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## From Contract of Work to Licensing Regime: Balancing State Sovereignty and Legal Certainty in Indonesia's Mining Law Transformation

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**Abstract:** The transformation of Indonesia's mining legal framework from the contract of work regime to the licensing regime represents a significant restructuring of the relationship between the state and investors in the governance of natural resources. While this shift reflects an effort to strengthen state sovereignty and enhance regulatory control over strategic resources, it also raises complex questions regarding the evolving nature of legal certainty in investment activities. This study aims to critically examine the comparative characteristics of both regimes and their implications for legal certainty within Indonesia's mining sector. The research employs a normative juridical method supported by statutory, conceptual, and comparative approaches. The findings indicate that the relationship between contractual stability and administrative flexibility is not strictly dichotomous, but rather reflects a dynamic tension shaped by regulatory design, institutional practice, and governance objectives. Although the licensing regime increases state discretion in resource management, its impact on legal certainty is contingent upon regulatory consistency and institutional coherence, rather than the regime itself. This study concludes that the transformation of mining law should not be interpreted as a linear decline or improvement in legal certainty, but as a complex reconfiguration of legal governance that requires a more balanced approach between state authority, investor protection, and sustainable resource management.

**Keywords:** Mining Law, Contract of Work, Licensing Regime, Legal Certainty, Investment Law.

### INTRODUCTION

The transformation of the mining legal regime in Indonesia from the contract of work system to the licensing system represents a significant legal reform in the governance of natural resources aimed at strengthening the role of the state. Rather than being a merely technical adjustment, this shift reflects a broader paradigm change in which the state repositions itself as the primary regulator of natural resources governance. This shift is grounded in the regulatory framework established under Law Number 4 of 2009 on Mineral

and Coal Mining, which was subsequently amended by Law Number 3 of 2020 on Amendments to the Mining Law. Under the contract of work regime, the legal relationship between the state and investors is contractual in nature and relatively stable, whereas under the licensing regime, the relationship becomes administrative, characterized by the dominance of state authority (Wälde, 2001). This transformation not only redefines the legal structure of resource governance but also introduces new dynamics in balancing state sovereignty and legal certainty for investors.

This transformation reflects the state's effort to strengthen its control over natural resources, where the state no longer acts merely as a contracting party but also as the primary regulator. In this context, the state possesses broader authority in granting, supervising, and revoking mining business licenses (Yanto & Hikmah, 2023). However, the expansion of such authority simultaneously introduces challenges in maintaining regulatory consistency and legal certainty.

Legal certainty constitutes a crucial factor in attracting and sustaining investment in the mining sector. Stability in natural resource contracts provides protection against policy changes that may adversely affect investors (Sornarajah, 2017). Furthermore, contracts of work are often equipped with stabilization clauses designed to preserve the balance of interests between the contracting parties (Cameron, 2010).

In contrast, the licensing regime offers greater flexibility for the state to adjust policies in response to economic developments and national interests. While such flexibility is essential in the dynamic management of natural resources, it also demonstrates a tendency to generate legal uncertainty due to frequent regulatory changes (Zhang & Li, 2021). This condition reflects an inherent tension between the need for legal stability and policy adaptability.

In practice, mining law reform in Indonesia continues to face various challenges, including regulatory disharmony between central and regional governments. Divergent policies and overlapping authorities often result in uncertainty in the implementation of mining licensing (Wibowo & Pratama, 2023). In addition, policy shifts may affect the continuity of previously granted mining rights.

The transition from contracts of work to special mining business licenses has also raised issues concerning the certainty of rights and obligations of the parties involved. The lack of clarity in the transitional process creates the potential for legal disputes between investors and the government (Asilah & Sugiyono, 2020). This condition indicates that the legal transformation has not yet fully achieved optimal legal certainty.

From an administrative perspective, the licensing regime places the state as the primary authority in regulating mining activities. This framework allows the state to exercise policy intervention, including the revocation of licenses under certain conditions (Kasim et al., 2023). Nevertheless, such authority may also generate uncertainty for business actors, particularly in the long term.

Conceptually, the contract of work regime can be understood as a contractual regime emphasizing mutual agreement and stability of legal relations, whereas the licensing regime represents a licensing regime that prioritizes state authority in regulation and supervision (Cameron, 2010). These differences significantly affect the level of legal certainty as well as the bargaining position between the state and investors (Muchlinski, 2007).

Moreover, contemporary natural resource governance requires a balance between economic, social, and environmental interests. Modern resource contracts are no longer solely focused on economic gains but also incorporate principles of sustainable development and corporate social responsibility (Cotula, 2010). This presents a challenge for the licensing regime in accommodating these multidimensional interests.

Within the context of decentralization, mining licensing policies in Indonesia have undergone significant changes. Authority that was previously held by regional governments has been recentralized to the central government to enhance regulatory effectiveness (Venugopal, 2014). However, this shift has also introduced coordination challenges among institutions.

Cases of mining license revocation in several regions illustrate the risks of legal uncertainty inherent in the licensing regime. Government actions in revoking licenses may directly affect the sustainability of investments (Dani & Rahayu, 2025). This reinforces the argument that the licensing system requires a more consistent and transparent regulatory framework.

In addition, legal protection for investors, particularly foreign investors, remains a critical issue in the mining sector. Legal uncertainty may reduce investment interest and negatively impact economic growth (Wahyuni, 2023). Therefore, policies that balance state interests with investor protection are essential.

Based on the foregoing background, this study aims to critically analyze the comparative legal characteristics of the contract of work regime and the licensing regime in Indonesian mining law, and to examine their implications for legal certainty within the broader framework of natural resource governance. The central focus of this research is not merely to describe the differences between the two regimes, but to evaluate how the transformation reflects a deeper restructuring of legal authority between the state and investors in the Indonesian legal system. Accordingly, the research questions are directed at identifying the extent to which the shift from a contractual to an administrative model affects regulatory stability, institutional coherence, and the predictability of legal outcomes in the mining sector.

This study contributes to mining law scholarship by positioning legal certainty not as an inherent attribute of a specific legal regime, but as an outcome shaped by regulatory design, institutional practice, and governance consistency in the Indonesian context. Unlike previous studies that predominantly adopt a descriptive approach, this research integrates normative and comparative analysis to highlight the juridical consequences of regime transformation on investment stability and regulatory predictability.

The novelty of this study is embedded as a central analytical thread from the outset, emphasizing that the transformation of mining legal regimes should be understood as a dynamic reconfiguration of legal governance rather than a linear shift from contractual stability to administrative flexibility. In doing so, this study offers a more critical perspective on the effectiveness of the licensing regime in balancing state sovereignty, legal certainty, and investor protection within Indonesia's mining law system.

## **METHOD**

This study employs a normative juridical research approach focusing on the analysis of legal norms, principles, and statutory regulations governing the transformation of Indonesia's mining legal regime from the contract of work system to a licensing-based regime, with particular emphasis on its implications for legal certainty. The study does not utilize population and sampling techniques, as it is non-empirical in nature, but instead relies on a systematic examination of legal materials consisting of primary, secondary, and tertiary sources.

Primary legal materials include Law Number 4 of 2009 concerning Mineral and Coal Mining and Law Number 3 of 2020 concerning Amendments to the Mining Law as the core legal framework governing the mining sector. Secondary legal materials consist of scholarly books, peer-reviewed journal articles, and relevant academic studies addressing natural resource governance, investment protection, and mining regulatory frameworks (Cotula,

2010; Sornarajah, 2017; Zhang & Li, 2021; Kasim et al., 2023), which are used to support contextual interpretation of the legal issues under examination. Tertiary legal materials, including legal dictionaries and reference works, are utilized to clarify key legal concepts and ensure conceptual precision.

The study applies a statute approach to examine the formal legal structure of mining regulations, a conceptual approach to explore underlying legal doctrines related to state authority and investment protection, and a comparative approach to analyze structural differences between the contract of work regime and the licensing regime. The comparative analysis is conducted through a structured examination of three dimensions: (1) the legal nature of the relationship between the state and investors, (2) the distribution of regulatory authority, and (3) the level of legal certainty produced by each regime (Muchlinski, 2007; Wälde, 2001).

Data collection is conducted through systematic library research involving the identification, selection, and classification of relevant legal sources (Kienzler et al., 2015; Tordo et al., 2010). The analysis is carried out using qualitative legal interpretation methods, including grammatical, systematic, and teleological interpretation, to uncover the intent and purpose of legal norms and assess their implications for legal certainty in mining governance (Cameron, 2010; Pistor, 2019). The findings are synthesized using a descriptive-analytical framework to ensure coherence between legal interpretation and the research objectives, particularly in explaining how the transformation of mining legal regimes affects regulatory stability and predictability in Indonesia's mining sector.

## RESULTS AND DISCUSSION

The findings of this study indicate that the transformation of Indonesia's mining legal regime from the contract of work system to a licensing-based framework represents a fundamental restructuring of the legal relationship between the state and investors. Under the contract of work regime, the relationship is primarily contractual in nature, based on mutual agreement between the parties, which in principle provides a relatively high degree of legal certainty due to its binding force and perceived regulatory stability. However, in practice, such contractual stability has not been entirely absolute, as several arrangements have undergone renegotiation and adjustment in response to evolving regulatory and policy developments. In contrast, the licensing regime regulated under Law Number 4 of 2009 concerning Mineral and Coal Mining, as amended by Law Number 3 of 2020, establishes an administrative legal relationship in which the state holds dominant authority in granting, supervising, and revoking mining permits (Wälde, 2001). This transformation reflects not only a technical regulatory shift but also a broader reconfiguration of governance from a contract-based model toward a public law-dominated regulatory system.

From a conceptual standpoint, the contract of work regime is generally associated with stronger legal certainty due to the inclusion of stabilization clauses intended to protect investors from sudden adverse regulatory changes (Sornarajah, 2017). Such mechanisms are particularly relevant in capital-intensive sectors such as mining, where long-term investment horizons require predictable legal environments. In addition, natural resource contracts are designed to establish a negotiated balance between state interests and investor protections through structured contractual arrangements (Cotula, 2010; Tordo et al., 2010). Nevertheless, this balance is not always static, as the effectiveness of contractual stability is highly dependent on broader political and regulatory contexts.

Conversely, the licensing regime introduces a more flexible regulatory structure that enhances the state's capacity to adjust mining governance in accordance with national policy objectives. The state possesses unilateral authority to issue, modify, extend, or revoke mining licenses, thereby strengthening its role as the primary regulator of natural resources.

However, this increased flexibility does not automatically translate into legal uncertainty, as its impact is largely determined by the consistency, predictability, and coherence of regulatory implementation. In certain instances, well-structured administrative procedures may still provide a reasonable level of legal predictability. Nonetheless, the dynamic nature of regulatory change and potential policy inconsistency remain critical factors that may affect investor confidence (Zhang & Li, 2021; Kasim et al., 2023).

In practice, the transition from contract-based arrangements to special mining business licenses has generated complex legal implications, particularly in relation to the continuity of rights and obligations. The absence of comprehensive transitional arrangements has created interpretative gaps in the conversion of contractual rights into licensing frameworks, thereby increasing the potential for legal disputes between investors and the government (Asilah & Sugiyono, 2020). This situation suggests that the effectiveness of legal transformation is highly dependent not only on normative reform but also on the clarity of transitional regulatory design.

From a governance perspective, the licensing regime also reflects institutional challenges, particularly in relation to the coordination between central and regional authorities. Although the recentralization of mining authority to the central government aims to improve regulatory control and policy uniformity, in practice it has also generated new complexities related to administrative coordination and implementation consistency (Venugopal, 2014). Issues such as overlapping authority, differing interpretations of regulations, and uneven enforcement practices contribute to regulatory uncertainty within the mining sector (Wibowo & Pratama, 2023). These conditions indicate that legal certainty is not solely determined by the choice of legal regime, but also by the effectiveness of institutional governance structures.

To provide a clearer understanding of the structural differences between the two regimes, the following comparison is presented:

**Tabel 1. Comparison between Contract of Work and Licensing Regime**

Aspect	Contract of Work	Licensing Regime (IUP/IUPK)
Legal Nature	Private (contractual)	Administrative (public)
Basis of Relationship	Mutual agreement	State authority
Legal Certainty	High	Relatively lower
Flexibility	Low	High
Investor Position	Stronger	Weaker
State Intervention	Limited	Dominant
Regulatory Risk	Low	High
Dispute Potential	Relatively low	Higher
Aspect	Contract of Work	Licensing Regime (IUP/IUPK)

The table demonstrates that the divergence between the two regimes extends beyond technical aspects and encompasses fundamental juridical differences that directly affect legal certainty. While the contract of work regime emphasizes stability and predictability, the licensing regime prioritizes regulatory flexibility, albeit at the cost of increased legal uncertainty.

To further deepen the analysis, the level of legal certainty under each regime can be comparatively assessed as follows:

**Tabel 2. Legal Certainty Analysis**

<b>Indicator</b>	<b>Contract of Work</b>	<b>Licensing Regime</b>
Regulatory stability	High	Low–Moderate
Investor protection	High	Moderate
Policy change risk	Low	High
Legal consistency	Relatively consistent	Fluctuating
Long-term certainty	High	Relatively lower
Dispute potential	Low	Higher

The data indicate that the contract of work regime provides a more stable and predictable legal environment compared to the licensing regime. This is primarily due to its contractual nature, which safeguards investor rights against sudden regulatory changes, whereas the licensing regime remains highly susceptible to policy fluctuations.

Furthermore, the shift in state authority can be illustrated as follows:

**Tabel 3. Comparison of State Authority**

<b>Authority Aspect</b>	<b>Contract of Work</b>	<b>Licensing Regime</b>
Determination of terms	Through negotiation	Unilaterally by the state
Supervision	Limited	Intensive
Amendment of provisions	Difficult	Flexible
Revocation of rights	Restricted	Easier
Policy intervention	Low	High

The table highlights a significant transition from a negotiated model to a state-dominated regulatory framework. Under the licensing regime, the state exercises extensive control over the entire lifecycle of mining activities, from permit issuance to revocation. While this strengthens the state’s position, it simultaneously raises concerns regarding the predictability and stability of the legal framework for investors.

Moreover, the findings indicate that the licensing regime introduces a heightened exposure to permit revocation, which may affect investment sustainability depending on the consistency and transparency of administrative decision-making. Empirical instances of permit revocation demonstrate that governmental discretion plays a significant role in shaping legal certainty within Indonesia’s mining sector (Dani & Rahayu, 2025). However, such risks are not solely inherent to the licensing framework itself, but are also influenced by the quality of regulatory governance, including procedural safeguards, accountability mechanisms, and institutional checks in permit administration. This suggests that legal certainty is contingent rather than absolute, and varies according to the manner in which regulatory authority is exercised.

From an investment law perspective, legal certainty remains a central determinant of a stable investment climate. Nevertheless, the relationship between licensing regimes and investor confidence is not linear, as legal predictability is also shaped by broader institutional and policy environments. While regulatory flexibility allows the state to respond to evolving national interests, excessive discretion without sufficient legal safeguards may weaken investor confidence, particularly in the context of foreign direct investment that is highly sensitive to regulatory stability (Wahyuni, 2023; Rahman, 2025). Therefore, the challenge lies not in eliminating regulatory flexibility, but in ensuring that such flexibility operates within a structured and predictable legal framework.

Based on the foregoing analysis, it can be interpreted that the transformation of Indonesia's mining legal regime reflects a shift toward strengthened state authority, yet this shift does not automatically result in either the enhancement or deterioration of legal certainty. Instead, legal certainty emerges as a function of regulatory design, institutional coherence, and implementation consistency. Although the licensing regime provides greater administrative flexibility in resource governance, its effectiveness in ensuring legal stability remains dependent on the robustness of its supporting legal infrastructure. This condition highlights an ongoing structural tension between state sovereignty and investment security, which is not merely a consequence of regime change, but a deeper issue of governance quality within Indonesia's mining regulatory system.

## CONCLUSION

Based on the findings of this study, it can be concluded that the transformation of Indonesia's mining legal regime from the contract of work system to the licensing regime represents a fundamental restructuring of the legal relationship between the state and investors. However, this transformation does not produce a linear improvement in legal certainty. Instead, it reconfigures the sources and nature of legal certainty itself, shifting from contract-based stability toward administratively driven predictability that is highly dependent on regulatory governance quality.

The contract of work regime reflects a legally stable framework grounded in negotiated agreements that provide stronger predictability for investors, particularly through the incorporation of stabilization mechanisms against regulatory change. In contrast, the licensing regime under Law Number 4 of 2009 on Mineral and Coal Mining and Law Number 3 of 2020 introduces a governance model characterized by expanded state authority in licensing, supervision, and enforcement. This transition signifies a shift from relational legal certainty based on contractual equilibrium to institutional legal certainty that relies on consistency, transparency, and coherence of administrative decision-making.

Nevertheless, the licensing regime simultaneously exposes structural vulnerabilities in legal certainty, particularly in relation to regulatory inconsistency, overlapping institutional authority, and discretionary revocation of mining licenses. These conditions indicate that legal uncertainty in the current regime is not merely a consequence of the licensing system itself, but rather reflects broader governance challenges within Indonesia's regulatory architecture. Therefore, the central issue lies not in the choice between contract or license, but in the capacity of legal institutions to ensure predictability and restraint in the exercise of state authority.

The key implication of this study is that legal certainty in the mining sector must be reconceptualized as a governance outcome rather than a structural feature of a specific legal regime. Strengthening legal certainty therefore requires not only regulatory reform, but also institutional consolidation to ensure harmonization between central and regional authorities, clearer transitional provisions for legacy contracts, and the establishment of stricter procedural standards for license issuance and revocation.

Accordingly, this study contributes to mining law and investment law scholarship by demonstrating that effective resource governance depends on balancing state sovereignty with credible legal constraints. Future regulatory reform should focus on enhancing institutional accountability, reducing regulatory fragmentation, and developing a more predictable licensing framework that is both adaptive to national interests and consistent in its legal application, thereby reinforcing long-term investment confidence and improving the overall competitiveness of Indonesia's mining sector.

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