

Legal Implications of the Application of the Principle of Due Diligence on the Extension of the Work Contract of PT Freeport Indonesia

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ABSTRACT

KEYWORDS

principle of acting carefully, Contract of Work, PT Freeport Indonesia, mining law, legal implications.

The extension of PT Freeport Indonesia's Contract of Work constitutes a strategic issue in national mining governance, as it relates to legal certainty, investment sustainability, and state authority over natural resources. As one of Indonesia's largest mining operations, Freeport contract decisions carry broad economic, legal, and political implications. The principle of due diligence, or principle of acting carefully, serves as a key normative standard guiding government and corporate conduct. It demands prudence, thorough assessment, and accountability across contract extension stages—preparation, evaluation, negotiation, and decision-making—to avoid arbitrariness and ensure comprehensive legal-factual basis. This study examines the prudential principle's role in Freeport's Contract of Work extension and neglect's legal risks. Employing a normative juridical approach, it reviews laws, contract principles, mining regulations, and documents. Careful application ensures objective, transparent, public-interest decisions. Neglect risks administrative flaws, eroded legitimacy, lost investor trust, and disputes. Thus, bolstering prudential mechanisms advances Indonesia's mining governance reform.

INTRODUCTION

PT Freeport Indonesia's Contract of Work is one of the main legal instruments in the management of the natural resources of the Grasberg mine which is rich in copper and gold, where the extension of the contract is often in the spotlight because it involves national interests and foreign investment worth trillions of rupiah (Karso, 2025). This process of extension, which has gone through several stages from the New Order era to the current government, raises a debate about the balance between the state's rights as the owner of resources and the company's obligation to comply with domestic regulations. Application of the principle of prudential action (due diligence) by the government in the process is crucial, given that this principle requires meticulous, transparent, and responsible action to avoid state losses and ensure legal certainty for investors (Ali & Kim, 2024).

In the context of Indonesian law, the principle of due diligence has been recognized as an integral part of treaty law under Article 1338 of the Civil Code which emphasizes good faith, and strengthened by Law Number 4 of 2009 concerning Mineral and Coal Mining which regulates the mechanism for the extension of generation I, II, and III work contracts. However, Freeport's 2018 contract of work extension practices and follow-up plans show inconsistencies, with the government faced with demands for share divestment, higher royalties, and domestic smelter management, while the company demanded guarantees of legal stability. This raises significant legal implications, including potential international arbitration disputes under UNCITRAL or ICSID if the principle of due diligence is not adequately applied, as seen in similar cases in other mining sectors (Junita, 2015).

This uncertainty not only threatens state revenue from the extractive sector that contributes significantly to the state budget, but also weakens Indonesia's credibility in the eyes of global investors in the context of a green energy transition that demands sustainable management. Therefore, an in-depth analysis of the legal implications of applying the principle of careful action is needed to formulate policy recommendations that can bridge national economic interests with international governance standards. This research aims to fill this gap through a normative juridical approach and a specific case study of PT Freeport Indonesia.

Based on this background, the formulation of the problem in this study is focused on the following juridical issues: 1) How is the application of the principle of careful action as stipulated in Article 1338 of the Civil Code to the process of extending PT Freeport Indonesia's work contract through Presidential Regulation Number 9 of 2017 and the 2018 amendments. 2) What are the legal implications of the fulfillment or omission of the principle of acting carefully on legal certainty, the rights and obligations of the parties, and the balance of state benefits in the management of natural resources based on Law Number 4 of 2009 concerning Mineral and Coal Mining. 3) What is the government's role in overseeing the application of the principle of acting carefully to prevent the risk of legal disputes and ensure the principle of good governance in the extension of PT Freeport Indonesia's work contract.

This study aims to analyze in depth the application of the principle of careful action in the process of extending PT Freeport Indonesia's work contract, as stipulated in Article 1338 of the Civil Code (Civil Code), in order to explore the extent to which the principles of prudence, honesty, and good faith have been fulfilled in the negotiation and implementation of Presidential Regulation Number 9 of 2017 and the 2018 amendments. In addition, the main objectives include the disclosure of the legal implications of the fulfillment or omission of the principle on legal certainty, the rights and obligations of the parties, as well as the balance of state benefits as mandated by Law Number 4 of 2009 concerning Mineral and Coal Mining. Specifically, this study is also intended to formulate recommendations for effective government supervision policies in preventing the risk of disputes and strengthening the principles of good governance in Indonesia's natural resource mining sector.

METHOD

This research adopted a normative juridical approach with a focus on doctrinal analysis of primary laws and regulations such as the Civil Code, Law Number 4 of 2009, Presidential Regulation Number 9 of 2017, and contract documents of PT Freeport Indonesia. The data collection method is secondary through a literature study that includes legal literature, scientific journals, relevant court decisions, and official government reports, which are then analyzed qualitatively with descriptive-analytical techniques to identify normative consistency and practical implications. Conceptual approaches and case studies were applied specifically to Freeport's contract extension case to compare the theory of the principle of careful action with the reality of implementation, resulting in comprehensive findings and legal evidence-based recommendations.

RESULTS AND DISCUSSION

The Basic Concept of Acting Carefully in Law

The government as a person elected by the people is obliged to carry out its duties and authorities properly and professionally so as not to harm its citizens. To carry out these duties and authorities properly and professionally, a handle is needed that serves as a guideline in carrying out its actions, namely the general principles of good governance or AAUPB. In this discussion, one of the principles that will be highlighted is the principle of acting carefully or the principle of prudence.

The principle of prudence according to Law Number 30 of 2014 concerning Government Administration is a principle that means that a decision and/or action must be based on complete information and documents to support the legality of the determination and/or implementation of the decision and/or action so that the decision and/or action concerned is carefully prepared before the decision and/or action is determined and/or carried out. This means that government actions must be based on complete information and documents to support the legality of government actions in implementing its policy determinations which aim to make a law and regulation meticulous. This principle requires that the state administration always act carefully so as not to cause losses to the community.

Based on the Government Administration Law of 2014, the elements that should be in the principle of careful action are: 1) The existence of decisions and/or actions; 2) Based on complete documents; 3) Be careful before such decisions and/or actions are determined and/or carried out.

From these elements, it can be said that the government when making decisions must be based on complete documents, be it documents related to data or realities in the field that already exist and the government must be careful before the decisions they make are determined or carried out so that they can prevent state losses, avoid hasty or discriminatory decisions, and ensure that the interests of the public and the state are always the top priority. The application of this principle of due diligence is crucial when the government negotiates and issues major permits, including the extension of mining contracts.

Definition and Function of Contract of Work

A work contract (KK) is a cooperation between foreign capital and national foreign capital in the form of a contract of work, this happens when a foreign investor forms an Indonesian legal entity, and this legal entity enters into a cooperation agreement with a legal entity that uses national capital. The legal principle of contract of work is regulated in Law Number 11 of 1967 concerning Mining and is the basis for companies with Indonesian legal entities with the Indonesian government to be able to manage non-oil and gas mining resources.

Mining work contracts have an important role in the mining management sector because they include the content of agreements which are part of legal legality. In the contract of work agreement, there are several things that contain about: 1) Date and place of approval; 2) Legal subjects; 3) Definition; 4) Appointment and responsibilities of the company; 5) Contract territory; 6) Period of operation; 7) Dispute resolution; 8) Financing; 9) Time frame; 10) Termination of contract; 11) Facilities; 12) Etc.

If there is no work contract, then it is certain that mining activities will be confused. Mining would be considered illegal because it lacks a clear legal basis, there is no evidence of

information regarding such mining activities, and it is unclear who will be responsible. The contract of work also states the term limit of the contract which will determine how the policy will be taken when the contract expires, between terminating the contract, continuing it, or it could be that the person in charge of mining can belong to another party. This is why the work contract is so important and its existence is crucial and binding on the parties.

The main function of the contract is to provide legal certainty and stability. Contracts of work provide a strong legal basis for mining activities, which is important for attracting large investments because the nature of investment in this sector is high-risk. The contract of work also contains the rights and obligations of the company, provides a clear framework, regulates the territory, indicates the period of operation, establishes a profit-sharing mechanism between the government and the contracting company, and becomes the basis for dispute resolution.

Before the birth of the Mineral and Mineral Law, mining licensing in Indonesia was dominated by Contract of Work. A work contract is essentially a Agreement (Private Law) which is *lex specialis*, providing a guarantee of stability and strong legal protection (sanctity of contract) to investors, even against potential future regulatory changes. This power often creates tensions with government efforts to increase state revenue and national control over natural resources. It is this conflict of interest that triggers the need to reform the system. With the expiration of the working contact period looming, a major legal challenge arises: How to transform this powerful treaty regime into a more state-controlled licensing regime?

Regulations Related to Contract Extension in Indonesia

Work contracts are considered detrimental to Indonesia and benefit foreign parties. Therefore, Law Number 4 of 2009 concerning Mineral and Coal Mining has changed what used to be a work contract now into a mining business license or IUP. This new regulation diverts the licensing system away from the regime Contract of Work that are of an agreement *lex specialis* and provide strong protection to investors into a licensing regime in the form of Mining Business License (IUP) and Special Mining Business License (IUPK). This regime change reflects the government's efforts to take greater control over natural resources in the national interest. The regulation specifically stipulates that if the validity period of the work contract ends, the company can submit an application for an extension whose form will be changed to IUPK as a Continuation of Contract/Agreement Operations. In addition, Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 completes the mining licensing system in Indonesia.

The process of transition and extension from a work contract to an IUPK is detailed in the implementing regulations, such as Government Regulation Number 96 of 2021. In the context of the renewal of the IUPK, especially for large companies such as PT Freeport Indonesia, there are crucial conditions. These conditions include a commitment to increase added value in the country, such as obligations Construction of refining facilities (*Smelter*), and obligations Stock divestment to the Indonesian side to a certain extent. The implementation of this regulation is evident in the case of PT Freeport Indonesia, where the Government and PT Freeport Indonesia reached an agreement in 2018 to change the status of the KK to IUPK. This agreement requires four main points, namely: change in licensing status; increasing Indonesia's share ownership to 51%; Development Commitment *Smelter*; and guarantee of the stability of state revenues.

The entire series of IUPK determination processes and the negotiation of these requirements requires the Government to carry out The Basics of Acting Prudently (or the Principle of Prudence). This principle requires the Government to act prudently, ensure that all decisions are based on complete documents and accurate information, and verify the technical and financial feasibility of the company. The goal is to ensure that the permits issued are optimal for the interests of the state, do not harm the community, and provide legal certainty.

Case Study of Contract Extension of Pt Freeport Indonesia

History and Development of PT Freeport's Contract of Work

PT Freeport Indonesia started its operations in Indonesia based on Contract of Work I signed in 1967. This contract of work is not only a permit, but an agreement that provides a very high level of legal certainty to foreign investors. The nature of this work contract tends to *lex specialis* (special law), which means that the provisions are often above the general mining laws in force in Indonesia at the time, especially in relation to the fiscal regime (taxes and royalties) which are fixed (nail-down) throughout the duration of the contract. Contract of Work I was then renewed to Contract of Work II in 1991 with a validity period until 2021.

The existence of a work contract has become a source of problems and debates over time. Work contracts are considered to be less reflective of the principle of state sovereignty over natural resources because of the regime's nail-down Fiscal revenues make state revenues not optimal and cannot adjust to changes in economic conditions and national legislation.

The Indonesian government then issued a Law Number 4 of 2009 concerning Minerals and Coal. This law is the main milestone of change that mandates two crucial things for PTFI, namely: 1) Obligation to downstream (processing and refine) minerals in the country before export. 2) Change of Contract of Work status to Special Mining Business Permit (IUPK).

The mandate of the 2009 Mineral and Mineral Law directly limits the validity and demands adjustments to the Contract of Work of PT Freeport Indonesia, thus triggering tension and negotiations that lead to the contract extension process.

Contract Extension Process

The negotiation process for the extension between the Government of the Republic of Indonesia and PT Freeport Indonesia is a follow-up to the mandate of the 2009 Mineral and Mineral Law, especially regarding the conversion of work contracts into IUPK. This process aims to change PT Freeport Indonesia's legal relationship with the state to be in accordance with the principle of state sovereignty in the management of Natural Resources (SDA).

Intensive major negotiations between the two sides managed to reach an agreement in 2018. The deal involves fundamental changes focused on four key pillars: 1) Share Divestment (Majority State Ownership): PT Freeport Indonesia agreed to divest its shares so that Indonesia's ownership, through SOEs (Inalum/MIND ID), reaches 51%. This divestment changed Indonesia's status from a minority shareholder to a controlling majority shareholder. 2) Smelter Development (Downstreaming): PT Freeport Indonesia is required to build a domestic copper processing and refining facility (Gresik) as proof of its value-added commitment. 3) State Revenue Stability: PT Freeport Indonesia has agreed to switch from a fiscal nail-down regime (KK) to a prevailing regime (IUPK), where tax obligations, royalties, and other state revenues will follow the applicable Indonesian laws and regulations. 4) Legal Status Conversion: PT Freeport Indonesia's status was officially changed from a Contract of

Work to a Special Mining Business License (IUPK). Through this IUPK, PT Freeport Indonesia is given an extension of operations until 2041, with the option of extending it further.

With the conversion to IUPK, PT Freeport Indonesia's status is now subject to a stricter national mining regime, which is seen as a strategic victory for the government in asserting economic sovereignty over natural resources (Kansil et al., 2023; Kusnadi et al., 2025; Sinaga, 2019).

Analysis of the Application of the Principle of Careful Conduct in the Case of PT Freeport

Application The Basics of Acting Prudently in government administration, especially in handling strategic issues involving natural resources and large-scale foreign investment such as PT Freeport Indonesia, is crucial to protect national interests as a whole. The Indonesian government showed great caution when deciding not to unilaterally terminate PT Freeport Indonesia's work contract, despite strong political push to nationalize the asset. This careful decision was taken because the 1991 contract of work was protected by Stability Clause which makes the contract immune to changes in national regulations and the existence of International Arbitration Clauses. If the Indonesian government acts rashly with the termination of the contract, it risks triggering arbitration lawsuits abroad, potentially incurring enormous compensation costs that can reach billions of dollars and harm the country's finances, so that mitigating the turmoil of disputes is a form of legal risk mitigation that is realized through Intensive negotiations. The protracted negotiation process from 2014 to 2018 is a tangible manifestation of the government's efforts to act carefully, ensuring that every step taken has a strong legal basis and does not give rise to moral hazard in the eyes of global investors, as well as carrying out the mandate of Law Number 4 of 2009 concerning Minerals and Coal (Mineral and Coal Law) which requires a change in the contract of work regime to become a UPK business license.

Furthermore, the Principle of Careful Action is implemented in a structured manner to secure the country's economic sovereignty, especially related to the optimization of state revenue and strategic control. The government has succeeded in requiring a change in PTFI's fiscal regime from nail-down (tax rates and royalties nailed according to the original contract) became a regime prevailing (following current and future applicable national tax regulations) as a condition for conversion to IUPK. This change is a fundamental fiscal prudential measure as it allows the country to obtain more dynamic and maximum revenue, in line with rising global commodity prices and national economic development. In addition to the fiscal aspect, the government's prudence is also seen in the demands divestment of 51% of shares to SOE entities (MIND ID). The control of this majority share is not just an acquisition of assets, but a prudent action that gives the state Strategic control and full control for making important decisions of the company's operations, ensuring that the management of natural resources is truly directed to the prosperity of the people in accordance with Article 33 of the 1945 Constitution. As a complement to this precaution, the government also expressly requires Downstream Obligations, i.e. the development of *Smelter* domestically, as an absolute requirement for IUPK. This obligation is a careful measure to ensure that it occurs Added value on mined minerals, creating jobs, and encouraging domestic industrialization, so that economic benefits do not stop only in the export of raw materials. The entire set of conditions ranging from arbitrage risk control, changes in the fiscal regime, to majority control and downstreaming,

show that the IUPK conversion decision is the result of very mature and integrated considerations, reflecting maximum compliance with the Principles of Careful Conduct in protecting and securing Indonesia's long-term interests.

Legal Implications of Applying the Principle of Prudential Action

Impact on Legal Certainty and Justice

In this subchapter, the author analyzes in depth the impact of the application of the Principle of Careful Action on legal certainty and justice, especially in the context of the extension of PT Freeport Indonesia's work contract. This principle emphasizes the importance of caution, so all parties are required to consider the risks carefully before making a decision. In the case of Freeport, the contract that has been in place since the 1960s and was renewed in 2018 has given rise to various reconsiderations. In general, this principle strengthens legal certainty because it provides a clear standard for assessing whether a contract extension has taken into account all risks, including environmental risks in Papua that have been severely damaged by gold mining activities at Grasberg.

Irregularities in the contract extension process have the potential to cause legal uncertainty, for example when the government does not do "*due diligence*" On environmental impacts, the sustainability of mining reserves, and potential social risks. Putra et al. (2025) emphasized that regulatory uncertainty in the transition from KK to IUPK also raises justice issues because it puts the state at a disadvantage in renegotiations, especially regarding royalty rates and divestment obligations.

The application of the principle of careful action in the extension of PT Freeport Indonesia's Contract of Work is not only related to formal obligations in the administrative process of government, but also closely related to the principle of the rule of law (*State of law*) as affirmed in Article 1 paragraph (3) of the 1945 Constitution. In a state of law, every government action must be based on a clear, rational, and accountable rule of law. Therefore, prudence is not only a principle of administrative ethics, but also a manifestation of a constitutional obligation. In the context of negotiations and operational extension of PT Freeport Indonesia (PTFI) which transformed from a Contract of Work (KK) regime to a Special Mining Business License (IUPK), the principle of acting carefully (*principle of carefulness*) is the main touchstone to determine whether the government has exercised its authority proportionately and accountably. The application of the Principle of Careful Conduct affects contractual fairness by demanding a balance between the rights and obligations of the parties. In the extension of Freeport's contract, this principle requires the government to act carefully in negotiations, such as considering the social and environmental impacts on the Papuan people, so that contractual justice is achieved.

Overall, this principle makes a positive contribution to legal certainty through a predictable framework, but to justice, there are still problems if it is not adapted to the conditions of Papua. The importance of this principle was emphasized by Erwinsyahbana et al., (2018) who pointed out that Freeport's Contract of Work from the beginning had major consequences for the state's control of mineral resources and at the same time tested the government's consistency in enforcing Article 33 of the 1945 Constitution. The author argues that there is a need for national law harmonization that pays more attention to distributive justice, such as increasing royalties for mine-producing regions.

Implications for the Rights and Obligations of the Parties

The rights and obligations of the state and PT Freeport Indonesia in the framework of the contractual relationship must run in a balanced manner. Sinaga emphasized that agreements between the government and corporations must contain the principle of equality, so that neither party gets a dominant position that has the potential to harm the other party. In the context of Freeport's Contract of Work, the principle of acting carefully requires the government to re-evaluate important state rights, such as state revenues, control of mining reserves, and environmental management guarantees. The government must also ensure that Freeport's obligations are carried out consistently, including the divestment obligation of 51%, the construction of the smelter, and the implementation of reclamation and post-mining.

Without care, state rights can be reduced or cannot be realized optimally. Some of the previous renegotiation processes have often been ineffective because the country lacks strong technical data on mine reserves, production capacity, and long-term economic potential. If the government does not have valid data, then its bargaining position will weaken in the contract extension process. On the other hand, PT Freeport Indonesia has the right to obtain legal certainty, investment protection, and regulatory stability. The principle of acting carefully requires that the state not act arbitrarily or capriciously in policies that could harm investors.

The Role of Government in Monitoring and Ensuring Compliance

According to Yurista and Alfatiry's (2021) research, the government has a dual responsibility: as a regulator and as the owner of the state's control rights over the mines. In the regulatory function, the principle of acting carefully requires the government to do: 1) A thorough evaluation of Freeport's operational performance during the contract. 2) Independent audit of environmental impacts and post-mining recovery. 3) Comparative analysis of contract regimes in other countries. 4) Public consultation and community participation are affected.

If supervision is carried out administratively without substantive evaluation, then the government is considered not to carry out the obligations of the AUPB. Many sections of academic criticism (including Rahadiyan's) point out that one of the weaknesses of previous contracts was the lack of an inherent oversight mechanism that put the government in a reactive, rather than proactive, position.

The government's role also includes education and socialization, such as risk awareness campaigns in high-risk industries such as mining or healthcare. However, challenges arise in the form of corruption or bureaucratic inefficiency, which can reduce the effectiveness of oversight. Empirical studies from developing countries show that governments that are strong in their capacity can improve compliance, but a balance is needed to avoid overregulation that stifles innovation. In conclusion, the role of the government as a guarantor of compliance is not only reactive (through sanctions) but also proactive (through prevention), to support a stable legal ecosystem.

The principle of acting carefully also requires the government to ensure that any violations by companies are acted upon in accordance with the provisions. Without strong oversight mechanisms, the potential for state losses increases, including lost revenue, environmental damage, and international arbitration lawsuits. Ananda Prima Yurista's research emphasizes that "contract extension or change of legal regime must be based on careful legal-formal analysis, because it concerns the sovereignty of natural resource management". In the context of Freeport, the government's due diligence measures include analysis *cost and benefit*,

environmental impacts, fiscal calculations, and aspects of regional security. Failure to assess one of these aspects can pose a double risk: economic losses and loss of policy legitimacy in the eyes of the public.

Legal Risks and Dispute Resolution

The application of the Prudential Principle poses legal risks to parties who fail to comply with it, including civil, criminal, or administrative claims. The main risk is a negligence lawsuit, where the victim can claim damages based on evidence that the other party did not act carelessly. Contract renegotiation also poses its own risks, especially because as Ngaini (2024) points out, "any change in fiscal obligations and contract structure can give rise to claims *legitimate expectation* and triggering arbitration disputes if it is not carried out transparently and carefully" (Ngaini, 2024).

Pose its own risks, especially related to changes in fiscal obligations and the construction of smelter facilities. Ngaini emphasized that renegotiation without adequate scrutiny can give rise to related disputes *fair and equitable treatment*, investment protection, or *legitimate expectation* investor. Thus, the principle of acting carefully serves as a safety net so that the government does not make decisions that open up potential lawsuits.

Dispute resolution often involves litigation in court, arbitration, or mediation. The courts play a central role in interpreting this principle, with the risk of uncertainty if the verdict varies between regions. Alternative settlements such as international arbitration (e.g. under the ICC) can reduce legal risks to foreign parties, but require contractual agreements. These legal risks can be minimized through professional liability insurance or internal audits, but still require a preventative approach to avoid costly disputes. Ananda noted that the legal relationship between Indonesia and Freeport contains potential investment disputes, including international arbitration, if the process and substance of the renegotiation are not in accordance with the principle of prudence of state administration. Overall, this principle encourages a culture of prudence, but the legal risks emphasize the importance of efficient and fair settlement mechanisms.

Evaluation and response to the renewal policy

Criticism and Opinion of Jurists

Experts in state administrative law and mining law consider that the application of the principle of due diligence is a major weakness in Freeport's contract management policy. Rahadiyan et al., (2017) argues that "the weakness of the state often lies in the incareful negotiation process, so that the state loses control over mining management" that Indonesia's position in historical contracts is often weak because the state does not conduct adequate legal studies before agreeing on strategic provisions, especially regarding profit sharing and contractual stability. In the case of Freeport, many critics have highlighted that the inconsistency of government policies indicates the weak application of this principle.

The government's decision to extend the Contract of Work of PT Freeport Indonesia is one of the strategic policies that requires a high level of precision, because it concerns the management of natural resources which according to the constitution are under state control. Various legal experts provide critical assessments of the process, substance, and basis of the government's consideration in the policy.

Within the framework of the principle of acting carefully, a number of experts assessed that the contract renewal process in the past showed administrative obstacles and a lack of a comprehensive evaluation of the company's performance and its impact on society and the environment. This is in line with the criticism of Alfatiry et al., (2019) who stated that public decisions regarding Freeport should be based on objective, transparent, and data-driven policy justifications, not just short-term economic considerations.

Furthermore, the study of public law also highlights that the government's inaccuracy can raise problems of administrative legitimacy. Yurista emphasized that the transition from a work contract to an IUPK should not only be formal, but a comprehensive reform in mining governance, including supervision, domestication obligations, and fiscal efficiency. If this transition is carried out without adequate study, then potential regulatory conflicts, administrative uncertainty, and imbalance of rights can occur.

Thus, legal experts generally conclude that the extension of Freeport's contract should be tested not only from an economic or investment perspective, but also from a constitutional, administrative, and long-term public interest point of view, relying on the principle of prudential action as its main benchmark.

Alternative Solutions and Recommendations

Seeing these various criticisms, a number of normative and policy solutions are offered by legal academics to strengthen the state's position in the management of the Freeport mine. This solution focuses not only on contractual aspects, but also on structural reforms in national mining governance (Wijaya et al., 2023). First, Putra et al. emphasized that the government needs to accelerate the total transition of the legal regime from Contract of Work to IUPK because the licensing regime provides stronger supervision to the state. In contrast to private contracts which are negotiable, the IUPK regime is administrative in nature so that the state can set stricter conditions without the need to go through a complicated renegotiation process. Therefore, one of the main solutions is to strengthen licensing legal instruments, including conditions related to divestment, royalties, and downstream obligations (Voon & Mitchell, 2016).

Second, Ngaini suggested that the government conduct fiscal renegotiations more firmly, especially related to the amount of royalties and profit-sharing schemes. The state must ensure that revenues from the mining sector reflect the economic value of the commodities produced as well as the environmental risks posed. The renegotiation should also include stronger sanctions clauses if the company fails to meet its smelter investment obligations or post-mine recovery obligations (Singh & Larasati, 2025).

Third, JOECY (2025) provides recommendations to increase public transparency through the publication of evaluation documents, audit reports, and socio-economic impact analysis. Transparency is necessary to create public trust and prevent allegations of conflicts of interest or abuse of authority. The publication of documents also allows civil society to engage in oversight, in accordance with the principles of public participation in modern governance.

Fourth, some experts recommend the use of digital technology in production supervision, including the *real-time monitoring* to ore volume, refining yield, and distribution channel. With this system, the government can prevent the manipulation of production data which has been a loophole for the loss of state revenue. This recommendation is in line with

Yurista's view that the transition of the legal regime should be followed by the renewal of the supervisory instrument (Setiawan et al., 2023).

Fifth, a policy solution that is no less important is to strengthen environmental regulations and tighten licensing requirements related to tailings disposal and the use of protected forest land (Nasir et al., 2024). The government must ensure that contract extensions do not create ecological debt which is detrimental to future generations.

Sixth, the state needs to ensure that the contract extension policy is in accordance with the principle of resource nationalism, which is to put the national interest above the interests of foreign companies. This effort can be realized through increasing Indonesia's portion of ownership in PT Freeport Indonesia, transparency in the calculation of share valuations, and strengthening internal supervisory institutions (e.g. BPK and KPK).

Finally, all of these solutions are based on the understanding that the principle of careful action is not only a legal-formal norm, but is an ethical and technocratic foundation for the state in managing strategic natural resources. Failure to apply this principle not only harms the state financially, but can also undermine the legitimacy of government in the eyes of the public.

CONCLUSION

The application of the principle of prudential action (prinsip kehati-hatian) in extending PT Freeport Indonesia's Contract of Work balances state resource ownership with foreign investor interests, grounded in legal agreements and mining regulations. The 2017-2018 negotiations boosted stock divestment and royalties, yet government oversight gaps risk international arbitration and eroded legal certainty, while bolstering party rights, governance transparency, and state revenues demands stricter supervision amid global economics. Critics note insufficient public participation and advocate adaptive stabilization clauses plus domestic smelter enhancements. Ultimately, comprehensive prudence minimizes losses and elevates Indonesia's investment credibility, urging regulatory revisions and an independent oversight body. For future research, empirical analysis of post-extension arbitration cases or comparative studies with other nations' mining contracts could assess long-term efficacy.

REFERENCES

- Alfatiry, A. R., & Sugara, A. (2019). Questioning the contract extension of PT Freeport: A public policy review. *Jurnal Mozaik*, 11(2), 72–82. <https://ijc.ilearning.co/index.php/mozaik/article/view/1024/313>
- Ali, P. O., & Kim, K. N. (2024). Analysis of Indonesia's priority selection: Energy transition, energy-related measures, mining governance, and resource transition using the analytic hierarchy process (AHP). *Resources Policy*, 98, Article 105327. <https://doi.org/10.1016/j.resourpol.2024.105327>
- Erwinsyahbana, T., & Tanjung, V. L. F. (2018). Legal certainty of P.T. Freeport Indonesia's contract of work in the perspective of the principle of the right to control the state. <https://doi.org/10.31227/osf.io/5h2uq>
- Junita, F. (2015). The foreign mining investment regime in Indonesia: Regulatory risk under resource nationalism policy and how international investment treaties provide protection. *Journal of Energy & Natural Resources Law*, 33(3), 241–265. <https://doi.org/10.1080/02646811.2015.1057028>

- Kansil, C. S. T., & Ananda, J. S. (2023). Juridical analysis of the investment case of PT Freeport Indonesia vs Indonesia in the perspective of investment law. *JERUMI: Journal of Education, Religion, Humanities and Multidisciplinary*, 1(2), 767–771. <https://doi.org/10.57235/jerumi.v1i2.1492>
- Karso, A. J. (2025). Natural resources governance and the vulnerability of indigenous communities in Indonesia. *Frontiers in Political Science*, 7, Article 1601480. <https://doi.org/10.3389/fpos.2025.1601480>
- Kusnadi, N., Rabbani, R., Alfariz, K. M. I., Irawan, M. L., Salsabila, S., Tanasale, T. F. A., Putra Pratama, M. R. M., & Azzahra, D. A. (2025). Extension of the mining giant's contract in Grasberg Papua. *Journal of Innovative and Creativity*, 5(2), 555–565.
- Nasir, M. S., Lumowa, R., & Hariyadi, H. (2024). Illegal mining in Indonesia: Need for robust legislation and enforcement. *Cogent Social Sciences*, 10(1), Article 2358158. <https://doi.org/10.1080/23311886.2024.2358158>
- Putra, M. H., Yusrizal, & Mukhlis. (2025). Juridical analysis of the change of the contract of work (KK) to a special mining business license (IUPK) in Law Number 3 of 2020 concerning mineral and coal mining. *Student Scientific Journal of the Faculty of Law, Malikussaleh University*, 8(3). <https://doi.org/10.29103/jimfh.v8i3.23166>
- Rahadiyan, I., & Savira, K. A. (2017). Considering Indonesia's position in Freeport's contract of work: Legal-social problems and possible solutions. *Defense*, 3(1), 41–55. <https://doi.org/10.54755/defendonesia.v3i1.69>
- Setiawan, E. N., McCarthy, J. F., & Naipospos, H. (2023). Environmental management of coal mining areas in Indonesia: The complexity of supervision. *Society & Natural Resources*, 36(8), 956–975. <https://doi.org/10.1080/08941920.2023.2180818>
- Sinaga, N. A. (2019). Implementation of the rights and obligations of the parties in the law of treaties. *Scientific Journal of Aerospace Law*, 10(1), 1–20. <https://journal.universitassuryadarma.ac.id/index.php/jihd/article/view/400>
- Singh, M. D., & Larasati, V. D. A. (2025). International arbitration laws and regulations: Indonesia. In *International Arbitration 2025*. Global Legal Insights. <https://www.globallegalinsights.com/practice-areas/international-arbitration-laws-and-regulations/indonesia/>
- Voon, T., & Mitchell, A. (2016). Indonesia's bold strategy on bilateral investment treaties: Seeking an equitable climate for investment? *Asian Journal of International Law*, 6(1), 180–208. <https://doi.org/10.1017/S2044251315000181>
- Wijaya, A., Bakir, H., & Nurdin, B. (2023). State administrative law in environment based management of natural resources and energy. In *Proceedings of the 3rd International Conference on Law, Social Science, Economics, and Education (ICLSSEE 2023)* (pp. 1–8). EAI. <https://doi.org/10.4108/eai.6-5-2023.2333463>
- Yurista, A. P., Widyaningtyas, R. S., Widyaningtyas, R. S., & Hasani, A. A. (2021). Looking at Freeport's mine management regime in realizing people's welfare: Contract of work extension or transition to a licensing regime? *Journal of Law & Development*, 50(3), 719. <https://doi.org/10.21143/jhp.vol50.no3.2765>

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