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An Economic Analysis of Law on Legal Certainty in the Transition from Contract of Work to Licensing Regime in Indonesian Mining Law

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Abstract: This study examines the transition from the Contract of Work regime to a licensing-based regime in Indonesian mining law through the lens of Economic Analysis of Law, focusing on legal certainty, regulatory efficiency, and transaction costs. The transformation reflects a shift from contractual governance toward an administrative framework that redefines the relationship between the state and investors. This change raises a fundamental tension between investment stability and strengthened state control over natural resources. The objective of this study is to analyze how this institutional transition affects legal certainty and economic efficiency in the mining sector. This research employs a normative juridical method combined with a law and economics approach, operationalized by examining changes in transaction costs, regulatory predictability, and the distribution of authority. The findings indicate that the licensing regime may improve administrative efficiency and reduce coordination costs through centralized control, yet it simultaneously increases regulatory uncertainty and discretionary risks that affect legal predictability. This study argues that the relationship between efficiency and legal certainty is mediated by the quality of regulatory governance. The novelty lies in integrating legal certainty and transaction cost analysis to explain the governance implications of mining law reform in Indonesia.

Keywords: Economic Analysis of Law, Contract of Work, Mining Business Permit, Mining Law Reform, Investment Certainty.

INTRODUCTION

The transformation of mining governance in Indonesia represents one of the most significant shifts in the national natural resources legal system, reflecting a fundamental change in the relationship between the state and business actors. The transition from the Contract of Work regime under Law No. 11 of 1967 to the licensing regime introduced in Law No. 4 of 2009, as amended by Law No. 3 of 2020, demonstrates a paradigm shift from a contractual-based approach to a regulatory-based governance framework in the mining

sector. Under the Contract of Work regime, legal relations were established through long-term agreements between the government and investors, providing a relatively high level of legal certainty due to their binding and stable nature. In contrast, the licensing regime establishes a unilateral administrative relationship in which the state holds dominant authority over the issuance, amendment, and revocation of mining business permits (Candra, 2022). This shift is not merely regulatory in nature but reflects a deeper institutional redesign of natural resource governance.

This transformation indicates that the state is no longer positioned as a contractual counterpart but as the primary regulator with full authority over access to and distribution of strategic resources. Accordingly, a shift from contract-based governance to state-centered regulatory governance has occurred, strengthening the state's role in determining mining policy direction. This change has significant implications for authority structures, decision-making mechanisms, and the relationship between central and regional governments and business actors in the mining sector.

From the perspective of law and economics, this regulatory transformation carries implications beyond formal legal change. The economic analysis of law conceptualizes legal rules as instruments for achieving efficient resource allocation and minimizing social costs arising from economic activities. Therefore, the shift from a contract-based system to a licensing-based system can be evaluated in terms of whether it enhances economic efficiency or generates new inefficiencies in resource governance (Cooter & Ulen, 1988). In capital-intensive and high-risk industries such as mining, legal certainty remains a critical factor influencing long-term investment decisions.

Furthermore, institutional economic theory provides an explanatory framework for understanding how formal institutions shape incentive structures for economic actors. North argues that institutional change affects economic performance through modifications in the "rules of the game" governing interactions among actors (North, 1990). In Indonesia, the transition to a licensing regime reflects the state's effort to strengthen control over strategic resources through a more centralized legal-institutional structure, which in turn influences business behavior in responding to regulatory uncertainty.

Transaction cost economics also offers important insights into the consequences of this institutional shift. Williamson emphasizes that different governance structures generate different levels of transaction costs, including information, negotiation, and monitoring costs. The Contract of Work regime tends to reduce transaction costs by providing long-term certainty and minimizing renegotiation needs. Conversely, the licensing regime enhances policy flexibility but may increase transaction costs due to greater administrative discretion and regulatory uncertainty (Williamson, 2008). This creates a governance challenge in balancing flexibility and investment stability.

In the Indonesian context, mining law reform is also closely linked to the state's agenda of strengthening sovereignty over natural resources and optimizing state revenue. The licensing regime is considered more aligned with constitutional principles of state control over natural resources, as it provides broader governmental authority in regulating access and utilization. However, this approach also alters investor expectations regarding long-term policy stability in capital-intensive sectors such as mining (Kasim et al., 2023).

Moreover, the enactment of Law No. 11 of 2020 on Job Creation reinforces a risk-based licensing framework aimed at improving investment efficiency through regulatory simplification. Nevertheless, this simplification remains embedded within a broader framework of strengthened state control, creating a dual dynamic between procedural deregulation and substantive re-regulation in the mining sector. This duality reflects the tension between investment facilitation and regulatory consolidation (Mubaraq et al., 2024).

Previous studies have examined mining law reform from perspectives of administrative law, central–regional authority relations, as well as investment and environmental dimensions. Several studies highlight that post-reform centralization has reshaped governance structures in mining licensing administration (Darman & Riyanti, 2024). However, most of these studies remain normative-descriptive and have not comprehensively integrated economic analysis into the evaluation of institutional change.

This research gap underscores the need for a more comprehensive analytical framework that integrates legal and economic perspectives through the Economic Analysis of Law. Previous studies on Indonesian mining law have predominantly adopted a normative approach, focusing on regulatory structure and legal doctrine, while paying limited attention to the economic consequences of institutional change, particularly in terms of transaction costs and efficiency. Such limitations hinder a systematic understanding of how the transition from a contractual regime to a licensing-based system affects both allocative efficiency, reflected in the optimal distribution of mining rights, and productive efficiency, reflected in the effectiveness of regulatory implementation. Moreover, legal uncertainty within the licensing regime remains underexplored, particularly in relation to regulatory inconsistency, administrative discretion, and the lack of clear transitional mechanisms between legal regimes.

Accordingly, this study aims to analyze the transition from the Contract of Work regime to the licensing regime in Indonesian mining law from the perspective of Economic Analysis of Law by examining the interaction between legal certainty, transaction costs, and regulatory efficiency. The research question addressed is how this institutional transition reshapes the structure of incentives and affects both economic efficiency and legal predictability in the mining sector. The novelty of this study lies in its development of an integrated analytical framework that combines legal certainty and transaction cost analysis to evaluate mining law reform, moving beyond purely doctrinal assessment toward a governance-oriented evaluation. The findings are expected to contribute theoretically to the advancement of law and economics scholarship and practically to the formulation of more efficient, adaptive, and balanced mining governance policies.

METHOD

This study employs the economic analysis of law framework as the primary perspective to examine the legal efficiency and institutional impact of the transition in Indonesia's mining governance regime. This research adopts a normative juridical method focusing on the analysis of legal norms, legal principles, and statutory regulations governing the transformation of the mining legal regime from the Contract of Work system to the licensing regime, as well as its implications for legal certainty and economic efficiency within the Indonesian context. The object of this research consists of legal materials; therefore, it does not utilize population and samples as in empirical research, but relies entirely on primary, secondary, and tertiary legal sources. Primary legal materials include Law No. 11 of 1967 concerning Basic Mining Provisions, Law No. 4 of 2009 concerning Mineral and Coal Mining, and Law No. 3 of 2020 concerning the Amendment to Law No. 4 of 2009. Secondary legal materials consist of books, academic journals, and prior studies relevant to natural resource contracts, investment legal stability, institutional theory, and mining licensing regimes (Cotula, 2010; Sornarajah, 2017; Zhang & Li, 2021; Kasim et al., 2023), while tertiary legal materials include legal dictionaries, encyclopedias, and other supporting references.

The study applies statutory, conceptual, and comparative approaches to analyze the structural differences between the Contract of Work regime and the licensing regime within the framework of economic analysis of law, emphasizing efficiency, incentives, and

transaction costs in institutional legal change (Muchlinski, 2007; Wälde, 2001). Legal materials are collected through library-based research by systematically identifying, classifying, and reviewing relevant literature in accordance with the research focus (Kienzler et al., 2015; Tordo et al., 2010). The analysis is conducted qualitatively using grammatical, systematic, and teleological interpretation to understand legislative intent, the rationality of legal policy transformation, and the direction of national mining law policy (Cameron, 2010; Pistor, 2019). The findings are then presented in a descriptive-analytical and interpretative manner to provide a comprehensive explanation of the implications of the regime transition on legal certainty, incentive structures, and economic efficiency in Indonesia’s mining sector.

RESULTS AND DISCUSSION

The findings of this study indicate that the transition of mining governance in Indonesia from the Contract of Work regime to the licensing regime represents a fundamental transformation in the legal and economic structure of natural resource management. Under the Contract of Work regime, the legal relationship between the state and business actors was based on long-term contractual arrangements with a private-law orientation, thereby providing a relatively high level of legal certainty for investors. In contrast, the licensing regime establishes a public administrative legal relationship in which the state holds dominant authority over the issuance, supervision, and revocation of mining business permits. This shift reflects a broader paradigm change from contract-based governance to state-centered regulatory governance in strategic resource management (Candra, 2022).

Normatively, this transformation demonstrates a strengthening of the state’s role in controlling and managing natural resources as reflected in Law No. 4 of 2009 and further reinforced by Law No. 3 of 2020. The state is no longer merely a contractual party but has evolved into the primary regulator determining access, licensing structures, and policy direction in the mining sector (Kasim et al., 2023).

To provide a clearer comparative perspective, the characteristics of both regimes are presented in Table 1 below.

Tabel 1. Comparison between Contract of Work and Licensing Regime in Mining Governance

Aspect	Contract of Work	Licensing Regime
Legal basis	Contractual	Administrative
Legal certainty	High	Relatively fluctuating
Role of the state	Contracting partner	Dominant regulator
Policy flexibility	Low	High
Investment certainty	Strong	Moderate
Transaction costs	Lower	Higher

Based on Table 1, a clear trade-off emerges between legal certainty and regulatory flexibility. The Contract of Work regime provides long-term stability for investors but lacks adaptability to policy changes. Conversely, the licensing regime enhances governmental flexibility in responding to economic dynamics but reduces investor certainty.

From the perspective of economic analysis of law, this shift reflects an attempt by the state to improve allocative efficiency through restructuring legal incentives. Law functions as an instrument to shape economic behavior and achieve efficiency in resource allocation (Cooter & Ulen, 1988). In this context, the licensing regime allows the state greater discretion in allocating mining resources in accordance with changing national priorities.

However, transaction cost economics suggests that this institutional shift also increases transaction costs. The Contract of Work regime minimizes renegotiation costs due to its long-

term stability, whereas the licensing regime increases administrative discretion, regulatory uncertainty, and monitoring costs (Williamson, 2008). This results in higher perceived regulatory risk for investors.

To deepen the analysis, Table 2 summarizes the economic-legal implications of the regime transition.

Table 2. Law and Economics Analysis of Mining Regime Transition Impacts

Analytical Dimension	Contract of Work	Licensing Regime	Economic Interpretation
Incentive structure	Stable, long-term	Flexible, adaptive	Shift from certainty to regulatory control
Transaction costs	Low	Higher	Increased regulatory and compliance costs
Economic efficiency	Stable but rigid	More adaptive	Context-dependent efficiency
Investment risk	Low	Higher	Increased regulatory uncertainty
Policy stability	High	Fluctuating	Trade-off stability vs flexibility
State orientation	Contract partner	Dominant regulator	Strengthened state-centered governance

Table 2 indicates that the transition from the Contract of Work regime to the licensing regime produces a structural reconfiguration in the legal-economic architecture of mining governance in Indonesia. While increased regulatory flexibility enhances the state’s capacity to adjust resource allocation in response to changing economic priorities, it simultaneously introduces greater uncertainty for business actors. This dual effect generates an inherent tension between short-term allocative efficiency and long-term investment stability, particularly in capital-intensive sectors such as mining, where sunk costs are high and regulatory predictability is essential.

From an institutional economics perspective, North emphasizes that institutional change fundamentally alters economic performance by reshaping the “rules of the game” governing interactions among economic actors (North, 1990). In this context, the shift toward a licensing regime reflects a process of institutional consolidation, through which the state strengthens its regulatory authority over strategic natural resources via centralized governance mechanisms.

This perspective is further reinforced by Richard A. Posner, who in *Economic Analysis of Law* (2007) argues that legal rules should be evaluated based on their capacity to promote economic efficiency by influencing incentives and minimizing social costs within a legal system. From this viewpoint, the licensing regime can be interpreted as an institutional instrument aimed at improving resource governance efficiency; however, its overall effectiveness depends on whether the regulatory design successfully balances administrative flexibility with legal certainty.

Moreover, this institutional restructuring has significant implications for intergovernmental relations. The centralization of licensing authority has reduced regional discretion in resource governance, thereby strengthening national regulatory coherence. While this may enhance administrative efficiency and policy uniformity, it also risks weakening the responsiveness of governance to local socio-economic and environmental conditions (Darman & Riyanti, 2024).

In parallel, the implementation of the Job Creation Law (Law No. 11 of 2020) institutionalizes a risk-based licensing framework aimed at improving investment efficiency through regulatory simplification. However, this reform simultaneously consolidates state

regulatory power, producing a paradoxical dynamic between procedural deregulation and substantive regulatory expansion. This reflects a broader governance shift in which administrative simplification does not necessarily reduce state intervention but rather transforms its regulatory modality (Mubaraq et al., 2024).

Empirically, the study further finds that increased administrative discretion and regulatory uncertainty under the licensing regime significantly affect investor risk perception. In capital-intensive mining industries with long investment horizons, such uncertainty translates into higher perceived regulatory risk, which may influence investment timing, scale, and capital allocation decisions (Ismail, 2022).

Overall, the findings demonstrate that the transition generates a complex and persistent trade-off between economic efficiency and legal certainty. While the state gains stronger regulatory control and improved institutional capacity in resource governance, this is accompanied by higher transaction costs, increased regulatory uncertainty, and reduced predictability for investors. Therefore, mining law reform in Indonesia should be understood not as a linear efficiency-enhancing process, but as an ongoing institutional balancing between state resource sovereignty and the need to maintain credible and stable investment protection mechanisms.

CONCLUSION

This study confirms that the transition from the Contract of Work regime to the licensing regime in Indonesian mining law represents a fundamental paradigm shift in natural resource governance, from a contractual-based relationship model to an administrative framework characterized by strengthened state regulatory dominance. This shift is reflected in several institutional indicators, including the centralization of licensing authority, the expansion of state discretion in permit issuance and revocation, and the reconfiguration of long-term contractual rights into administratively controlled entitlements. Consequently, the state is no longer positioned as an equal contracting party, but as the primary regulator exercising unilateral authority over access, control, and supervision of mining activities. This transformation indicates that the primary orientation of the regime change lies in enhancing state control effectiveness and resource sovereignty, rather than solely in improving legal certainty.

From the perspective of Economic Analysis of Law, this study demonstrates that the transition produces a structured trade-off between regulatory efficiency and legal certainty, mediated by the role of administrative discretion. Increased regulatory flexibility allows the state to adjust policies more rapidly, potentially improving allocative efficiency, optimizing resource management, and enhancing fiscal outcomes. However, this flexibility also expands discretionary space, which in turn raises transaction costs through increased compliance burdens, uncertainty in permit continuity, and reduced predictability of regulatory decisions. Thus, the causal mechanism underlying the trade-off is not inherent to the licensing regime per se, but emerges from the interaction between discretionary authority and the absence of sufficiently constraining institutional safeguards.

The scholarly contribution of this study lies in developing a governance-based Economic Analysis of Law framework that integrates legal certainty and transaction cost analysis to explain institutional change in mining law. By moving beyond a purely normative approach, this study demonstrates that legal regime transformation is shaped not only by doctrinal considerations but also by incentive structures, regulatory design, and institutional capacity. Practically, the findings suggest that improving mining governance requires more than regulatory reform; it necessitates the establishment of clearer procedural standards for licensing decisions, the strengthening of safeguards against arbitrary administrative action, and the harmonization of authority between central and regional institutions. Such measures

are essential to reduce transaction costs, enhance legal predictability, and ensure that the licensing regime can simultaneously support state sovereignty and long-term investment sustainability in Indonesia's mining sector.

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