors of production and natural resources. These provisions grant the state the power to control and regulate strategic industries and the exploitation of the nation's natural wealth to promote the greatest prosperity of the people. The framers of the 1945 Constitution recognized the profound importance of Indonesia's natural resources in supporting the country's economic development and improving the welfare of its citizens (Pinilih & Chairunnisa, 2019). Paragraph 2 states that branches of production vital to the state and affecting public livelihood shall be controlled by the state. This aims to prevent monopolistic practices and ensure these crucial sectors are managed for the benefit of the entire population. Through this measure, the state seeks to promote economic democracy and social justice, where the nation's wealth is utilized to improve the well-being of all citizens (Hoessein et al., 2020). Paragraph 3 asserts the state's control over land, water, and natural resources, emphasizing their use for the greatest prosperity of the people. The state must manage these essential resources to balance economic growth, environmental protection, and fair benefit distribution. This involves creating strong regulations, enforcing policies to prevent resource depletion and environmental damage, and reinvesting profits from resource use into the people's welfare.

Article 33 of the Indonesian Constitution promotes economic democracy, ensuring the economy benefits the public rather than private monopolies. It emphasizes fair economic management, with the state regulating key sectors and natural resources to prevent exploitation and ensure public prosperity. The article also supports social justice, reducing economic disparities and sharing benefits broadly. It reinforces national sovereignty over natural resources, preventing exploitation by foreign entities or private monopolies, and ensures resources are managed for the prosperity of all Indonesians (Arsil & Ayuni, 2021).

The 1945 Constitution of Indonesia, through Article 33 Paragraphs 2 and 3, establishes principles that guide the state's role in managing the economy and natural resources:

a. **State Control**: The state must exert control over sectors of production that are vital to the economy and public welfare, such as energy, transportation, telecommunications, natural resources, and other key industries that significantly impact the daily lives of citizens.
b. **Utilization for Public Welfare**: The management and exploitation of natural resources must prioritize the well-being of the entire population. This involves employing sustainable practices that balance economic development, environmental conservation, and social equity.
c. **Prevention of Exploitation**: The article seeks to prevent the exploitation of natural resources and economic activities by private monopolies or foreign interests, ensuring these vital resources are utilized in a manner that benefits the nation.
d. **Economic Planning**: The article implies the state has a significant role in economic planning and regulation to guarantee that key industries, infrastructure, and natural resources are developed and managed in alignment with broader national interests and public welfare.

In summary, Article 33 Paragraphs 2 and 3 of the 1945 Constitution reflect Indonesia's commitment to economic democracy, social justice, and national sovereignty. They emphasize the state's central role in managing critical economic sectors and natural resources to ensure they benefit the entire population.

Concept of Control and Management of Natural Resources

Indonesia's control and management of natural resources are guided by principles of state sovereignty, sustainable development, and social justice, as outlined in the 1945 Constitution and supported by national laws and international agreements. The state regulates natural resource exploitation to benefit all citizens, preventing monopolization by private or foreign interests. This approach ensures resources are managed sustainably and equitably, reflecting Indonesia's commitment to economic democracy and national sovereignty. Economic theories like the Resource-Based View (RBV) and the Tragedy of the Commons highlight the importance of effective state intervention to manage resources competitively and sustainably (Tragedy of the Commons, 2003).

Indonesia's approach to natural resource management is shaped by economic theories and its unique historical and political context. The state believes these resources are crucial for economic development and citizen prosperity. Legal theories like the Public Trust Doctrine and state ownership emphasize the government's role in protecting and managing resources for public benefit. This is reflected in Indonesia's Constitution, which mandates state control to ensure sustainable and equitable use of natural resources for the greatest benefit of the people (Arsil & Ayuni, 2021).

International law supports the state's role in managing natural resources. The principle of permanent sovereignty, affirmed by UN General Assembly Resolution 1803 (1962), allows states to control and exploit their resources for national development and public well-being. International environmental law, including the Rio Declaration (1992) and the Convention on Biological Diversity (CBD), emphasizes balancing economic development with environmental protection to ensure resources meet current needs without harming future generations (Thiaw & Munang, 2012). Human rights and environmental protection are key to managing natural resources. International agreements like the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) ensure indigenous communities' rights to their lands and participation in resource management. Environmental justice promotes everyone's right to a healthy environment, advocating for fair and inclusive management practices and equitable distribution of benefits and burdens. (Principles of Environmental Justice, 1996) In Indonesia, Article 33 of the 1945 Constitution is the foundation of natural resource management, requiring state control over essential production sectors and resources for public benefit. This reflects economic democracy and social justice principles. Laws like the Mineral and Coal Mining Law (No. 4/2009) and Environmental Protection Law (No. 32/2009) implement these mandates, ensuring resource exploitation aligns with national interests and includes environmental protection (Pramita et al., 2021). In conclusion, the control and management of natural resources in Indonesia are deeply rooted in both economic and legal theories that emphasize state sovereignty, sustainable development, and social justice. International law provides a framework that supports these principles, ensuring that natural resource management contributes to national prosperity and environmental sustainability. This comprehensive approach ensures that Indonesia's natural resources are managed in a way that benefits all citizens, both now and in the future.

Legal Framework of Mining in Indonesia. The mining sector in Indonesia is governed by a comprehensive legal framework designed to ensure the sustainable and equitable management of mineral and coal resources. This framework is primarily established through Law No. 4 of 2009 on Mineral and Coal Mining, commonly referred to as the UU Minerba,

along with various implementing regulations. The goal of this framework is to balance the economic benefits derived from mining activities with the need to protect the environment and ensure the welfare of local communities.

Law No. 4 of 2009 on Mineral and Coal Mining (UU Minerba). The UU Minerba is the foundation of Indonesia's mining regulation, replacing the old contract-based system with a structured licensing regime. It requires all mining activities to have one of several licenses: Mining Business Licenses (IUP), Special Mining Business Licenses (IUPK), or Community Mining Licenses (IPR). Each license type has specific requirements to regulate different mining activities. A key aspect of UU Minerba is environmental management, mandating that mining companies conduct environmental impact assessments (AMDAL) before operations and implement environmental management and monitoring programs to prevent environmental harm (Rahnema et al., 2023). The UU Minerba emphasizes community development, requiring mining companies to implement programs (PPM) that benefit local communities. These programs include infrastructure development, education, healthcare, and other quality-of-life improvements. The law also mandates domestic processing and refining of minerals to increase their value before export, boosting local industries and creating jobs. This ensures that more economic benefits from mining stay within Indonesia (Febrianto & Suparto, 2019).

Recent amendments to Indonesia's mining regulations aim to improve sector management and benefits for Indonesians. Law No. 3 of 2020, which amends Law No. 4 of 2009, introduces key changes:

Centralized Authority: The central government now issues mining licenses for consistent and transparent governance.

Value Addition Obligations: Mining companies must conduct domestic processing and refining to increase the value of Indonesia's mineral resources.

Implementing Regulations, to operationalize the provisions of the UU Minerba, the Indonesian government has issued a series of implementing regulations. For example, Government Regulation No. 23 of 2010 outlines the procedures for obtaining mining licenses and permits, including the requirements for environmental management and community development. Ministerial Regulation No. 7 of 2012 mandates the domestic processing and refining of minerals, requiring mining companies to develop processing facilities within Indonesia. Government Regulation No. 78 of 2010 stipulates the financial obligations of mining companies, including royalties and taxes, to ensure that the state benefits economically from mining activities.

Government Policies on Foreign Investment in the Mining Sector. The Indonesian government values foreign investment for mining development and has policies to attract and regulate it, balancing capital needs with national interests. The Negative Investment List restricts foreign ownership in certain sectors, ensuring significant economic benefits remain in Indonesia. The Investment Coordinating Board (BKPM) facilitates investment, streamlining licensing and ensuring compliance with laws. The government has renegotiated contracts with major foreign mining companies, like PT XYZ Indonesia, to increase state ownership and economic benefits. It also offers tax incentives and royalty adjustments to attract investment while ensuring fair profit sharing. Local content requirements mandate mining companies use local goods, services, and labor to boost the domestic economy and create jobs.

Challenges and Future Directions. Despite a strong legal framework, Indonesia's mining sector faces challenges like regulatory uncertainty, frequent policy changes, and environmental concerns. Effective enforcement and infrastructure development in remote areas are crucial.

To attract sustainable investments, Indonesia aims to improve regulatory stability, transparency, and collaboration between the government, industry, and communities. The UU Minerba and its regulations support this, balancing foreign investment with national interests to ensure mineral resources contribute to long-term prosperity.

METHODS

This research will employ a qualitative, case study-based approach, drawing on a combination of legal analysis and policy review. The study will rely on primary sources such as the 1945 Indonesian Constitution, relevant laws and regulations, as well as official government documents and policy statements. Secondary sources, including academic journals, reports, and media articles, will also be utilized to provide contextual information, expert analysis, and diverse perspectives on the implementation of Article 33 and the XYZ case.

Expected Findings

This research paper is expected to provide a comprehensive analysis of the implementation of Article 33 Paragraphs 2 and 3 of the 1945 Indonesian Constitution in the context of natural resource concessions granted to foreign companies, with a focus on the PT XYZ Indonesia case study. The findings of this study are expected to contribute to the ongoing debate and policy discussions surrounding the management of Indonesia's natural resources, the role of foreign investment, and the need to reconcile domestic constitutional principles with international private law considerations.

Specifically, the paper will:

1. Highlight the historical and philosophical foundations of Article 33, and its evolving interpretation in Indonesia's legal and policy frameworks (Aryanti, 2014), (Muhtamar & Bachmid, 2022), (Wicaksana, 2017).
2. Analyze the key challenges and tensions that have arisen in the PT XYZ Indonesia case, and the broader implications for Indonesia's natural resource governance (Anggraeni et al., 2020).
3. Examine the extent to which Indonesia's approach to natural resource concessions and foreign investment agreements is aligned with principles of international private law and best practices in resource management (Aryanti, 2014), (Wicaksana, 2017), (Wiryawan, 2019).
4. Propose potential legal and policy frameworks that can help Indonesia better balance its constitutional mandates with the realities of the global economy and foreign investment, while ensuring the sustainable and equitable management of its natural resources (Rustan et al., 2021).

By addressing these critical issues, this research paper aims to contribute to the ongoing efforts to improve the governance and utilization of Indonesia's natural resource wealth for the benefit of its people, in line with the principles enshrined in the 1945 Constitution.

RESULT AND DISCUSSION

Implementation of Article 33 Paragraphs 2 and 3 of the 1945 Constitution in the Case of PT XYZ Indonesia

History and Initial Contract of PT XYZ Indonesia. In the 1930s, Dutch geologist Jean Jacques Dozy discovered the Ertsberg copper deposit in Papua, Indonesia. However, it wasn't until the 1960s that significant interest in developing the site emerged. PT XYZ Indonesia, has been operating in Indonesia since the 1960s and is one of the largest foreign investors in the country's mining sector (Rustan et al., 2021). In 1967, the Indonesian government granted XYZ a 30-year contract of work (CoW) for copper and gold mining operations in the Papua province (Febrianto & Suparto, 2019).

The initial contract was signed during a period when Indonesia was eager to attract foreign investment to boost its economy and develop its natural resources. The government

aimed to utilize foreign expertise and capital to exploit the country's mineral wealth. The political climate of the time was characterized by a shift towards economic development under President Suharto's New Order regime, which prioritized foreign investment and economic growth (Oei, 1969). The contract gave XYZ extensive rights and concessions, including the ability to operate, export, and sell minerals extracted from the mine (Rustan et al., 2021).

The 1967 Contract of Work (CoW) granted PT XYZ Indonesia extensive rights to explore and extract minerals in a designated area in Papua. The contract covered a 30-year period with options for extensions. Key terms of the CoW included: 1) Exclusive rights for PT XYZ to explore, develop, and extract mineral resources within the contract area; 2) Provisions for royalty payments and taxes to the Indonesian government, although the initial terms were considered favorable to XYZ with relatively low royalty rates; 3) Commitment by PT XYZ to develop necessary infrastructure, such as roads, ports, and facilities, to support its mining operations.

The CoW was established under the prevailing legal framework at the time, which prioritized foreign investment and economic development. The terms were negotiated to ensure that PT XYZ could operate profitably while contributing to Indonesia's economic growth.

Over time, the initial contract with PT XYZ Indonesia faced growing criticism on several fronts. Critics argued that the terms were too favorable to the company, failing to ensure fair revenue sharing with Indonesia. The low royalty rates and tax concessions were seen as insufficient compensation for the extensive extraction of the country's natural resources.

Additionally, the environmental impact of PT XYZ's mining operations became a significant concern, with issues such as deforestation, habitat destruction, and pollution of rivers and ecosystems in Papua being highlighted. Socially, there were concerns about the displacement of indigenous communities, inadequate compensation, and lack of meaningful engagement with local populations.Furthermore, the alignment of the initial contract with Article 33 Paragraphs 2 and 3 of the 1945 Constitution was questioned. Critics argued that the contract did not fully reflect the constitutional principles of state control over natural resources and their use for the maximum benefit of the people. This led to a recognized need for renegotiation and revisions to align the contract with these constitutional mandates.

Renegotiation and Revisions to the CoW. In the late 1990s and early 2000s, the Indonesian government initiated a process to renegotiate the terms of the CoW with PT XYZ. The renegotiations aimed to address the criticisms and concerns raised over the years, including the need to align the contract with the provisions of Article 33 of the 1945 Constitution.

During the 1980s and 1990s, the original Contract of Work (CoW) was extended and amended. These modifications included adjustments to royalty rates, environmental regulations, and community development obligations. The Indonesian government sought to secure more favorable terms and increase its share of the benefits from PT XYZ's operations.

One significant milestone was the 1991 Memorandum of Understanding (MoU) between the Indonesian government and PT XYZ. This agreement increased the government's equity stake in the company from 10% to 9.36% and revised the royalty and tax structure to provide a larger share of revenue to the state (Harun et al., 2023), (Halomoan, 2019).

Further renegotiations took place in the early 2000s, leading to the signing of a new Contract of Work in 2017. The revised contract included several key changes: (Fatem, 2019), (Baan, 2018).

a. Increased royalty rates for copper, gold, and silver production.
b. Expanded local procurement requirements and commitments to support community development programs.
c. Establishment of a new state-owned subsidiary, PT Indonesia Asahan Aluminium (Inalum), to manage the government's equity stake in PT XYZ Indonesia.

d. Provisions for the gradual divestment of PT XYZ Indonesia's shares to the Indonesian government, with the goal of achieving 51% state ownership over time.

The renegotiation process was challenging, with both the Indonesian government and PT XYZ seeking to protect their respective interests. However, the revisions represented a significant step towards addressing the longstanding criticisms and concerns surrounding the initial contract. The negotiations were complex, with both parties working to find a balanced solution that would address the issues raised over the years, such as the need for more equitable revenue sharing, stricter environmental regulations, and greater alignment with the constitutional principles of state control and the use of natural resources for the benefit of the people. Despite the difficulties, the revised contract marked a meaningful shift in the relationship between the government and the mining company, laying the groundwork for a more collaborative and responsible approach to natural resource management (Cotula, 2018). These revisions aimed to align the contract more closely with the principles of state control and the use of natural resources for the benefit of the people, as outlined in Article 33 of the 1945 Constitution.

Key Clauses in the Contract Reflecting Article 33. The revised Contract of Work with PT XYZ Indonesia incorporated several key clauses that sought to align the agreement with the principles outlined in Article 33 of the 1945 Constitution (Octaviana, 2021). Firstly, the contract explicitly recognized the state's sovereignty over the natural resources within the contract area. This was reflected in provisions that granted the Indonesian government the right to assume direct management and control of the mining operations, if deemed necessary for the public interest (Baan, 2018).

Secondly, the contract included mechanisms to ensure a more equitable distribution of the economic benefits derived from the mining activities (Harun et al., 2023), (Baan, 2018). This included increased royalty rates, a commitment to prioritize local procurement and community development programs, and the gradual divestment of PT XYZ's shares to achieve majority state ownership.

Thirdly, the contract emphasized the importance of environmental protection and sustainability (Baan, 2018). It included more stringent environmental regulations, requirements for rehabilitation and reclamation of mined areas, and provisions for the prevention and mitigation of environmental damage.

These contractual clauses reflected a concerted effort to align the agreement with the principles of state control and the use of natural resources for the greatest benefit of the people, as enshrined in Article 33 of the 1945 Constitution.

International Private Law Aspect. The renegotiation and revision of the PT XYZ Indonesia contract also had implications from an international private law perspective. The initial contract was negotiated and signed in the context of Indonesia's transition to a market economy and the government's efforts to attract foreign direct investment.

From an international private law standpoint, the original contract could be seen as a form of investment agreement between the Indonesian government and a foreign company. As such, it was subject to the principles and norms of international investment law, which often prioritize the protection of foreign investor rights and the sanctity of contractual obligations. However, the revised contract sought to strike a balance between the interests of the foreign investor and the constitutional mandates of the Indonesian government (Bintang et al., 2020).

Applicable Law Clauses. The applicable law clauses in mining cooperation contracts between the Indonesian government and foreign companies, such as PT XYZ Indonesia, are critical in determining how the contracts are interpreted and enforced. These clauses encompass the choice of law, dispute resolution mechanisms, and protections for foreign investors and state sovereignty. This chapter elaborates on these aspects in detail.

Choice of Law. The choice of law clause in a mining cooperation contract specifies which jurisdiction's laws will govern the contract. This clause is essential for ensuring legal certainty and protection for both parties involved. In the case of PT XYZ Indonesia, the initial contracts often referred to Indonesian law or a specific international law agreed upon by both parties. This choice of law is crucial for providing a predictable legal framework and reducing potential conflicts (Sopamena, 2022). The application of national law, specifically Indonesian law, is typical for contracts involving natural resources within Indonesia's territory. This approach aligns with the principle of state sovereignty over natural resources as enshrined in Article 33 of the 1945 Constitution. Indonesian law provides a comprehensive regulatory framework that governs the exploration, exploitation, and management of mineral resources, ensuring that such activities benefit the country and its people.

However, the inclusion of international law or a combination of national and international law in the choice of law clause can also be observed in some mining cooperation contracts. This approach may be driven by the foreign investor's desire for additional legal protections, such as those provided by international investment treaties or customary international law.

Dispute Resolution. The dispute resolution mechanism outlined in the mining cooperation contract is another critical aspect from an international private law perspective. Contracts may stipulate the use of international arbitration, domestic courts, or a combination of both as the preferred dispute resolution forum. The inclusion of international arbitration, such as that provided by the International Centre for Settlement of Investment Disputes (ICSID), can be a concession made to foreign investors to ensure the impartiality and neutrality of the dispute resolution process. On the other hand, the use of domestic courts, particularly Indonesian courts, reinforces the state's sovereignty and the application of national law in the management of natural resources (Hendrawan, 2016). In the case of PT XYZ Indonesia, the revised contract sought to strike a balance between these two approaches, by including both international arbitration and domestic dispute resolution mechanisms. This reflects the government's efforts to accommodate the interests of the foreign investor while upholding the principles of state control and national sovereignty over natural resources.

Investor Protections vs. State Sovereignty. In the context of international mining cooperation contracts, particularly those involving significant foreign investment like PT XYZ Indonesia, there is a delicate balance to be struck between protecting the interests of foreign investors and upholding state sovereignty. This section elaborates on how investor protections are incorporated within the framework of international private law and how these intersect with the principles of state sovereignty as enshrined in Indonesia's legal and constitutional context.

Investor Protections. Foreign investors typically seek a range of protections in their mining cooperation contracts to mitigate risks and safeguard the stability of their investments. These may include provisions guaranteeing fair and equitable treatment, non-discrimination, full protection and security, compensation in the event of expropriation or nationalization, as well as access to international arbitration for dispute resolution. These investor protections are often derived from international investment treaties, customary international law, and generally accepted principles of international investment law. The inclusion of such provisions in the PT XYZ Indonesia contract reflects the desire of the foreign investor to have a predictable legal environment and a degree of certainty regarding the protection of their investment. Indonesia has established numerous bilateral investment treaties (BITs) with various countries to provide legal protection and foster a stable investment environment for foreign investors (Navisa et al., 2019). These treaties typically include key provisions:

a. **Fair and Equitable Treatment**: BITs ensure foreign investors receive fair and equitable treatment, preventing arbitrary or discriminatory actions by the host state. This principle is

vital for maintaining investor confidence and ensuring investments are not unfairly disadvantaged by changing government policies.

b. **Protection Against Expropriation**: BITs generally protect foreign investors from direct and indirect expropriation without adequate compensation. Expropriation refers to the host state taking private property for public use, and BITs ensure such actions are carried out lawfully, with investors receiving fair market value compensation
c. **Dispute Resolution Mechanisms**: These treaties typically provide investor-state dispute settlement mechanisms, such as international arbitration. This allows investors to seek redress independently of the host state's legal system, ensuring neutrality and fairness in dispute resolution.

Contractual Protections

Beyond the protections offered by investment treaties, the PT XYZ Indonesia contract itself may have included additional provisions to safeguard the foreign investor's interests (Aqimuddin & Siska, 2019) These could include:

a. **Stability clauses**: Provisions that limit the government's ability to unilaterally change the terms of the contract, providing the investor with a degree of legal certainty over the life of the investment.
b. **Compensation guarantees**: Assurances that the investor will be fairly compensated in the event of contract termination or changes in the legal or regulatory framework.
c. **Choice of law and dispute settlement**: As mentioned previously, the contract may have specified the applicable law and dispute resolution mechanisms, potentially including international arbitration.

State Sovereignty

At the same time, the Indonesian government, as the custodian of the country's natural resources, must balance the need to attract and retain foreign investment with the imperative to uphold state sovereignty and the principles enshrined in the 1945 Constitution.

Sovereignty Principles

The principle of state sovereignty, particularly over natural resources, is a fundamental tenet of Indonesia's constitutional and legal framework. Article 33 of the 1945 Constitution underscores the government's control over critical sectors and resources, ensuring they are managed to benefit the nation. Specifically, the Indonesian government asserts its authority to regulate, manage, and utilize natural resources in a manner that aligns with national development goals and public welfare (Suroto, 2020).

This concept of state control and public ownership over natural resources is central to Indonesia's interpretation of Article 33 and its implementation in the mining sector (Baan, 2018). The government's role is not merely to facilitate investment, but to actively manage and supervise the exploitation of natural resources for the benefit of the Indonesian people.

Regulatory and Supervisory Authority

The government retains the authority to regulate and supervise all mining activities within its jurisdiction. This includes ensuring compliance with environmental standards, labor laws, and other regulatory requirements. The government's regulatory role is crucial in balancing the economic benefits of mining with environmental sustainability and social responsibility. Additionally, the state has the right to inspect and monitor mining operations to ensure adherence to national laws and contractual terms. This supervisory role enables the government to intervene if necessary to protect public interests and maintain environmental and social standards (Mintarsih et al., 2018).

Balancing Foreign Investment and National Interests

Balancing foreign investment and national interests requires a delicate approach. The Indonesian government has sought this equilibrium by periodically renegotiating contracts with major foreign investors to better align with national priorities. For example, the 2018 renegotiation with PT XYZ Indonesia increased state ownership and control, ensuring more equitable distribution of mining benefits and maintaining sufficient government oversight of strategic resources.

Additionally, the government imposes local content requirements in mining contracts to enhance domestic economic gains. These mandates for the use of local goods, services, and labor foster local industry development and job creation, while also enabling foreign investments to contribute more broadly to national economic growth (Local Content Policies in the Mining Sector: Scaling up local procurement, 2019). International Legal Standards and Compliance Indonesia's approach to managing foreign investments in the mining sector must also be viewed in the context of its obligations under international law.

Adherence to International Norms

As a sovereign nation, Indonesia is subject to a range of international legal norms and principles, including those established by the United Nations Convention on the Law of the Sea, the ASEAN Economic Community, and various bilateral investment treaties (Abdullah et al., 2019). Indonesia's approach to managing foreign investments in the mining sector involves adherence to relevant international legal standards, such as those related to environmental protection, human rights, and corporate governance:

a. **Sustainable Development**: Indonesia ensures mining activities are conducted sustainably by complying with international environmental standards, balancing economic growth with environmental protection. This includes adhering to conventions like the Convention on Biological Diversity and the principles outlined in the Rio Declaration.
b. **Human Rights Protections**: International frameworks, such as the UN Declaration on the Rights of Indigenous Peoples, safeguard the rights of indigenous peoples and local communities affected by mining operations. These protections help ensure local populations benefit from mining activities and that their rights are respected throughout the investment lifecycle.
c. **Corporate Governance**: Indonesia requires mining companies to comply with international best practices in corporate governance, transparency, and anti-corruption measures. This includes alignment with the OECD Guidelines for Multinational Enterprises and the Extractive Industries Transparency Initiative.

Impact on Bilateral Relations

Indonesia's approach to managing foreign mining investments has a significant impact on its bilateral relations with other countries. Mining contracts and the way they are managed can significantly impact bilateral relations between Indonesia and the home countries of foreign investors (Junita, 2015). Positive relations foster further investment and cooperation, while disputes or dissatisfaction can strain diplomatic ties. Therefore, contracts are crafted to support Indonesia’s international relations while protecting its sovereignty and promoting sustainable development.

In summary, the balance between investor protections and state sovereignty in Indonesia’s mining sector is achieved through a combination of bilateral investment treaties, contractual protections, and robust regulatory frameworks. These measures ensure that while foreign investors are protected and incentivized, the state retains control over its natural resources, aligning their exploitation with national interests and sustainable development goals.

CONCLUSION

The exploration and analysis of Article 33 Paragraphs 2 and 3 of the 1945 Indonesian Constitution in relation to the mining cooperation contract with PT XYZ Indonesia provide significant insights into how constitutional principles are applied in practice. The clauses in the contract reflect a robust attempt to align with the ideals of state control over natural resources, equitable distribution of economic benefits, environmental stewardship, and social responsibility. These principles, deeply embedded in the Indonesian Constitution, are operationalized through detailed contractual obligations and regulatory frameworks.

The case of PT XYZ Indonesia demonstrates the complexities and challenges of balancing investor protections with state sovereignty. The contract includes various clauses that safeguard the interests of the state and ensure that the exploitation of natural resources aligns with national development goals. Key aspects such as royalties, taxes, and share ownership illustrate how the economic benefits of mining are distributed to ensure maximum national gain. The state's regulatory and supervisory roles are evident in the requirements for environmental impact assessments, reclamation, and ongoing environmental monitoring, reflecting a commitment to sustainable development.

Moreover, the integration of corporate social responsibility (CSR) obligations within the contract underscores the importance of ensuring that local communities benefit from mining activities. The CSR initiatives mandated by the contract aim to improve the welfare of local populations through education, health, infrastructure development, and economic empowerment. This approach not only fosters a positive relationship between the company and the community but also ensures that the broader social impacts of mining are addressed.

However, the implementation of these principles is not without challenges. Regulatory uncertainty, environmental impacts, and social conflicts are persistent issues that need continuous attention and effective management. The renegotiation of contracts, as seen in the 2018 agreement with PT XYZ Indonesia, highlights the dynamic nature of these agreements and the need for flexibility to adapt to changing national priorities and international standards.

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