

# MINING REGULATORY: ENFORCING THE NEW GOVERNMENT REGULATION AGAINST COMPANY RESISTANCE

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## Abstract

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The low contribution of the mining sector to state income has encouraged the Indonesian government to optimize profits. Mining regulatory governance reform must be implemented. Government Regulation No.1 of 2017 is a step to strengthen the role of the government, the legislative body which has the authority to manage and regulate natural resources. However, PT Freeport Indonesia (PTFI) opposes the implementation of this policy. Consequently, this research aims to explore and analyze the enforcement of Indonesian government regulations in the mining sector. This research uses a qualitative approach and case study method. The data selection is prepared in a structured, systematic and structured manner. The results contain several vital pieces of information. PTFI's non-compliance reached a breaking point, such as a ban on export permits to provide a deterrent effect. Following these sanctions against mining companies, the government began the negotiation process. These strategies manifest the Indonesian government's seriousness, resulting in PTFI's agreement with regulations. Government efforts to combine punishment and persuasion in regulatory enforcement practices are discussed in this research. The paper provides scholarly discussions, guiding authoritarians to achieve stakeholder compliance with their laws and policies.

**Keywords:** Mining Regulatory, Regulatory Enforcement, Government Authority, PT Freeport Indonesia

**Authors' individual contribution:** Conceptualization — D.S.S.; Methodology — M.N.H.; Validation — D.S.S., F.P., and J.P.K.; Formal Analysis — D.S.S. and M.N.H.; Writing — Original Draft — D.S.S. and M.N.H.; Writing — Review & Editing — F.P. and J.P.K.; Supervision — D.S.S.; Project Administration — D.S.S.

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## 1. INTRODUCTION

Academics and policymakers identify industrial commodity processing as the most promising economic support sector (Schulz, 2020). Unfortunately, the lack of optimal management of this sector impacts the low contribution of industrial commodity processing

to state income and community welfare. Sabowo and Siswanto (2023) pointed out that the cause is export activities resulting from mining natural resources in the form of semi-finished materials without any processing. Therefore, mining governance needs to be reformed. Mining regulatory governance reform is the key to optimizing the success of the mining

sector's contribution to state revenues and community welfare. Fan et al. (2017) define the mining industry as an industry that carries out activities — exploration, extraction, and primary processing of minerals — utilizing natural resources in a country. This is a crucial step, as sustainable mining sector management can significantly contribute to the national economy (Ma et al., 2019). Unfortunately, the implementation of mining governance reform in Indonesia faces many obstacles.

This research is taking a micro-scale case, PT Freeport Indonesia's (PTFI) rejection of the implementation of mining regulatory governance reform in Indonesia. We consider these cases to increase the depth of the study's research focus. PTFI is one of the largest gold mining companies in the world and the second-largest copper mine. The first PTFI contract was the contract of work (*kontrak karya*), signed in 1967. The contract of work is a *lex generalis* contract that provides special treatment to mining companies from the government. Cooperation between PTFI and the Indonesian Government has been ongoing for over 50 years. These expanded business partnerships are the product of solid lobbying to adapt to government requirements and political situations, which creates mutual dependency. Unfortunately, PTFI mining exploration did not significantly benefit Indonesia. Most of the profits go to Freeport-McMoRan Inc (FCX), the USA's leading company. This is due to the Indonesian government's low share ownership of 9.36% of PTFI shares, while FCX acquired the remaining PTFI shares (90.64%) (Afriyadi, 2018). In the extension of the contract of work in 1991, the government only received 1% royalties (Redi, 2016).

PTFI's mining exploration has generated much controversy. For example, they ignore the element of social sustainability and only prioritize making profits without considering local communities (Leith, 2002). As a result, PTFI has had little impact on the welfare of the people of Papua, still ranking as the poorest region in Indonesia (World Bank, 2005). Papua was the province in Indonesia with the highest relative poverty, with 28% of people living in poor conditions in 2016. The poverty condition of the Papuan people is exacerbated by various factors, such as the high prices of daily necessities and the lack of public health facilities, causing many unnecessary deaths (Chandler, 2018). Therefore, separatist movements originating from local communities, such as the Free Papua Movement (*Organisasi Papua Merdeka* — OPM), emerged. Due to the dissatisfaction of the local community, this separatist movement aims to gain complete political independence for Papua (Firdaus, 2017). Although never threatening provincial control, the separatist movement has come to symbolize Papuan identity and political aspirations (Chauvel, 2005). These social problems are evidence of the low direct multiplier effect on the local community welfare (Sabowo & Siswanto, 2023).

Most of the existing literature has focused on problems in law enforcement in the mining sector, especially in Indonesia. For example, OCallaghan (2010) successfully investigated the factors causing high risk in investment in the Indonesian mining sector. He explained that problems related to poor regulatory governance, corruption, and minimal

institutional capacity exacerbate mining problems in Indonesia. Junita (2015) continued explaining that inconsistent policies, weak enforcement of regulations, and implementation of new mining policies are factors causing unsafe conditions and major challenges in the mining sector. In addition, Hamidi (2015) pointed out that inconsistent regulations and corruption problems in the mining sector contributed to the decline in investor interest. From another perspective, most existing literature has also focused on the implications of mining regulatory reform on community welfare (Spiegel, 2012). Improving community welfare and decentralizing mining policies increases the regional government's influence in managing mining resources (Harun et al., 2023). As a result, the existing literature has built a limitation of science. Bridging the limitation of science, a different perspective is offered. How does government authority work for reforming the new law enforcement in the mining sector? The poor mining conditions require soft and hard approaches to encourage successful enforcement of the new law.

Considering the research problems presented, this research explores and analyses the enforcement of Indonesian government regulations in the mining sector. The Indonesian government has the rights and obligations to manage and utilize natural resources, including the mining sector, based on the principle of government authority (Bakung, 2020). Three major contributions are offered. First, this research analyzes the Indonesian government's steps in enforcing regulations in the mining sector. It allows for increased theoretical knowledge and better practice in governance reform. A case study of regulatory enforcement against PTFI refusal was selected. A micro-scale case can shed light on our understanding of how government authority works. In the end, critical factors for the success of regulatory enforcement are identified. These factors could increase the knowledge of the literature on strategic management and good mining governance. Therefore, the knowledge gaps that occur may be filled in this research.

To achieve the study aims, the paper's structure is separated into numerous sub-information, as shown below. Section 2 discusses the background of the research topic, followed by a survey of relevant literature. Section 3 examines the method that is applied to perform empirical research. Section 4 presents the research findings, offering a broader context for the findings, concepts, and relevant literature supports. The last Section 5 highlights the study's main findings and limitations.

## 2. LITERATURE REVIEW

### 2.1. Government authority

The concept of government authority emerged because of irregular natural conditions in society. To create order and justice, society agrees to form government institutions. Government institutions have the authority to regulate and protect common interests in carrying out their duties. As science develops, the concept of government authority has various definitions. The diversity is due to using different perspectives in cognitive and practical frameworks. Some literature defines government

authority from a legitimacy perspective. Tumuhulawa and Moonti (2021) highlight that government authority is the formal power of state administration institutions or officials acting in public legal reports, including several competencies. From an institutional perspective, Tonthowi (2009) explains that authority is a formalized power from legislative and government institutions to a group of people. Some literature defines government authority from a political and power perspective. León-Alberca et al. (2023) highlight that authority is citizens' right to participate in politics, balanced with the duties and demands inherent in it. It is in line with (Gavrilets & Richerson, 2022). He explained that authority refers to people who have power, influence, or order the thoughts, opinions, or behavior of others.

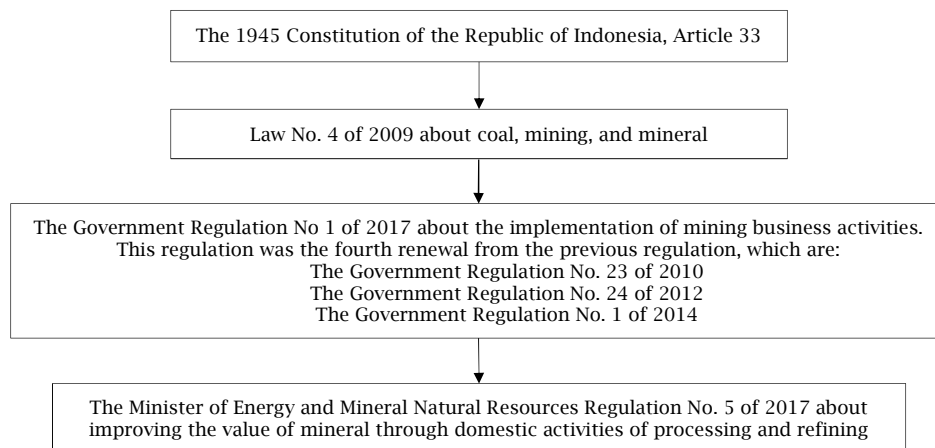
The diversity of definitions causes the concept of authority to be abstract and not easily defined because of the entanglement of the concepts of authority, power, and legitimacy (Nayak, 2011). However, the diversity of definitions can be grouped into at least three parts. Baier (1972) groups them into three main parts: understanding the concept of government authority. First, it explained that authority is defined as the power and ability to carry out the general agreement of those concerned. Then, authority is also defined as the rights and legitimacy inherent in an authority institution's actions. Finally, the definition of authority includes an ambiguous sense, having both a *de facto* and a *de jure* sense, in providing direction to the relationship between different interpretations (Baier, 1972). Alasuutari (2018) also highlights that authority is epistemic capital, grouped into four types: authority-capacity-

based, ontological, moral, and charismatic. Government authority includes the rights and powers of legislative or government institutions to regulate and control a country. In carrying out its duties, the government can use the attributes of state power and instruments to carry out actions, including policymaking, law enforcement, public financial management, and the provision of public services.

## 2.2. The origin of mining regulations in Indonesia

The 1945 Constitution of the Republic of Indonesia was reduced to Law No. 4 of 2009 concerning energy and mineral resources, which regulates mining regulations. This mining regulation revises the previous regulation, Law No. 11 of 1967, concerning basic mining provisions. The most fundamental change in the 2009 law from the 1967 law is regarding the change in mining contracts from work contracts to special mining permits (Redi, 2016). Elaborating on more technical regulations, the Indonesian government established Government Regulation No. 1 of 2017 concerning implementing mining business activities in Indonesia. This regulation regulates the actions of mining companies. In addition, the government implements regulations through the Ministry of Energy and Mineral Resources Regulation No. 5 of 2017 concerning Increasing Mineral Added Value through Domestic Processing and Refining Activities. This regulation was issued by the Ministry of Energy and Natural Mineral Resources and complements regulations from the central government.

Figure 1. The derivation and correlation of mining regulation in Indonesia



The Government Regulation No. 1 of 2017 includes several points that the government can use to increase profits. The first point is divestment or ownership of company shares in Indonesia. The divestment regulations will force FCX to sell its shares to the government until the Indonesian side owns 51% of PTFI shares, funded by the issuance of bonds (Nurmayanti, 2018). The local province will

get a 10% share. Local governments can determine company policies by owning company shares, providing more benefits to local communities. Second, PTFI's obligation to make improvements. As a result, PTFI built a smelter in Gresik, worth around US \$3 billion (Dorimulu, 2019). The establishment of this smelter can increase local economic growth.

**Table 1.** Comparison of previous and current regulations of mining operations

<i>Aspects</i>	<i>The Government Regulation No. 23 of 2010</i>	<i>The Government Regulation No. 77 of 2014</i>	<i>The Government Regulation No. 1 of 2017</i>
Shares of corporation	Article 97 (1): Min 20% divestment after five years of operation.	Article 97: 1a) Divestment starts from the fifth year of operation for the company that does not refine its material and reaches 51% divestment by the end of the tenth year (without emphasizing the possession of shares); 1b) Divestment starts from the fifth year of operation for the company which refines the material and reaches 40% by the end of the fifteenth year (without emphasizing the possession of shares).	Article 97 (1): Min 51% divestment after five years of operation, emphasizing that Indonesian parties must possess the shares by the 10 years of operation.
Material refinement	Article 112 (4c): Refinement should be done domestically for at least five years since the 2009 Law about Mineral and Coal Mining was implemented.	Article 36: The permit holder can divert the refinement for other parties.	Article 112 (C): The permit holder of mining must do refinement in Indonesia.

The government is aware that the contract of work provides benefits in favor of PTFI rather than to the Indonesian Government. President of Indonesia, Ir. Joko Widodo changed the contract of work to a special mining permit. The government has justification for implementing the special

mining permit before its validity period expires by assuming that the contract of work is based on the 1967 Law on Coal, Mining, and Minerals. These regulations were updated and replaced by the 2009 Law on Coal, Mining, and Minerals, which regulates special mining permit contracts.

**Table 2.** The difference between a contract of work and a special mining permit

<i>Aspects</i>	<i>Contract of work</i>	<i>Special mining permit</i>
The position between the state and the company	State position is equal with the company as the contract is issued by agreement of the government and company	The state position is higher than the company since the state issues the mining permit for the company
Contract duration	The contract is valid for some periods	The permit can be revoked if it harms the state
Tax payment	Tax payment is fixed for a contract period	Tax payment is changeable based on tax policy

Table 2 shows the basic differences between a contract of work and a special mining permit. Contracts of work provide little benefit to the state compared to special mining permit contracts. Apart from that, environmental damage, public objections, problems of manipulation, abuse of office, and corruption in contract-making are the basis for re-negotiation between the government and the company.

### 3. RESEARCH METHODOLOGY

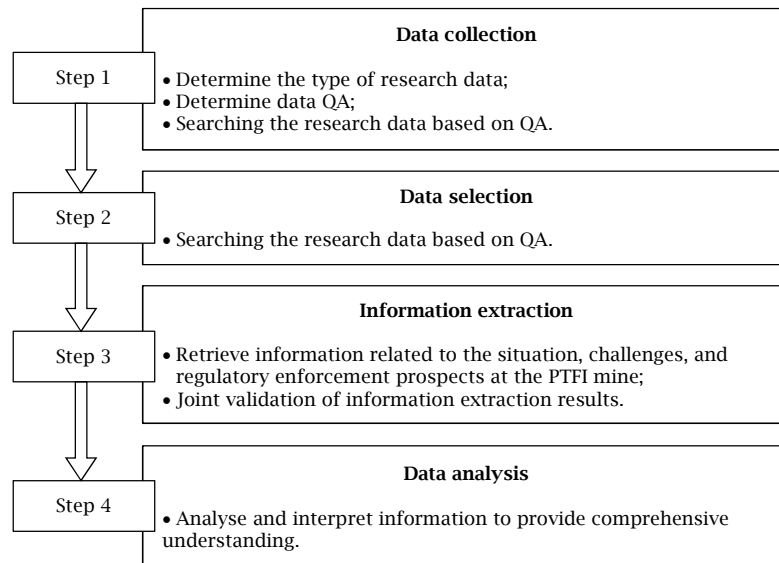
This research uses a qualitative approach and case study method. The selection of a qualitative approach is based on its superiority in strengthening research results and the suitability of qualitative data types to explain social phenomena. The case study method was chosen to explain the Indonesian Government's efforts to enforce regulations in the mining sector. Apart from these, the case study method helps the authors achieve the research objective, using government authority to optimize PTFI mining exploration's benefits. To increase

the accuracy of research data, literature study techniques were chosen. The selected literature includes articles, newspapers, books, and official government documents. Literature must meet quality assessment (QA) to be considered as research data. QA determined as follows:

- *QA1*: Literature discusses Indonesian government policies in the mining sector.
- *QA2*: The literature discusses case studies of PTFI's rejection of Indonesian government policies.

As a result, secondary data mining provided comprehensive study results regarding enforcing government regulations that faced resistance in the PTFI case study. We designed the stages of literature selection rigorously and systematically. Figure 2 shows the steps for extracting research data. First, we carried out the process of collecting literature. Then, the literature will be selected by following the established quality assessment guidelines. Information extraction is carried out in compiling secondary data. At the end of the step, analyze the data.

Figure 2. Data selection flow



A qualitative approach is carried out using categorical data from selected literature studies to analyze examples of social cases. Researchers extracted information such as information related to the situation, the challenges faced by the Indonesian Government in enforcing regulations, and the prospects for enforcing regulations at the PTFI mine. Researchers develop a framework and guidance in the data extraction process to improve data triangulation. In addition, researchers work independently to extract meaningful information. Then, researchers work together to discuss the results of the information extraction. In the joint meeting, researchers examined and analyzed the extracted information to identify the situation, challenges, and prospects for regulatory enforcement against PTFI. This step also aims to collect comprehensive information as research findings regarding the enforcement of Indonesian government regulations in the mining sector, especially the case at the PTFI mine. Finally, the findings are analyzed and interpreted in the final step to provide a comprehensive understanding of the success of regulatory enforcement of PTFI. Therefore, the stages are arranged systematically and structured as guidance to ensure that the results are reliable and consistent.

#### 4. RESEARCH RESULTS AND DISCUSSION

Implementing the new mining regulations faces significant problems. The implementation of Government Regulation No.1 of 2017 concerning divestment and smelter construction, the mining companies can only export concentrate after changing their contract of work to a special mining permit. A comparison of the substance between government regulations is shown in Figure 1. Figure 1 shows that the divestment and refinement provisions in Government Regulations No. 1 of 2017 have been previously regulated in the 2010 and 2014 government regulations. However, PTFI needs to implement these regulations, and the Indonesian Government's share ownership is less than 10% (Pratama & Jatmiko, 2018). The non-compliance is a deviation from applicable regulations (Hommels

et al., 2014). Meanwhile, PTFI's negative response can be categorized as "well-informed ill-intentioned", the government has fully informed the company about the 2010 and 2014 government regulations but is still experiencing difficulties in dealing with the company by avoiding the intent of the law. Using authority and legitimacy to manage and regulate natural resources is a legal and formal step to enforce the new regulation. The Government Regulation No. 1 of 2017 is a public policy product. Public policies are developed and implemented within autonomous legal entities that utilize knowledge and interests grouped around representative bodies (Piggott, 2012). This section is divided into three important points to explain government efforts for mining regulatory governance.

##### 4.1. Establishing compliance with applicable regulations: Implementing export ban policy

The Government is aware that the persuasion applied in enforcing the 2010 and 2014 government regulations cannot result in voluntary compliance. Company non-compliance is categorized as "bad behavior". Non-compliance is normal behavior because it combines business opportunities and risks, which may involve losses and provide regulatory sanctions (Baldwin, 2004; Laufer, 1999). To respond to this condition, the Indonesian government tightened law enforcement, provided solutions, and took reasonable steps to prevent the same violations from recurring. Actions of persuasion, including threats of formal action, are a strict approach to creating company compliance with regulations. The Ministry of Energy and Mineral Resources Regulation No.5 of 2017 concerning Increasing Mineral Added Value through Domestic Processing and Refining Activities, Article 17 has pointed out that mining companies holding Contracts of Work can export concentrate for five years after changing the mining contract to a special mining permit. To strengthen this rigid approach, the Government imposed a ban on export permits. The policy prohibiting export permits is a punishment for PTFI non-compliance (Asmarini & Taylor, 2017; Silviana & Taylor, 2016).

The government's decision to implement a penalty policy is a breakthrough in regulatory enforcement. In the organizational setting, penalty policies are defined as company intervention towards employees aimed at complying with norms (Saravakos & Sirakoulis, 2014). In this case, implementing a penalty policy is the government's way of forcing companies to comply with new government regulations. As highlighted by Suprun et al. (2021), penalty policy has many functions including reducing losses through risk model assessment and increasing potential benefits. On the other hand, applying penalties can reduce the adverse risk of creating social inequality towards other companies and weaken the effectiveness of regulations (Passini & Morselli, 2009; Veljanovski, 2010). Merely using regulations is ineffective in changing the behavior of ill-named and well-informed companies. For example, the government continues to allow PTFI to act as a lawbreaker without punishment. It can undermine trust and respect for the system and hinder regulatory performance due to a lack of enforcement (Gunningham, 2010).

Enforcing the penalty function, the policy of prohibiting export permits is a form of using the authority of the Indonesian Government. Banning exports — raw mineral ore exports, except coal, copper, iron ore, lead, and zinc — is a strategic step in increasing state profits in the mining sector (Tui & Adachi, 2021). On the other hand, as highlighted by Schulz (2020), implementing the export bans policy on unprocessed and semi-processed commodities in developing countries aims to maintain the supply of domestic raw materials and reduce the increase in domestic raw materials as the ultimate goal. The policy of prohibiting export permits, which is based on strict regulations, is an application of institutional authority. As highlighted by Gwardzińska and Chackiewicz (2023), authorized officials can cancel, suspend, or revoke export permits that have been granted. In this particular setting, the export ban policy aims to create compliance with applicable laws. The Indonesian Government makes decisions and uses state instruments such as the constitution and laws to carry out its authoritative functions. Therefore, the implementation of export bans is within the formal authority of the Indonesian Government.

The government's decision to apply punitive sanctions to PTFI is a legal action, a form of government authority in managing and regulating natural resources. The application of legal sanctions is a government decision based on the function of law as a basic procedure for documents and actions of public institutions in decision-making. Kelman and Hamilton (1989) highlighted that government authority is a manifestation of the use of power in forming specific and legitimate influences. Legitimate influence has a different impact on each stakeholder, and authorities expect everyone to comply with the rules and demands of the authority (Kim & Mauborgne, 2002). They are more willing to comply if they see the request's legitimacy. It encouraged the political regime and the leadership of the President of the Republic of Indonesia, Ir. Joko Widodo has a strict policy that is different from the previous government. PTFI cannot get special privileges and has no choice but to accept the new regulations.

The government implements responsive regulations, an authoritarian paradigm that focuses on enforcing rules, and a prevention-based compliance model (Leviner, 2008). Responsive regulation has the idea of escalation from a less intrusive regulatory response to a more intensive regulatory response if non-compliance is discovered. This responsive regulation responds to PTFI's non-compliance with regulations. Thus, the government as a regulator needs a combination of soft and hard approaches to resolve this company's non-compliance. The combination of punishment and persuasion can lead to deterrence and compliance as a law enforcement response, as the Indonesian Government has done. The results of the literature review show that the implementation of sanctions prohibiting export permits can have a significant effect, reducing company profits. For example, Grasberg's output was reduced by 70 million pounds of copper (Taj & Iturriet, 2017). The decline in FCX share prices was 5.8% to US \$16.04 in January 2017 due to the fall in mining production in Grasberg (Malik, 2017). The decline continued until February 2017, when Papua's exports fell drastically by 96.25% due to the cessation of copper ore exports from PTFI (Jati, 2017). This ban on export permits impacts local governments and the community, employee layoffs are 40% to reduce PTFI production costs (Mordant, 2017).

The application of punitive sanctions aims to review the status of compliance with applicable laws (Thornton et al., 2005). Punitive sanctions in response to corporate non-compliance. Laws reflect and target law enforcement as appropriate outcomes to produce. Flexibility comes from the government's authority to create or revise laws based on government requests or political situations. Applying legal sanctions for refusing to implement new laws creates a deterrent effect because penalties against companies can affect future compliance (Simpson, 2002). Punitive sanctions show the government's seriousness in exercising government authority in the mining sector. Therefore, the speed of law enforcement is an essential factor. Taking advantage of opportunities reduces harm and can lead to improvement in reactive strategies.

#### **4.2. Government efforts against corporate resistance: Persuasion and bureaucracy discretion**

The government is collaborating on a complex and non-linear approach. This approach brings together various strategic steps to overcome problems and explore effective implementation (Freiberg, 2010). Using authority and power provides benefits in controlling business enterprises, such as creating the availability of choices in compliance with the law through education, advice, persuasion, and negotiation (Baldwin et al., 2011). These regulatory interventions are necessary to strengthen each other's tools and minimize the possibility of failure. As a regulator, the government can strategically use available formal and informal tools (Veljanovski, 2010). As the highlight by Baldwin et al. (2011) emphasize the method can be complemented by developing appropriate rules and tools to generate compliance. In creating successful regulatory enforcement, the synergy between punishment and persuasion can be achieved by proposing punishment and involvement in the resolution process.

Implementing this approach strengthens the government's legitimacy in enforcing mining regulations. These strategies resulted in a significant reduction in PTFI income. PTFI, bound by a contract of work contract, needs help exporting concentrate. This condition forces PTFI to change the mining contract to a special mining permit. As a result, this company applied for a temporary special mining permit. The government granted the request because companies have a role in increasing capital and economic scale in Papua. Government decisions are based on legitimate authority, permitting or prohibiting specific actions to guide agents and officials (Baldwin et al., 2011). In a situation like this, the Indonesian Government is in the position of an institution that has formal authority, power, and authority. The authority, power, and authority can be applied, to decide on claims of unlawful acts and provide punishment. Therefore, the government's positioning as an authoritative legislative body and the legitimacy of government authority are becoming stronger.

Discretion is government action in resolving problems where regulations are optional, non-regulating, incomplete, and unclear (Ishak, 2019). In this condition, government authorities encourage the government to decide on policies, but there needs to be written regulations to resolve the problems faced. As highlighted by Bushway and Forst (2013), the government has the authority to make rules and policies to limit weak policies and aims to resolve problems resulting from tensions between government regulations. It was also highlighted by Rivera and Knox (2023) that public administrators have one of the main authorities; it is called bureaucratic discretion. Bureaucratic discretion produces two contradictory benefits: increasing social justice and creating administrative legitimacy dilemmas (Rivera & Knox, 2023). However, bureaucratic discretion is legally valid (Pottie & Sossin, 2005). Wisdom is complex, and making the right decisions requires deliberation. Meanwhile, a little wisdom results in legalistic behavior, but too much wisdom gives rise to abuse of power, corruption, and discrimination.

The temporary special mining permit results from negotiations to accommodate exports as a short-term agreement, investment stability, continuity of operations, divestment, and long-term smelter construction (Cahyani, 2017). Special temporary mining permits result from negotiations between the government and the company. As highlighted by (Southalan et al., 2015), contractual agreements between the government and companies that have obtained legislative approval and mining regulations strengthen the government's position in regulating large mining projects. In addition, actors consciously change and adopt some elements of norms that provide room for negotiation to create more flexible conditions (Singh & Camba, 2020).

Business companies must complete the provisions in this regulation by issuing a temporary export permit process. This step is an alternative to minimize resistance and produce compliance. Persuasive strategies in the negotiation process are relationships, bargaining, and strategic behavior (Veljanovski, 2010), pushing PTFI into a dilemma. On the one hand, the Indonesian government as a law enforcement agency demands certainty and consistency in interpreting regulations from time to

time and the expected behavior of those regulated (Black, 1998). On the other hand, companies need regulatory clarity to support the continuity of their business, which leads to bargaining between companies and the government due to the absence of flexible regulations (Hommels et al., 2014). The method is a stakeholder dialogue involving consultation for both parties' good and a commitment between the company and the government to improve understanding (Unerman & Bennett, 2004).

To pursue corporate compliance, governments use proactive approaches, including providing potential benefits to offset costs (Baldwin, 2004). Baldwin (2004) emphasized that the proactive approach is realized by giving rewards and incentives in new regulatory and compliance approaches. PTFI's contract will end in 2021, so the government is offering a contract extension as an incentive if the company agrees to the new rules. PTFI must agree to the new regulations to continue operating for 20 years, from 2021 to 2041. These efforts are a strategy to implement the Indonesian Government's proactive approach to prevent future legal violations. Therefore, a proactive approach is integral to effective mining regulatory governance reform. Adopting a proactive approach offers many benefits, such as preventing legal violations, reducing the burden on law enforcement, and improving overall compliance. It is an efficient and cost-conscious use of resources. It can be justified as economically rational rather than offering these mining rights to other companies that would need to invest in the first place.

The literature review results show that PTFI accepted regulations and signed a Head of Agreement (HoA) with the government in July 2018 (Putera & Jatmiko, 2018). HoA is a transaction framework that regulates the agreement to sell PTFI shares to Inalum. This HoA states the next divestment steps: payment transactions, consequences of late payments, and other payment schemes (Guitarra, 2018). PTFI agreed to the regulation and completed the divestment transaction, which granted the company an extension of its mining rights until 2041. The total divestment price for Indonesia to obtain 51% of PTFI shares was US \$4 billion, consisting of US \$3.85 for purchasing PTFI shares and US \$150 million for refinancing (Nurmayanti, 2018). The purchase value was below the company's initial offer, US \$12.15 billion, and Morgan Stanley's valuation of US \$4.67 (Bochove et al., 2018). This potential income has increased significantly compared to Indonesia's income from PTFI during 1991–2000, which was only around US \$180 million per year (Tebay, 2005).

#### **4.3. Critical success factor for enforcement the government regulation**

The ministry issued the Minister of Energy and Mineral Natural Resources Regulation No. 5 of 2017 about improving the value of minerals through domestic activities of processing and refining, which regulates and manages natural resources in Indonesia. This regulation applies to mining companies, with the aim of all mining companies carrying out divestment activities and building smelters. This regulation is a form of reform of mining regulations. The regulatory mechanism and

substance of the rules are precise and do not cause ambiguity. Implementing new regulations allows the government majority to control natural resources through divestment and forces mining companies to change their work contracts to special mining permits to increase benefits for the government. Rejection of the implementation of new regulations is a very complex problem. PTFI's rejection of new regulations must be addressed in policy implementation. It is not only a matter of executing regulations for the government but also the outcome of conflict resolution and negotiation processes when business companies defend their interests.

The complicated situation leads to unpredictable policy execution outcomes (Eliadis et al., 2005). The unpredictable outcome was a long, challenging enforcement process that took over a year. Delegation of government authority to ministers in the negotiation process with PTFI was carried out. Delegate authority based on respective duties and functions. For example, the provisions or agreements in this contract cannot be changed through Indonesian law but must be regulated jointly by agreement between the government and the company. This unique treatment aims to provide legal certainty, considering that mining is a high-risk investment requiring a long time before it can start operating. This contract also stipulates that operations management rests with the contractor. Therefore, the contractor has the right and privilege to preempt the company's interests to gain more benefits. The government's success in enforcing regulations against Cotheny non-compliance. As highlighted by Sabatier and Mazmanian (1979), the theory of five conditions for effective implementation includes:

- a) the program is based on altering target behavior to reach the intended outcome;
- b) the legislation provides a clear direction for maximizing targets that will act on the regulator's goals;
- c) leaders possess management and political abilities and are dedicated to lawful goals;
- d) constituents and politicians support this program;
- e) public conflict or socioeconomic conditions do not negatively impact the law's purpose.

The success of regulatory implementation is the appropriate use of strategic steps, which combine persuasion and punishment, providing a deterrent effect for corporations (Baldwin et al., 2011). As highlighted by Scholz (1997), compliance with the law depends on increasing the pain associated with getting caught and stopping the profits from breaking the law. The export ban policy is a legal sanction for PTFI. Regulatory regularity is an integral part of regulatory enforcement. The application of punitive sanctions, accompanied by facilities and persuasion, is a form of formal government authority that regulates and enforces mining regulations, which causes resistance. Designed social improvements and maintenance are peaceful ways of improving a bad situation. In achieving compliance, the relationship between government and companies can be more distant, confrontational, and less conducive (Baldwin, 2004). The government can apply punishment and persuasion because the government and the company have ongoing interactions that influence the company.

## 5. CONCLUSION

This research explores and analyses the steps of the Indonesian government under the leadership of the President of the Republic of Indonesia, Ir. Joko Widodo in increasing the optimization of mining results. Enforcing the new regulations is the Indonesian Government's way of reforming mining regulatory governance. The Indonesian government issued Government Regulation No.1 of 2017 regarding divestment and smelter construction, stating that mining companies can only export concentrate after changing the contract of work to a special mining permit. Both soft and hard approaches were applied to enforce the new regulations. The results show that the Indonesian government implements an export tire policy as a sanction for non-compliance with regulations and persuasive steps, negotiations, and government discretion in fostering compliance by mining companies. These government actions are a form of use of government authority in regulating and managing mining companies that exploit natural resources in Indonesia.

Although this research offers three important contributions to bridging knowledge, the research limitations have risen. In the beginning, this research uses secondary data, which may impact the research findings and analysis limitations. Future research is expected to combine primary and secondary data to expand findings and discussions. These suggestions help future research provide new insight into the same topic. Then, taking a micro-case study, especially PTFI rejection of new regulations, might give rise to research gaps. Future research can use other social cases. Identifying weaknesses in practice is a way of enriching knowledge.

We offer several policy recommendations to optimize the enforcement of mining regulations in Indonesia. We highlight the weak function of legal supervision in Indonesia in the case of PTFI rejection. The Indonesian government can strengthen the function of supervisory and law enforcement institutions in several ways. For example, ministerial institutions related to the mining sector, the Ministry of Energy and Mineral Resources, and the Ministry of Environment and Forestry should be encouraged. These ministries are official bodies with the main task of ensuring mining companies comply with existing regulations. Strengthening cooperation between actors can be one solution to improving the function of supervision and law enforcement. Collaboration between the government, mining companies, local communities, and non-governmental organizations can also improve sustainable mining management. Increasing the role of regional governments is needed to participate in monitoring law enforcement. It is also a way to strengthen the implementation of the principle of decentralization, delegating a number of powers from the central government to regional and municipal bodies. On the other hand, tightening transparency mechanisms for mine management is necessary. The obligation of mining companies to publish documents containing the handling of environmental damage, finances, and social obligations of mining companies can improve the function of supervision and law enforcement.



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