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Legal Certainty for Foreign Investment Following the Revision of the 2026 RKAB Policy: A Case Study of Chinese Corporate Investment in Indonesia's Nickel Downstream Industry

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Abstract

This research analyzes the legal implications of the 2026 Work Plan and Budget (RKAB) policy change on legal certainty for foreign investment, focusing on Chinese investment in Indonesia's nickel downstream sector. Minister of Energy and Mineral Resources Regulation Number 17 of 2025 fundamentally changes the RKAB system from a three-year to an annual plan while imposing a 30% nickel production cut to stabilize global prices and preserve national reserves. Using normative legal research with statutory and conceptual approaches, this study examines Law Number 25 of 2007 on Investment, Law Number 3 of 2020 on Mineral and Coal Mining, and relevant implementing regulations. The findings reveal that the annual RKAB approval system and production restrictions disrupt long-term investment planning, threaten mining service contracts, and create significant raw material deficits for domestic smelters, potentially violating the principles of legal certainty, business security, and equal treatment guaranteed under Indonesian investment law. From an international law perspective, these substantial regulatory changes raise concerns regarding indirect expropriation and compliance with fair and equitable treatment standards under the Indonesia–China Bilateral Investment Treaty. The study concludes that while the government's objectives price stabilization, reserve sustainability, and resource sovereignty are legitimate, the sudden implementation without adequate transition mechanisms creates normative tension between sectoral regulatory goals and foreign investment protection. Stronger regulatory coordination, transparent and participatory policymaking, transitional arrangements with reasonable grace periods, and appropriate compensation mechanisms are therefore necessary to maintain investment certainty while safeguarding Indonesia's national interests in its strategic nickel downstream industry.

INTRODUCTION

Indonesia holds a strategic position in the global nickel industry as the owner of the world's largest nickel reserves, estimated to reach 5.3 billion tons by 2023 and contributing more than 50% of the world's nickel supply (Cerri et al., 2025; Pribadi, 2024). This wealth of natural resources positions Indonesia as a key player in the global supply chain, especially amidst the increasing demand for nickel for electric vehicle batteries and stainless steel. The Secretary General of the Indonesian Nickel Miners Association (APNI), Meidy Katrin Lengkey, emphasized that Indonesia is extremely rich in nickel resources, especially in Eastern Indonesia, such as North Maluku, which contributes 35% of national reserves. In terms of content, production, and ease of mining, Indonesia is far superior to other nickel-producing countries such as the Philippines and New Caledonia. The Indonesian government has long recognized that its control of the world's largest nickel reserves must be balanced with policies that ensure maximum added value for the national economy (Musafa & Muhtada, 2026; Pambudi, 2025; Setiani et al., 2024; Tilley, 2026). This has driven the implementation of a downstreaming policy through Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. This policy mandates domestic processing and refining of nickel ore, beginning with a complete ban on nickel ore exports starting in 2020. Since the policy's enactment, nickel's popularity has continued to rise, and investment in nickel processing and refining facilities (smelters) has emerged, including rotary kiln electric furnace (RKEF) smelters for producing stainless steel raw materials and high-pressure acid leaching (HPAL) smelters producing raw materials for electric vehicle batteries. In practice, almost all smelter investment comes from China a country with mastery of metal processing technology and a dominant export market. Giant Chinese companies such as Tsingshan Group, Huayou Cobalt, and CATL have invested billions of dollars in smelter development and downstream industrial ecosystems in Indonesia (Foss & Koelsch, 2022; Nugraha et al., 2025; Setiawan & Liu, 2025; Tritto, 2022). The Director of Downstreaming at the Ministry of Investment/BKPM acknowledged that Indonesia's dependence on China for investment, processing technology, and export markets is very high. In fact, Indonesia supplies more than 90% of China's nickel needs, creating a complex interdependent relationship in which Indonesia requires Chinese investment and technology, while China requires Indonesian nickel supplies for its stainless steel and electric vehicle battery industries. Prior to 2026, the mining Work Plan and Budget (RKAB) system implemented a three-year period based on Minister of Energy and Mineral Resources Regulation No. 10 of 2023, which provided certainty for medium-term planning for investors, including Chinese companies that had invested significantly in smelters and supporting infrastructure. This three-year system enabled companies to develop long-term investment plans, sign sales contracts with downstream buyers, and obtain financing from banks and financial institutions with clear revenue projections. This certainty serves as a crucial foundation for capital-intensive investments like smelters, which require years of construction and have long-term payback periods.

However, this policy changed drastically with the issuance of Minister of Energy and Mineral Resources Regulation Number 17 of 2025 concerning Procedures for the Preparation, Submission, and Approval of the Work Plan and Budget (RKAB) and Procedures for Reporting on the Implementation of Mineral and Coal Mining Business Activities. This regulation, signed by Minister of Energy and Mineral Resources Bahlil Lahadalia on September 30, 2025, fundamentally changed the RKAB approval system from a three-year period back to an annual period, as stipulated in Article 35 letters c and d which require adjustments to the previously approved RKAB for 2026 and 2027. This change also revokes Minister of Energy and Mineral Resources Regulation Number 10 of 2023 and its amendments which previously regulated the three-year system (Hadebe, 2026; Masetti et al., 2025; Poncian, 2023; Wright, 2023). More crucially, the government has set a nickel production limit of 2.6–2.7 billion tons for 2026, representing a decrease of approximately 30%, or 1.1 billion tons, from the 2025 target of 3.79 billion tons. Data from the Ministry of Energy and Mineral Resources shows that the approved quota for 2025 was actually 3.79 billion tons, but actual production was only around 2.95 billion tons. In other words, this new policy not only cuts the approved quota but also significantly reduces actual production. This reduction is the largest in the last decade and has created a tremendous ripple effect across the upstream and downstream sectors. Some mining areas have experienced even more drastic cuts, for example, the Weda Bay (WBN) mining area managed by a Chinese company saw its quota cut from 42 million tons to just 12 million tons, a 71% reduction. Meanwhile, PT Vale Indonesia only obtained around 30% of its proposed volume and temporarily suspended mining operations due to the lack of approval for the Company's Work Plan and Budget (RKAB).

The government based this policy on three main interrelated considerations. First, from a macroeconomic and fiscal perspective, this policy aims to stabilize global nickel prices, which have been under pressure due to oversupply (Balouz, 2026; Ehrlich, 2018; Garnaut, 2015; Panourgias & Jiang, 2026; Soamole & Mokodompit, 2025). Data shows that the LME nickel price fell 46% from USD 48,226 per ton in March 2022 to below USD 14,800 per ton in early 2025. The government aims to reduce the global surplus from 261,000 tons to 89,000 tons, and by January 2026, the price had climbed to USD 18,200 per ton. Furthermore, state revenue optimization is being carried out through a floating royalty scheme of 14-19% linked to the LME price and reforming the Mineral Benchmark Price (HPM) formula to include cobalt values. Second, from a resource sustainability perspective, this policy is driven by concerns about the availability of national nickel reserves, currently estimated at 5.9 billion tons, which at current production rates are predicted to last only five to seven years. Even more worrying, the average nickel ore grade has dropped from 2.0% in 2006 to 1.6% in 2026, and high-grade ore reserves are estimated to last only 9 to 13 years. Controlling production rates is essential for more measurable and sustainable natural resource management. Third, from a strategic and resource sovereignty perspective, this policy is a manifestation of resource nationalism, a paradigm shift from "sell mining" to "control the chain." The government aims to strengthen Indonesia's bargaining position on the global stage, arguing that "if we have limited but controlled supplies, we have bargaining power." Through this policy, Indonesia aims to establish a kind of "nickel cartel" capable of influencing global prices, similar to OPEC in the world oil market, while ensuring that the nickel mined truly provides maximum benefits for the national interest.

Circular Letter of the Director General of Mineral and Coal Number 2.E/HK.03/DJB/2025 concerning the Implementation of the 2026 Work Plan and Budget issued on December 31, 2025 regulates a transition period by providing leniency for companies that have not yet received approval for adjustments to the 2026 RKAB. The circular stipulates that companies can carry out mining activities at a maximum of 25% of the 2026 production plan that has been approved in a three-year scheme, with a deadline of March 31, 2026. However, this transition policy does not automatically apply to all companies because it is accompanied by a number of strict requirements, namely: the company has obtained approval for the 2026 RKAB in a three-year scheme, has submitted an application for adjustment to the 2026 RKAB through the information system, has placed a reclamation guarantee for the 2025 production operation phase, and has a Forest Area Use Approval (PPKH) for mining areas located in forest areas. The policy's real-world impact is deeply felt by Chinese investors and businesses. Sari Esayanti (2024), Executive Director of the Indonesian Mining Association (API-IMA), explained that this significant quota reduction will impact companies' long-term planning, including investment decisions, operational management, and sales contract commitments that have been formulated taking into account global market dynamics. The social and economic impacts, such as employment and regional revenues, also require serious attention. Approximately 58% of mining activities are carried out by mining service contractors, who are now threatened with contract termination and mass layoffs in mining areas. The smelter raw material supply deficit has reached approximately 1 billion tons, with domestic smelter demand reaching 3.4–3.5 billion tons per year compared to a production quota of only 2.6 billion tons. This deficit will disrupt the operations of smelters built with billions of dollars of investment, including those owned by Chinese companies. If the smelter runs out of raw materials, the large investments made may not yield the expected returns, and supply contracts with downstream buyers could potentially become legal disputes.

From a legal perspective, this policy raises serious questions regarding the legal certainty of foreign investment in Indonesia. Law Number 25 of 2007 concerning Investment (UUPM) expressly guarantees the principle of legal certainty as the primary principle in the implementation of investment, as stipulated in Article 3 paragraph (1) which states that investment is carried out based on the principles of legal certainty, openness, accountability, equal treatment and without distinction of country of origin, togetherness, efficiency with justice, sustainability, environmental awareness, independence, and balance of progress and national economic unity. The placement of the principle of legal certainty as the primary principle reflects that this principle is the source of values that determine the regulation of foreign investment and the implementation of these regulations must be able to realize legal certainty in real terms. Furthermore, Article 4 paragraph (2) of the UUPM requires the government to provide equal treatment for domestic and foreign investors while still paying attention to national interests, and guaranteeing legal certainty, business certainty, and business security for investors from the licensing process until the end of investment activities. The most fundamental provision in the UUPM, which serves as the main instrument of legal certainty for foreign investors, is regulated in Article 5 paragraph (2), which requires that foreign investment must be in the form of a limited liability company based on Indonesian law and domiciled within the territory of the Republic of Indonesia. The explanation of the UUPM explicitly states that this obligation is one of the government's efforts to provide legal certainty in the implementation of foreign investment. The form of a Limited Liability Company contains substantial legal certainty mechanisms, including articles of association approved by the Ministry of Law and Human Rights, capital allocation in the form of shares that determine voting rights and dividends, limited liability that separates the company's assets from the personal assets of shareholders, and company organs that carry out business activities in a structured and accountable manner. In addition, Article 6 paragraph (1) of the UUPM emphasizes that the government provides equal treatment to all investors who carry out investment activities in Indonesia, namely without regard to country of origin. This principle of non-discrimination is an important foundation in building foreign investor confidence in the investment climate in Indonesia. Meanwhile, Article 7 paragraph (1) of the UUPM states that the government will not take action to nationalize or take over ownership rights of investors, except based on law. If such an expropriation occurs, the government is obligated to provide fair compensation, the value of which is determined based on the market price at the time of the expropriation. This provision is reinforced by Article 7 paragraph (3) of the UUPM, which stipulates that if no agreement is reached between the government and investors regarding the amount of compensation or damages, dispute resolution shall be carried out through an arbitration mechanism, either nationally or internationally.

Furthermore, sudden changes without an adequate transition period and without clear quota determination criteria have the potential to violate the Indonesia-China Bilateral Investment Treaty (BIT), especially the principle of fair and equitable treatment that protects legitimate investor expectations and the prohibition of indirect expropriation. In international investment law, state actions that significantly reduce the value of foreign investment can be categorized as actions equivalent to nationalization (indirect expropriation or creeping expropriation). Although the government has sovereign rights to regulate its natural resources based on the principle of Permanent Sovereignty over Natural Resources, this authority must be implemented proportionally, transparently, non-discriminatory, and accompanied by adequate transition and compensation mechanisms. Indonesia's experience in the WTO dispute with the European Union regarding the ban on nickel ore exports (DS592) shows that Indonesia's natural resource policies often face challenges in international forums, and a valuable lesson to be learned is that arguments for legitimate public policy objectives such as natural resource protection and downstream industrial development must be supported by strong evidence and consistent, non-discriminatory implementation. Therefore, this research is very important to legally examine how the 2026 RKAB policy is regulated and its basis for consideration, analyze the guarantee of legal certainty in the UUPM, and evaluate the implications of this policy on the sustainability of Chinese companies' investments in the nickel downstream sector in terms of investment protection principles in national and international law.

Accordingly, this study aims to analyze the regulatory framework of the 2026 RKAB policy and the government's considerations in imposing nickel production restrictions, examine the regulation of legal certainty for foreign investment under Law Number 25 of 2007 concerning Investment and related policies in Indonesia, and evaluate the implications of the 2026 RKAB policy on legal certainty and the sustainability of Chinese companies' investments in the nickel downstream sector from the perspective of investment protection principles in both national and international law. This research is expected to provide both theoretical and practical contributions; theoretically, it enriches the literature on investment law and natural resource governance by providing a comprehensive legal analysis of how sectoral regulatory changes affect foreign investment legal certainty in Indonesia's strategic nickel downstream industry, extending the application of legal certainty theory and investment protection theory to the specific context of post-pandemic resource nationalism policy, while also contributing to the literature on bilateral investment treaties by examining the compatibility of Indonesia's regulatory changes with its obligations under the Indonesia-China BIT. Practically, the findings are expected to serve as evaluation material for the government in formulating mining sector policies that balance national interests with foreign investment protection, ensuring regulatory consistency and adequate transition mechanisms, while for foreign investors, particularly Chinese companies, the results provide a clearer understanding of legal risks associated with sectoral policy changes and the protection available under national and international law, and for policymakers, this research offers recommendations for strengthening regulatory coordination, transparent and participatory policymaking, transitional arrangements, and appropriate compensation mechanisms, ultimately contributing to the broader discourse on resource nationalism and foreign investment protection to support the development of more balanced and sustainable investment policies in Indonesia's natural resource sector.

METHOD

This research used a normative legal approach by reviewing relevant laws and regulations, including Law Number 25 of 2007 concerning Investment, Law Number 3 of 2020 concerning Mineral and Coal Mining, Regulation of the Minister of Energy and Mineral Resources Number 17 of 2025, and Circular Letter of the Director General of Mineral and Coal Number 2.E/HK.03/DJB/2025. With this approach, the research is expected to contribute to the development of investment law in Indonesia and provide input for the government in formulating policies that continue to guarantee legal certainty through an inclusive process involving input from industry players, clear determination criteria, and adequate transition mechanisms without neglecting national interests. As emphasized by the Indonesian Mining Association, production restrictions need to be implemented through an inclusive process involving input from industry players, especially companies directly affected. Clear determination criteria are needed and socialization to business players so that the RKAB evaluation process can be understood. A balance is needed between the state's right to manage natural resources and the obligation to provide legal protection for foreign investors who have contributed to the development of the nickel downstream industry in Indonesia, in order to create a conducive and sustainable investment climate without sacrificing long-term national interests.

RESULTS AND DISCUSSION

Policy arrangements for the 2026 Work Plan and Budget (RKAB) and the basis for consideration of nickel production restrictions in the 2026 (RKAB) policy.

Discussions regarding the 2026 Work Plan and Budget (RKAB) policy and the basis for considering nickel production restrictions within it must begin with an understanding of the primary legal basis that underpins this fundamental change. The government, through the Ministry of Energy and Mineral Resources (ESDM), issued ESDM Ministerial Regulation Number 17 of 2025 concerning Procedures for the Preparation, Submission, and Approval of RKAB and Procedures for Reporting on the Implementation of Mineral and Coal Mining Business Activities, which was signed by ESDM Minister Bahlil Lahadalia on September 30, 2025, and promulgated on October 3, 2025. This regulation expressly changes the RKAB approval system from a three-year period back to an annual period, as stipulated in Article 35 letters c and d, which require adjustments to the RKAB for 2026 and 2027 that were approved before this regulation came into effect to be readjusted and submitted through the RKAB information system. This change also revokes ESDM Ministerial Regulation Number 10 of 2023 and its amendments, which previously regulated the three-year system. As a follow-up to the policy change, the government issued Circular Letter of the Director General of Mineral and Coal Number 2.E/HK.03/DJB/2025 concerning the Implementation of the 2026 Work Plan and Budget which was stipulated in Jakarta on December 31, 2025 and signed by the Director General of Mineral and Coal Tri Winarno. This circular letter serves as an important guideline for all holders of Mining Business Permits (IUP), IUPK, Contracts of Work (KK), and PKP2B that have entered the production operation stage to continue to carry out business activities legally and measurably during the policy transition period. The circular stipulates transitional provisions that provide leniency for companies that have not yet received approval for adjustments to the 2026 RKAB, where they are still allowed to carry out mining activities at a maximum of 25% of the 2026 production plan that has been approved in a three-year scheme, with a deadline until March 31, 2026. However, this transition policy does not automatically apply to all companies because it is accompanied by a number of strict requirements, namely the company has obtained approval for the 2026 RKAB in a three-year scheme, has submitted a request for adjustment to the 2026 RKAB through the information system, has placed a reclamation guarantee for the 2025 production operation phase, and has a Forest Area Use Approval (PPKH) for mining areas located in forest areas. The mechanism and procedure for submitting RKAB in this new system has undergone significant changes with the implementation of an integrated digital system through the MinerbaOne application. The Director General of Minerals and Coal emphasized that this integration allows the entire RKAB planning, evaluation, and approval process to be carried out online, documented, and recorded in a single national database. Submission of the RKAB for the following year can only be done within a definite timeframe, namely no earlier than October 1 and no later than November 15 each year through the RKAB information system.

The evaluation process is regulated more strictly through three tiered evaluation stages with a maximum time limit of five working days for each evaluation stage and two working days for improvements by the company. As a form of service acceleration, the system is also equipped with an automatic approval mechanism where if the application is declared complete but has not received approval or rejection after eight working days, the system will automatically issue RKAB approval. The most crucial policy in the 2026 RKAB is the limitation of nickel production quota set at 2.6 to 2.7 billion tons, or a decrease of around 30% or equivalent to 1.1 billion tons from the realization in 2025 which reached 2.95 billion tons from the approved quota of 3.79 billion tons. This decrease is the largest in the last decade and creates a significant chain impact in the upstream to downstream sectors. Some mining areas even experienced more drastic cuts, for example the Weda Bay (WBN) mining area whose quota fell from 42 million tons to only 12 million tons or a reduction of 71%, while PT Vale Indonesia Tbk only obtained around 30% of the proposed volume and even temporarily stopped mining operations because the 2026 RKAB approval had not been issued. The government also provides flexibility through a mid-year RKAB revision mechanism that can be submitted around July with requirements including production realization, the latest reserve data, feasibility studies, and fulfillment of fiscal obligations, as well as an affirmative policy that gives priority to HPAL projects over RKEF and integrated mine-to-smelter companies. The government's considerations in imposing this production restriction are based on three main interrelated pillars. First, from a macroeconomic and fiscal perspective, this policy aims to stabilize global nickel prices that are experiencing pressure due to oversupply, where the LME nickel price fell 46% from USD 48,226 per ton in March 2022 to below USD 14,800 per ton in early 2025. The government targets to reduce the global surplus from 261,000 tons to 89,000 tons, which in January 2026 has resulted in a price increase to USD 18,200 per ton. In addition, optimization of state revenue is carried out through a floating royalty scheme of 14-19% linked to the LME price as well as reform of the Mineral Benchmark Price (HPM) formula by including cobalt value. Member of Commission XII of the Indonesian House of

Representatives, Yulisman, emphasized that in a situation of falling prices, the state must have instruments to ensure that production does not get out of control, and the one-year RKAB becomes a control tool so that supply is more measured so that mineral prices do not fall further. Second, from the aspect of resource sustainability, this policy is driven by concerns about the availability of national nickel reserves, which are currently estimated at 5.9 billion tons, which at the current production rate is predicted to only last for the next 5 to 7 years. Executive Director of CORE Indonesia, Mohammad Faisal, agrees that the speed of exploitation is indeed extraordinary, the issuance of massive and often overlapping permits, and the construction of massive smelters encourage miners to mine as much as possible. Even more worrying, the average nickel ore grade has dropped from 2.0% in 2006 to 1.6% in 2026, and high-grade ore reserves are estimated to last only 9 to 13 years. Controlling production rates is essential for more measurable and sustainable natural resource management. Third, from a strategic and resource sovereignty perspective, this policy is a manifestation of resource nationalism, namely a paradigm shift from "sell mining" to "control the chain."

The government wants to strengthen Indonesia's bargaining position in the global arena with the logic that "if the goods are few but controlled, we have bargaining power". Through this policy, Indonesia wants to ensure that the nickel mined truly provides maximum benefits for national interests, both in terms of added value to the downstream industry, state revenue, and mastery of processing technology, while at the same time building a kind of "nickel cartel" that is able to influence global prices like OPEC in the world oil market. How is the regulation of legal certainty for foreign investment in Law Number 25 of 2007 concerning Investment and related policies in Indonesia.

Regulation of the Principle of Legal Certainty for Foreign Investment in Law Number 25 of 2007 concerning Investment and related policies in Indonesia

The discussion regarding the regulation of legal certainty for foreign investment in Law Number 25 of 2007 concerning Investment (UUPM) must begin with the understanding that this law was born from the government's awareness of the importance of creating a globally competitive investment climate by addressing various inhibiting factors, including inefficient bureaucracy, weak inter-agency coordination, and most importantly, legal certainty in the investment sector. UUPM firmly places the **principle of legal certainty** as the main foundation for organizing investment, as regulated in Article 3 paragraph (1) which states that investment is carried out based on the principles of legal certainty, openness, accountability, equal treatment and without differentiating country of origin, togetherness, efficiency with justice, sustainability, environmental awareness, independence, and balance of progress and national economic unity. The placement of the principle of legal certainty as the first principle is not a coincidence but reflects that this principle is the source of values that determine the regulation of foreign investment and the implementation of these regulations must be able to realize legal certainty in real terms. Furthermore, Article 4 paragraph (2) of the UUPM strengthens this guarantee by requiring the government to provide equal treatment for domestic and foreign investors while still paying attention to national interests, as well as guaranteeing legal certainty, business certainty, and business security for investors from the licensing process until the end of investment activities. The most fundamental provision in the UUPM which is the main instrument of legal certainty for foreign investors is regulated in Article 5 paragraph (2) which requires that foreign investment must be in the form of a limited liability company based on Indonesian law and domiciled in Indonesian territory, unless otherwise stipulated in the law. The explanation of the UUPM explicitly states that this obligation is one of the government's efforts to provide legal certainty in the implementation of foreign investment. This obligation is not merely administrative because the form of a Limited Liability Company (PT) contains four substantial legal certainty mechanisms as regulated in Law Number 40 of 2007 concerning Limited Liability Companies. First, the Articles of Association are made in a notarial deed and must be registered and ratified by the Ministry of Law and Human Rights, where every change to the articles of association must also be notified or obtain approval from the Ministry of Law and Human Rights, so that every action and business activity of the PT must be in accordance with the PT Law and the articles of association, cannot be carried out only based on the name of an individual as in a non-legal entity business entity. Second, **allocation of capital in the form of shares** which proves the participation of foreign capital, where shares determine the size of the vote in decision-making regarding the company's actions and determine the amount of dividends and or losses that will be received from the company's business activities, in contrast to non-legal entity business entities whose ownership of the founders cannot be realized in the form of shares but only the company's assets alone. Third, **limited liability** as regulated in Article 3 paragraph (1) of Law 40/2007 which states that shareholders are not personally responsible for the actions of the PT and obligations carried out by the PT exceeding the shares owned, so that there is a separation of the personal wealth of shareholders with the PT itself, in contrast to non-legal entity business entities where the responsibility of the founders can include personal wealth. Fourth, the **corporate organs** consisting of the General Meeting of Shareholders, the Board of Commissioners, and the Board of Directors, where each organ has a clear capacity and obligation in carrying out the company's business activities as outlined in the articles of association and the PT Law. Although the UUPM has provided a comprehensive legal certainty framework, its implementation journey has not escaped the dynamics of constitutionality testing at the Constitutional Court. In the Constitutional Court Decision Number 21,22/PUU-V/2007, there are five articles that are considered potentially contrary to the constitution, but only Article 22 concerning land rights is declared unconstitutional. Article 22 of the UUPM which regulates the provision of ease of land rights at once in advance and can be extended and renewed again is declared contrary to Article 33 of the 1945 Constitution, so that after the decision, the provisions that apply to the provision of ease of land rights for investment companies are the provisions in other laws and regulations as long as they are directly related to investment, namely Law Number 5 of 1960 concerning Basic Agrarian Principles and Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Rights, and Land Use Rights. This decision shows that although the UUPM provides legal certainty, the norms therein must still be in harmony with the constitution and other laws and regulations, because the regulation of foreign investment is only a sub-system of the complexity of investment regulations in Indonesia which must be supported by certainty in other laws and regulations directly related to investment activities. Academic research shows that the implementation of the principle of legal certainty in the regulation of ideal foreign investment must meet several criteria, namely: a) the existence of synchronization of regulations both vertically and horizontally; b) regulation of norms on investment that are effective and not open to multiple interpretations; c) the regulation of norms regarding foreign investment has validity related to its applicability; d) the norms can be implemented in accordance with the needs and objectives of investment; and e) the regulations do not conflict with higher regulations. In the context of sectoral policies such as the 2026 RKAB in the mining sector, the critical question that arises is whether the policy is harmonious and synchronized with the guarantee of legal certainty mandated in the UUPM, considering that sudden policy changes without an adequate transition period have the potential to violate legitimate expectations or legitimate hopes that have been built by foreign investors based on previous planning schemes. Coordination between central and regional government agencies is needed as well as harmonization between various laws and regulations related to investment so that this law can firmly provide legal certainty, because in essence, legal certainty is an important element that influences investors' decisions to build capital in Indonesia.

Implications of the 2026 RKAB policy on legal certainty and the sustainability of Chinese companies' investments in the nickel downstream sector as reviewed from the principles of investment protection in national and international law.

Discussion on the implications of the 2026 RKAB policy on legal certainty and the sustainability of Chinese companies' investments in the nickel downstream sector must begin with an analysis of the actual impacts that have occurred on the ground, where this sudden production restriction policy has fundamentally disrupted the entire investment ecosystem that has been built over many years. Chinese companies that have made massive investments in smelter construction and supporting infrastructure, with a value reaching billions of US dollars, now face uncertainty due to production quota cuts reaching 30% nationally, with some areas such as Weda Bay (WBN) experiencing cuts of up to 71% of their previous quotas, while PT Vale Indonesia Tbk only obtained around 30% of the proposed volume and temporarily suspended mining operations. This disruption to long-term planning not only impacts the upstream side, but also creates a very significant deficit in the supply of smelter raw materials, where domestic smelter needs reach 3.4 to 3.5 billion tons per year while the production quota is only 2.6 billion tons, resulting in a deficit of around 1 billion tons that threatens the operational continuity of smelters that have been built with these giant investments. Another chain impact is the threat to around 58% of mining activities carried out by mining service contractors, which has the potential to experience termination of work contracts and lead to mass layoffs of thousands of local workers, as well as the risk of trade contract disputes because companies cannot fulfill supply commitments agreed upon in long-term contracts with domestic and foreign buyers. From a national legal perspective, the 2026 RKAB policy faces a serious constitutional test against the guarantee of legal certainty mandated in Law Number 25 of 2007 concerning Investment (UUPM). Article 3 paragraph (1) of the UUPM explicitly places the principle of legal certainty as the first of the ten principles of investment management, which means that all policies related to investment must be based on this principle. Furthermore, Article 4 paragraph (2) of the UUPM requires the government to guarantee legal certainty, business certainty, and business security for investors from the licensing process until the end of investment activities, as well as provide equal treatment for domestic and foreign investors while still paying attention to national interests. The obligation for foreign investment to be in the form of a Limited Liability Company under Indonesian law as regulated in Article 5 paragraph (2) of the UUPM is actually an instrument to provide legal certainty through the mechanism of articles of association approved by the Ministry of Law and Human Rights, allocation of capital in the form of shares that determine voting rights and dividends, limited liability that separates the company's assets from the personal assets of shareholders, and company organs that carry out business activities in a structured and accountable manner. However, this sudden policy change without an adequate transition period has the potential to violate the legitimate expectations that Chinese investors have built based on the three-year RKAB scheme that forms the basis of their long-term investment planning. Moreover, Article 7 of the UUPM itself guarantees that the government will not take nationalization actions or take over investor ownership rights, except with compensation according to market prices, and this extreme production restriction policy can be categorized as an action equivalent to indirect nationalization (indirect expropriation) because it significantly reduces the economic value of the investment that has been invested. Extending the analysis to the realm of international law, this RKAB 2026 policy has the potential to cause international disputes because it clashes with investment protection standards guaranteed in various international agreements, including the Bilateral Investment Treaty (BIT) between Indonesia and China. In international investment law, there are five main protection standards that must be met by the recipient country of investment, namely Fair and Equitable Treatment (FET), Full Protection and Security (FPS), the principle of non-discrimination which includes Most-Favored-Nation and National Treatment, as well as protection against nationalization and expropriation. The FET standard, which has evolved beyond the conventional International Minimum Standard (IMS), requires states to provide fair and equitable treatment, including obligations not to harm legitimate investor expectations, maintain the stability and predictability of the legal framework, and act transparently and consistently. Sudden policy changes without adequate consultation with stakeholders and without a transition period that takes into account the interests of existing investors, have the potential to violate this FET standard. Furthermore, protection against expropriation under international law is no longer limited to direct expropriation, but also includes regulatory actions that are equivalent to expropriation (indirect expropriation or creeping expropriation), where state intervention that substantially deprives an investment of its economic value can give rise to compensation obligations even without a formal transfer of ownership rights.

Indonesia actually has sovereign rights to regulate its natural resources based on the principle of Permanent Sovereignty over Natural Resources (PSNR) recognized in international law, but the exercise of this sovereignty is increasingly limited by obligations under ratified investment agreements, so the country must be careful in balancing the right to regulate with protection for foreign investors. Indonesia's experience in the WTO dispute with the European Union regarding the ban on nickel ore exports (DS592) shows that Indonesia's natural resource policies often face challenges in international forums, where the European Union claimed that Indonesia's policies violated Article XI:1 of GATT 1994 concerning the prohibition of quantitative restrictions on exports, although the WTO panel ultimately ruled that Indonesia's policies were proven to violate WTO provisions and could not be justified based on available exceptions. Although the WTO case is different from potential investment disputes under BITs, a valuable lesson to be learned is that arguments for legitimate policy objectives (public policy objectives) such as natural resource protection and downstream industrial development must be supported by strong evidence and consistent and non-discriminatory application. Indonesia itself has terminated around 30 BITs in recent years as part of a strategy to recalibrate investment treaties and expand policy space, but Chinese investors can still claim protection under existing treaties or under the framework of the ASEAN-China Investment Agreement, which provides similar protection standards. Therefore, the 2026 RKAB policy is in a dialectical tension between state sovereignty to manage natural resources for national interests and international obligations to provide adequate protection for foreign investors. Therefore, a more balanced approach is needed through transparent, participatory, proportional policies, accompanied by a transition period and adequate compensation mechanisms to avoid creating legal uncertainty that is counterproductive to the national investment climate in the long term.

CONCLUSION

Based on the discussion that has been outlined regarding the 2026 Work Plan and Budget (RKAB) policy and its implications for the legal certainty of foreign investment in the nickel downstream sector, especially investment by Chinese companies, several important conclusions can be drawn. First, the 2026 RKAB policy arrangement through the Minister of Energy and Mineral Resources Regulation Number 17 of 2025 has fundamentally changed the approval system from a three-year period to an annual period, by setting a nickel production limit of 2.6 to 2.7 billion tons or a decrease of around 30% from the previous year's realization. This policy is based on three main government considerations, namely stabilizing global nickel prices due to oversupply that has lowered prices by up to 46%, maintaining the sustainability of national reserves which are estimated to only have 5-7 years remaining at the current production rate, and strengthening Indonesia's bargaining position through a resource nationalism strategy. Although the objectives of this policy are legitimate and strategic within the framework of natural resource management for the national interest, its sudden implementation with a limited transition period until March 2026 through Circular Letter of the Director General of Mineral and Coal No. 2.E/HK.03/DJB/2025 has caused significant shocks in the upstream to downstream sectors, especially for foreign investors who have carried out long-term investment planning based on the previous three-year RKAB scheme. Law Number 25 of 2007 concerning Investment has provided a strong guarantee of legal certainty for foreign investors, by placing the principle of legal certainty as the first principle in the implementation of investment as regulated in Article 3 paragraph (1). Article 4 paragraph (2) of the UUPM strengthens this guarantee by requiring the government to provide equal treatment and guarantee certainty and security of business from the licensing process until the end of investment activities.

The legal certainty instrument is realized through the obligation of foreign investment in the form of a Limited Liability Company under Indonesian law as stipulated in Article 5 paragraph (2), which contains a protection mechanism through articles of association approved by the Ministry of Law and Human Rights, capital allocation in the form of shares, limited liability, and company organs that carry out business activities in a structured and accountable manner. However, this guarantee of legal certainty can only be realized if there is harmonization and synchronization between the UUPM and other sectoral policies, considering that foreign investment regulations are a sub-system of the complexity of investment regulations in Indonesia that require cross-institutional coordination and regulatory consistency. The 2026 RKAB policy has significant implications for legal certainty and the sustainability of Chinese company investments in the nickel downstream sector, both from a national and international legal perspective. From a national legal perspective, this policy has the potential to violate the principles of legal certainty and the principle of equal treatment guaranteed in the UUPM, because the sudden change without an adequate transition period has disrupted the legitimate expectations of Chinese investors who have made large investments based on the previous three-year RKAB scheme. The actual impacts include disruptions to long-term planning, a smelter raw material supply deficit of up to 1 billion tons, the threat of contract termination for 58% of mining service contractors, and the risk of trade contract disputes leading to mass layoffs. From an international legal perspective, this policy has the potential to violate the Indonesia-China Bilateral Investment Treaty (BIT), particularly the Fair and Equitable Treatment (FET) standard that protects legitimate investor expectations and the prohibition on indirect expropriation or actions equivalent to nationalization because it significantly reduces the economic value of invested investments. Although Indonesia has sovereign rights to regulate its natural resources based on the principle of Permanent Sovereignty over Natural Resources, the implementation of this sovereignty must be carried out proportionally, transparently, non-discriminatory, and accompanied by transition mechanisms and adequate compensation to avoid creating legal uncertainty that is counterproductive to the national investment climate in the long term. Thus, it is necessary to strengthen coordination between regulators, harmonize the Capital Market Law with sectoral policies in the mining sector, and formulate participatory policies based on comprehensive impact studies to create a balance between the state's right to manage natural resources and the obligation to provide legal protection for foreign investors who have contributed to the development of the nickel downstream industry in Indonesia.

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