



# Legal Protection for Investors Against Obstacles to Mining Activities in Konawe Regency

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## ABSTRACT

*The research aims are: 1) To find out and understand the forms of investor protection against barriers to mining activities. 2) To know and understand efforts to resolve community conflicts resulting from PT. ST Nickel Resources' mining activities. The type of research used in this thesis is normative using a doctrinal approach. The data collection methods used were document studies, field surveys and interviews using qualitative descriptive analysis. The results of this research show that : 1) Criminal acts in the mineral and coal mining sectors are legal subjects from a group of people who , on represent of a community organization called Pambers , have deliberately obstructed the activities of mining investors using the argument that the mining area of PT. ST Nickel Resources is an area or land controlled by a group of people before the provisions of law number 4 of 2009 concerning minerals and coal mining , then conflicts between investors and the community occurred through thuggery , obstructing mining activities , holding demonstrations . and build barriers / fences and stop heavy equipment activities working in the PT IUP-OP area. ST Nickel Resources, resulting in losses for investors. 2) Investor protection as a civil legal entity Limited Liability Company PT. ST Nickel Resources as the holder of a Production Operation Mining Business Permit (IUP-OP) for nickel ore commodities in carrying out mining activities requires very large production costs and paying obligations for state income including Regional Tax for the area of the Mining Business Permit , Non- Tax State Income (PNBP) sale of nickel ore , therefore the provisions of investor protection law strictly provide criminal threats for anyone who obstructions mining activities that are carried out officially as regulated under the provisions of Article 162 of Law No.3 of 2020 concerning amendments to Law No. 4 of 2009 concerning Mining Minerals and Coal.*

**Keywords:** Legal Protection, Investors, MiningActivities

## I. INTRODUCTION

Indonesia is a country blessed with abundant natural resources, both renewable *and* non - renewable , *both biological and non - biological*. Mineral resources in the form of mining deposits with special properties can be called *wasting . assets* If mined, these minerals will not grow or regenerate. Nickel is one such non-renewable mineral. Ninety percent of potential nickel reserves are located in Central Sulawesi, South Sulawesi, Southeast Sulawesi, and North Maluku. In 2019, Indonesia became the world's largest nickel ore producer, producing 2,668 million tons of nickel .

Indonesia is currently included in the group of developing countries. One characteristic of a developing country is development in all sectors. To enhance economic development, investment as capital is essential for carrying out development. Investment is the activity of investing capital. Good in a way direct and No direct, with hope

In the future, capital owners will reap a number of benefits from their investments. This form of investment activity involves both domestic and foreign investors. These activities utilize funds from investors in economic activities. Not only the private sector seeks to invest, but the government also plays a role. For example, the government improves infrastructure and adds assets. Regional development financing for this infrastructure is commonly referred to as capital expenditure. Capital expenditure is expenditure related to investment activities undertaken by the government to achieve development goals.

Mining is a sector that receives serious attention from the government, considering that mining business activities contribute significantly to the country's foreign exchange earnings, as evidenced by the large number of mining permits issued in the regions. On the other hand, the increasing number of mining business activities, both involving foreign and national investment, has led to large-scale exploitation and environmental pollution and damage. Furthermore , various problems have arisen, particularly regarding land use for mining activities, which has led to

conflicting interests between mining business actors and local communities and regional government where the mining business activities are carried out.

The development and utilization of these mining materials requires long-term planning and cooperation from competent parties, in this case foreign investors. Foreign investors play a role not only in boosting a country's economic growth but also in creating new jobs and technology transfer.

On the other hand, legal protection for both local and foreign investors is crucial in improving Indonesia's economic development. Investors are one of the indicators of Indonesia's economic development and are actors who have a role in empowering and managing potential resources to become the country's economic strength. Mineral and coal mining plays an important role in the national economy and has great potential in national economic development. To realize this, the Government then issued Law Number 25 of 2007 concerning Investment, specifically Article 3 paragraph (2) as the Government's hope. In this law, a number of hopes have been determined as the objectives of implementing investment, including: is:

1. Increase economic growth national.
2. Creating a field Work.
3. Improving economic development sustainable.
4. Improving business competitiveness national.
5. Increasing technological capacity and capabilities national.
6. Promote economic development democracy.
7. Managing potential economics into a real economic force by using funds originating from both within the country and abroad, and
8. Improving welfare public.

## II. LITERATURE REVIEW

### 2.1 Overview About Mining

#### 2.1.1 Understanding Mining

Mining is part or all of the stages of activities in the context of research, management and exploitation of Minerals or Coal which include general investigations, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales, as well as post-mining activities. mine.

According to the Law No. 4 of 2009 concerning Mineral and Coal Mining defines mining as all or part of the stages of activities in the context of research, management and exploitation of minerals or coal which include general investigations, exploration, feasibility studies, construction, mining, management and refining, transportation and sales, and post-mining activities. This definition shows that mining activities are large activities that can certainly also generate large profits for those who manage them.

Mining is a type of activity that extracts minerals and other mining materials from the earth. Mineral resources are non-renewable natural resources, meaning that they are non- renewable. Once the mineral is extracted, it cannot be recovered or returned to its original state. Mining is the process of extracting materials that can be extracted from the earth. Mining is an activity to optimize the use of natural mining resources (minerals) found in the earth. Indonesia.

#### 2.1.2 Principles Mining

The principles that apply in mineral and coal mining have been stipulated in Law Number 4 of 2009, there are 4 (four) types, that is:

##### a. Benefits, Justice, and Balance

The principle of benefit in mining is the principle that mining must provide the greatest possible benefits and advantages for the prosperity and well-being of the people. The principle of justice, then, means that mining must provide equal opportunities and opportunities proportionally for all citizens, without any exceptions. Meanwhile, the principle of balance requires that mining activities take into account other areas, especially those directly related to their impacts.

##### b. Partiality to Interests Country

This principle states that mining activities must be oriented toward the interests of the state. Even if mining activities involve the use of foreign capital, labor, or planning, the activities and results are solely in the national interest.

##### c. Participatory, Transparency, and Accountability

The principle of participation requires community participation in mining activities in policy formulation, management, monitoring, and supervision of their implementation. The principle of transparency is openness in the implementation of mining activities, ensuring the wider community can obtain accurate, clear, and honest information. In turn, the community can provide input to the government. The principle of accountability requires that mining activities be conducted in a proper manner so that they can be accounted for to the state and the community.

##### d. Sustainable and Insightful Environment

The principle of sustainability and environmental awareness is a principle that integrates economic, environmental and social dimensions in a planned manner. socio-cultural in the entire mineral and coal mining business to realize present and future prosperity.

#### 2.1.3 Classification of Materials Mine

In Law Number 4 of 2009 concerning Mineral and Coal Mining which has been outlined in Government Regulation Number 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities,

mining commodities are divided into several groups, namely:

- a. Mineral radioactive
- b. Mineral metal
- c. Minerals are not metal
- d. Rocks and coal.

#### 2.1.4 Business permit Mining

The term Mining Business Permit, hereinafter referred to as IUP, comes from the English translation, namely mining. *permit*. The definition of IUP according to Article 1 number 7 of Law Number 4 of 2009 is a permit to carry out mining business. Article 37 of Law Number 4 of 2009 concerning Mineral and Coal Mining states that IUP is granted by:

- a. regent/ mayor if the WIUP is located within one district/city area;
- b. the governor if the WIUP is located across district/city areas in 1 (one) province after obtaining a recommendation from the local regent/ mayor in accordance with the provisions of statutory regulations; and
- c. The Minister if the WIUP is located across provincial areas after obtaining recommendations from the local governor and regent/ mayor in accordance with the provisions of laws and regulations. However, with the existence of Law Number 23 of 2014 concerning Regional Government, the authority to issue Mining Business Permits is the Provincial Government in accordance with with authority Which owned. Provision transition

Article 402 of Law Number 23 of 2014 concerning Regional Government stipulates that permits issued before the enactment of Law Number 23 of 2014 remain valid until the permit expires. Article 38 of Law Number 4 of 2009 concerning Mineral and Coal Mining states that IUPs are granted to:

- a. Body Business;
- b. Cooperative; And
- c. Individual.

The principle governing IUP granting, as stipulated in Law Number 4 of 2009, is that one IUP is only permitted for one type of mine. One IUP is granted for one type of mineral or coal. An IUP may not be granted for more than one type of mine.

If, during mining, the IUP holder finds other minerals other than those registered in the mining area, the IUP holder can be given priority by the government to exploit the other minerals he has discovered by submitting a new IUP application to the authorized official. However, if the IUP holder does not wish to exploit the other minerals he has discovered, he is obliged to protect the other minerals so that they are not exploited by other parties. IUP There are two types known, namely IUP Exploration and IUP Production Operations, the issuance of which is carried out individually. gradually.

##### a. Exploration IUP

An Exploration IUP is the first stage of permit issuance, and its activities include general investigations, exploration, and feasibility studies. The purpose of an Exploration IUP is for the mining of metallic and non-metallic minerals. For metallic mineral mining, an Exploration IUP can be granted for a maximum period of 8 years. Meanwhile, an Exploration IUP for non-metallic mineral mining can be granted for a maximum period of 3 years.

##### b. Operation IUP Production

IUP Production Operation as a permit granting in accordance with the Exploration IUP is issued and its activities include construction, mining, processing and refining, as well as transportation and sales. Every holder of an Exploration IUP is guaranteed by law to obtain an IUP Production Operation because it is a continuation of their mining business activities. IUP Production Operation can be granted to companies in the form of limited liability companies, cooperatives, or individuals based on the results of the auction of WIUP metal minerals or coal that have data from the results of feasibility studies. IUP Production Operation for mining mineral.

For metal mining, the IUP can be granted for a maximum period of 20 years and can be extended twice for 10 years each. Meanwhile, for non-metallic mineral mining, the IUP Production Operation can be granted for a maximum period of 10 years and can be extended twice for 5 years each. year.

As an IUP holder, you naturally have rights and obligations that must be adhered to. These rights and obligations are outlined in Law Number 4 of 2009 concerning Mineral and Coal Mining . The rights of an IUP holder are as follows:

- 1) IUP and IUPK holders can carry out some or all stages of mining business, both exploration activities and operational activities. production.
- 2) IUP and IUPK holders can utilize public infrastructure and facilities for mining purposes after fulfilling regulatory requirements. legislation.
- 3) IUP and IUPK holders have the right to own minerals, including associated minerals, or coal that has been mined. produced.
- 4) IUP and IUPK holders may not transfer their IUP and IUPK to another party. Transfer of ownership and/or shares on the Indonesian stock exchange may only be done after completing the exploration phase. certain.

In addition to rights, IUP holders also have obligations. These obligations must be fulfilled by IUP holders. IUP holders have the following obligations:

- a. Applying mining engineering principles Good;
- b. Manage finances according to the accounting system Indonesia;
- c. Increase the added value of mineral and/or coal resources.
- d. Implementing local community development and empowerment; And

e. Comply with the tolerance limits of carrying capacity environment.

In implementing good mining engineering principles, IUP and IUPK holders are required to carry out:

- a. occupational safety and health provisions mining;
- b. operational safety mining;
- c. management and monitoring of the mining environment, including reclamation activities and post-mining;
- d. mineral resource conservation efforts and coal ;
- e. management of mining waste from a mining business activity in solid, liquid or gas form until it meets environmental quality standards before being released into the media environment.

Apart from the obligations mentioned above, IUP and IUPK holders have the following obligations:

- a. IUP and IUPK holders are required to guarantee the implementation of environmental standards and quality standards in accordance with the characteristics of a area;
- b. IUP and IUPK holders are also obliged to maintain the sustainability of the function and carrying capacity of the water resources concerned in accordance with the provisions of the regulations. legislation;
- c. post-mining plan when applying for an IUP Production Operation or IUPK Production Operation. Reclamation and post-mining activities are carried out in accordance with the post-mining land allocation stated in the land use agreement between the IUP or IUPK holder and the rights holder. land;
- d. IUP and IUPK holders are required to provide reclamation guarantee funds and guarantee funds. post-mining ;
- e. coal resources in the implementation of mining, processing and refining, as well as the utilization of minerals and/or coal. coal ;
- f. Holders of IUP and IUPK Production Operations are required to process and refine mining results within country;

The expiration of a mining business permit has been stipulated in Article 117 of Law Number 4 of 2009. The purpose of the expiration of a mineral mining business permit is the completion or no longer validity of the mining business permit granted to the IUP holder. There are 3 (three) ways for an IUP to expire, namely:

- a. Returned;
- b. Revoked; or
- c. Expired its validity.

An IUP that expires due to being returned is the permit granted to the IUP holder no longer valid, where the IUP holder returns the IUP in writing to the authorized official. In order to hand over the IUP, the IUP holder must state a clear reason. What is meant by a clear reason, among other things, is the absence of technical, economic, or environmental prospects. An IUP that expires due to being revoked is the IUP no longer valid because it is declared withdrawn or declared no longer valid or cancels the IUP that has been granted to the IUP holder. by authorized official. The official authorized to revoke an IUP is the Minister, governor, or regent/ mayor according to their authority.

There are 3 (three) reasons for authorized officials to revoke the IUP of IUP holders, including:

- 1) The IUP holder does not fulfill the obligations stipulated in the IUP and regulations. legislation;
- 2) The IUP holder commits a crime; or
- 3) IUP holders are declared bankrupt.

## 2.2 Government Authority in the Field Mining

Law Number 23 of 2014 concerning Regional Government brings a paradigm shift in the implementation of government authority related to the management of natural resources, including mineral and coal mining . The implementation of government affairs in the fields of forestry, maritime affairs, and energy and source

Mineral resources are divided between the central government and provincial governments. This is stated in Article 14 paragraph (1) of Law Number 23 of 2014 concerning Regional Government. Therefore, Law Number 4 of 2009 and all its derivative regulations (Government Regulations, Ministerial Regulations, etc. ) must comply with Law Number 23 of 2014. 2014.

The authority of the central government and provincial governments in the mining sector can be seen in the appendix to Law Number 23 of 2014 concerning Regional Government. The appendix lists the division of authority between the central government, provincial governments, and district governments. Prior to Law Number 23 of 2014 concerning Regional Government, district/city governments had authority in the field of mineral and coal mining , including granting mining permits. However, with the enactment of Law Number 23 of 2014 concerning Regional Government, authority in the field of mineral and coal mining was transferred to the central government and provincial governments, taking into account the principles of accountability, efficiency, externalities , and national strategic interests. Therefore, district/city governments no longer have authority in the field of mineral and coal mining. coal . The appendix to Law Number 23 of 2014 concerning Regional Government stipulates the division of government affairs in the energy and mineral resources sector, where authority regarding minerals and coal is divided between the central government and provincial governments. The central government's authority in the energy and mineral resources sector, particularly minerals and coal, is as follows:

- a. Determination of mining areas as part of the national spatial planning plan, which consists of mining business areas, people's mining areas and state reserve areas as well as mining businesses. special;
- b. Determination of mining business permit areas for metal minerals and coal and mining business permit areas special;
- c. Determination of business permit areas for non-metallic mineral and rock mining across provincial areas and sea areas of more than 12miles;

- d. Issuance of business permits for mining metal minerals, coal and rocks on:
  - 1) Mining business permit areas located in cross-provincial areas;
  - 2) Mining business permit areas that directly border other countries; And
  - 3) Sea area of more than 12 miles.
- e. Issuance of mining business permits for investment purposes foreign;
- f. Granting of special mining business permits for minerals and coal ;

### 2.2.1 Definition of Region Mining

A mining area is an area that has mineral and/or coal potential and is not bound by government administrative boundaries that are part of the national spatial plan. In this sense, a mining area is said to be not bound by government administrative boundaries, because the area mining does not follow the administrative areas of government (province, district/city),

Therefore, coordination and cooperation between regional governments are required if mining occurs across regional government boundaries. Areas that can be designated as mining areas have certain criteria. existence of:

- e. Indication of mineral-bearing and/or coal- bearing rock formations.
- f. Potential mining resources in solid and/or liquid form.

Preparation of mining areas is carried out through the following activities:

- a. Regional Planning Mining.

Mining area planning is specifically regulated in Government Regulation Number 22 of 2010 concerning Mining Areas. Mining area planning is prepared through the stages of mining potential inventory and the stage of preparing a mining area plan.

- b. Territorial Determination Mining.

The determination of mining areas is carried out in a transparent, participatory and responsible manner in an integrated manner by taking into account the opinions of relevant government agencies, and by taking into account ecological, economic and socio-cultural aspects as well as being environmentally aware, and by taking into account

Regional aspirations. Mining areas, as part of the national spatial plan, are the basis for determining mining activities. Determining mining areas must be based on data obtained in the field from research results. Therefore, the central and regional governments are required to conduct mining investigations and research in order to prepare mining areas. Data and information from these investigations and research are incorporated into mineral and coal potential maps , which serve as the basis for developing mining area plans. Mining area plans are presented on map sheets and in digital form.

Article 13 of Law Number 4 of 2009 concerning Mineral and Coal Mining divides mining areas into 3 (three) parts consisting of Mining Business Areas (WUP), People's Mining Areas (WPR), and State Reserve Areas (WPN). Mining Business Areas (WUP) are parts of mining areas that have available geological data, potential, and/or information. The determination of WUP is in principle the authority of the government through the Minister of Energy and Mineral Resources. The government can delegate some of its authority to provincial governments in accordance with statutory provisions. For 1 (one) WUP consists of 1

(one) or several Mining Business Permit Areas (WIUP) located across provincial areas, across district/city areas, and/or within 1 (one) district/city area. WIUP is an area granted to holders of Mining Business Permits (IUP). The area and boundaries of WIUP are determined by the government in coordination with local governments based on criteria held by the government. Mining areas can consist of mining business areas which include:

- a. Radioactive WUP;
- b. Mineral WUP metal;
- c. WUP mineral is not metal;
- d. Coal WUP ; And
- e. WUP rock.

A Community Mining Area (WPR) is a portion of a mining area where community mining activities are conducted. Community mining activities may only be conducted within the community mining area. The criteria for establishing a WPR are as follows:

- a. Has secondary mineral reserves found in rivers and/or between banks and banks river;
- b. Have primary reserves of metal or coal with a maximum depth of 25 (twenty five) meters;
- c. Terrace deposits, floodplains, and river deposits ancient;
- d. The maximum area of people's mining areas is 25 (twenty five ) hectares;
- e. Mention the type of commodity that will be mined;
- f. It is an area or place where people's mining activities have been carried out for at least 15 (fifteen) years. year;
- g. No overlap with mining business areas and state reserve areas. The State Reserve Area (WPN) is part of the mining area reserved for national strategic interests. For national strategic interests related to mining, the government, in collaboration with the House of Representatives (DPR), by taking into account regional aspirations, establishes WPN as an area reserved for certain commodities and conservation areas in order to maintain the balance of the environmental ecosystem. WPNs that have been designated for certain commodities can be cultivated from a portion of the area by means of the government obtaining approval from the DPR. Likewise, for WPNs designated for conservation, a time limit is determined with the approval of the DPR. WPNs designated for certain commodities or for conservation change their status to Special Mining Business Areas (WUPK). To be able to change the status from WPN to WUPK, it is carried out by: consider matters stipulated in Article 28 of Law

Number 4 of 2009 concerning Mineral and Coal Mining as following:

- a. Fulfillment of industrial raw materials and energy needs country;
- b. Source of foreign exchange country;
- c. Regional conditions are based on limited facilities and infrastructure;
- d. Has the potential to be developed as a center for economic growth;
- e. Environmental carrying capacity; and/or
- f. The use of high technology and investment capital big.

### 2.2.2 Legal Protection Investor

Based on the provisions of Chapter 3 Article 4 of Law Number 25 of 2007 concerning investment, the Basic Investment Policy is regulated as a reference and framework for developing investment in Indonesia, both foreign investment and foreign investment.

Mining activities in Indonesia currently involve a significant number of foreign parties. This is part of the internationalization of mining activities, and the expected transfer of technology is also a key aspect of this activity. Furthermore, globalization does not allow Indonesia to turn a blind eye to the outside world. Indonesia is also a member of several international organizations, including trade organizations. However, this does not mean ignoring the impacts of mining activities on communities surrounding mining areas. Under the guise of development, economy.

Considering national interests, foreign exchange and tax revenues, as well as state and regional revenues, the existence of mining activities is not a justification for conditions that violate the public's sense of justice. Therefore, the primary goal of managing Indonesia's natural resources for the greatest prosperity of the Indonesian people can be set aside.

One factor investors consider when investing is legal certainty. Various legal provisions related to investment need to be aligned with the various multilateral, regional, and bilateral agreements to which the government is party. The public expects legal certainty, as this will lead to a more orderly society. The law's role is to create legal certainty because it aims to maintain social order. Without legal certainty, people will be uncertain about their actions, which ultimately leads to unrest. However, overemphasizing legal certainty and overly strict adherence to legal regulations will result in rigidity and a sense of insecurity. fair.

The issuance of Law Number 22 of 1999 concerning Regional Government, as amended by Law Number 32 of 2004 concerning Government Regulation Number 25 of 2000 concerning Government Authority and Provincial Authority as Autonomous Region, as amended by Government Regulation Number 38 of 2004 concerning Distribution of Government Issues between the government, provincial governments and city/district governments has essentially given power to regions to manage mineral resources in their regions and to change existing arrangements. The mineral resource management functions carried out so far by the government, with the implementation of regional autonomy, will subsequently carry out most of these functions throughout the regions.

A very important thing is also related to the implementation of Law Number 4 of 2009, namely the exploitation of mineral and coal mining related to investment efforts in this sector. Law Number 25 of 2007 concerning investment regulates business fields or types that are open and closed to investment activities, the provisions of which are further regulated in Presidential Regulation Number 44 of 2016 concerning the list of closed business fields and the list of closed business fields with requirements in the field of investment. In the presidential regulation, the mining business sector can be carried out through investment activities with requirements on capital ownership, business fields that require certain locations, and business fields that require special permits.

The laws and regulations above serve as the basis for mining companies to secure their investments. Investment security requires a shared commitment between the government, regional governments, and investors to build harmonious business relationships between the state (government) and investors, thus creating a healthy investment climate. The government, as an investor, is responsible for issuing regulations that support the synergy between the government, investors, and the public. Investors, as the implementers of exploration activities, are obligated to comply with the legal regulations that form the legal basis for conducting these exploration activities by implementing all applicable legal provisions and/or contractual agreements agreed upon between the government and investors, as well as maintaining the cultural values that exist within the customary cultural areas. local.

As previously explained, the basis for developing investment policies in the mining sector is still Law Number 25 of 2007 concerning investment and mining law, which the government considers to be a basic regulation that is still consistent with the current situation. Therefore, it is crucial to establish regulations.

Specifically, regarding businesses, particularly mining, which can impact foreign investment, they should focus more on fundraising to manage the economy. The government should immediately establish an investment climate based on current laws. It must also be able to meet investor aspirations and needs to ensure the continuity of cooperation contracts in mining activities.

Inconsistencies will fundamentally disrupt the investment climate in Indonesia's mining sector. Several mining regulations, including Government Regulation No. 1 of 2017 and Ministerial Regulations No. 5 and 6 of 2017, will create new problems for mining investment. To ensure certainty and legal protection for investments, these issues should be resolved through renegotiation of Contracts of Work (KK) between the government and companies, as mandated by Article 169 of the Mineral and Coal Mining Law. Coal.

Referring to mining cases, this demonstrates the government's lack of readiness and consistency in establishing mining policies. According to Article 169(a) of the Mineral and Coal Mining Law, the rights of CoW holders must be respected until the contract expires. The government should terminate CoWs based on the clauses within the CoW.

Consistency is essential, as changing regulations have negative implications.

In this regard, many mining investors are beginning to worry about the uncertainty surrounding mining laws in Indonesia. Legal uncertainty discourages investors from investing in Indonesia. Poor legal protection and legal certainty for investors hinder mining investment in Indonesia. In fact, the country's mineral potential and reserves are among the best in the world.

Legal certainty makes foreign investors consider Indonesia a priority for doing business. Unfortunately, investors are facing a number of issues. Foreign investors in the mining sector often question the clarity of various mining cases in Indonesia, such as those related to Churchill Mining Plc and Intrepid in Tumpang Pitu, Banyuwangi. With so many IUP issues now, they prefer to invest in countries with legal certainty, even if the reserves are less attractive.

All relevant elements, including government elements, namely the Ministry of Energy and Mineral Resources (ESDM), the police, the Attorney General's Office, and other relevant parties, must improve the investment climate in the country. Existing laws must be able to meet the aspirations and needs of investors to ensure the continuity of the implementation of Cooperation Contracts (CCS) to encourage exploration activities. The point is that legal protection for investors is regulated by Indonesian national law, as stipulated in Law Number 25 of 2007 concerning Investment. This law provides foreign investors with adequate protection against various risks, including non-commercial risks in foreign investment in Indonesia. This is evident in various provisions of the law, including through the regulation of foreign investor rights related to various matters (Articles 6 to 9), namely guarantees of equal treatment for all investors and guarantees of nationalization and expropriation. In addition, there are guarantees for the transfer and repatriation of capital, profits, and various other matters in foreign currency. As far as international law is concerned, protection from non-commercial risks is guaranteed by multilateral investors (MIGA - Multilateral Investment Guarantee) Agency).

The implications of legal protection for foreign investors for foreign investment activities in Indonesia can provide significant contributions or benefits to increasing foreign investment activities. Protection of foreign investors from non-commercial risks in manufacturing operations is expected to be a factor in creating a conducive investment climate. This, in turn, will encourage increased foreign investment activity in Indonesia. Guaranteed protection for investors is one of the factors supporting the increase in foreign investment activity in Indonesia in the long term, especially in the era of free trade marked by increasing competitive competition and the country's economic growth. There are 15 improvements in the body of the latest Mineral and Coal Mining Law. These adjustments primarily relate to the authority to manage mineral and coal mining, adjustments to licensing nomenclature, and policies related to share divestment. Specifically, the inclusion of 51% of foreign business entity share divestment is absolutely mandatory in the body of the Mineral and Coal Mining Law. The 15 formulations new these include:

1. Regarding Mineral and Coal Control, it was agreed that Mineral and Coal Control would be implemented by the central government through policy, regulation, administration, management, and supervision functions. Furthermore, the central government has the authority to determine the production volume, sales, and prices of metallic minerals, certain types of non-metallic minerals, and rocks. coal.
2. It is agreed that the Mining Area as part of the Mining Legal Area is the basis for determining Business Activities. Mining.
3. There is a guarantee from the central government and regional governments not to make changes to the use of space and areas for the WIUP, WPR, and WIUPK that have been determined, as well as guaranteeing the issuance of other permits required for the implementation of business activities. mining.
4. Regarding WPR, if previously the maximum area was 25 hectares and the maximum depth was 25 meters, through the amendment to the law, the maximum area was 100 hectares and it had metal mineral reserves with a maximum depth of 100 meters. meters.
5. Mining business is carried out based on business permits from the central government. The permits in the Mineral and Coal Mining Bill consist of: -IUP, IUPK, IUPK as a continuation of Operations; -Contract/Agreement, IPR, SIPB, Assignment Permit, Transportation and Sales Permit, Mining Services Business Permit and Mining Business Permit for Sales. Regarding the granting of permits, the central government can delegate the authority to grant Business Permits to the governor. The delegation of authority is based on the principles of effectiveness, efficiency, accountability and externalities in the implementation of government affairs, including in the granting of IPR and SIPB.

### 2.2.3 Legal Foundation mining

The legal basis for mining encompasses various regulations and laws governing the mining industry. Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law): This law is the primary basis governing all aspects of mineral and coal mining in Indonesia. The Minerba Law stipulates mining rights, mining business permits, tax obligations, environmental protection, and other aspects related to the industry. mining.

Government Regulation Number 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities: This regulation regulates in more detail the implementation of mineral and coal mining business activities, including the licensing process, procedures for selling mining products, and other technical aspects. Regulation of the Minister of Energy and Mineral Resources (ESDM): In addition to national-level regulations, there are also regulations issued by the Minister of ESDM that regulate certain matters related to the mining industry, such as regulations on business procedures, mining plans, and mine feasibility assessments.

1. Scope of Regulation:
2. Mining Permits:
3. Prohibitions and Restrictions
4. Mine Management: This regulation regulates mine management which includes mining plans, production reporting, and monitoring. environment.
5. Environmental Management: This regulation contains provisions regarding environmental protection in the context of mining activities, including procedures for waste management and rehabilitation of former land. mine.

Law Number 32 of 2009 concerning Environmental Protection and Management: Although not a law that specifically regulates mining, this law has relevant provisions related to environmental protection in the context of mining activities. Regional Regulations (Perda) on Mining: In several regions in Indonesia, there are regional regulations that further regulate mining according to the characteristics and needs of the region. The following are some important points regulated in these regulations:

1. Scope of Regulation: This regulation covers all mineral and coal mining business activities in Indonesia, starting from the exploration, exploitation, processing, to transportation and marketing of the results. mine.
2. Licensing: This regulation governs the licensing procedures for conducting mineral and coal mining business activities. This includes the requirements, procedures, and stages in obtaining a business permit. mining.
3. Sales of Mining Products: This regulation also regulates the procedures for the sale of mining products, including marketing procedures, payment mechanisms, and obligations. reporting.
4. Mining Management: There are provisions governing the procedures for managing mining business activities, including procedures for preparing mining plans, waste management, and protection. environment.
5. Tax Obligations: This regulation also regulates the tax obligations that must be fulfilled by mining business permit holders, including the amount of tax, payment mechanisms, and reporting. tax.
6. Role of Government: This regulation establishes the role and responsibilities of the government in supervising and controlling mining business activities, including supervision of compliance with regulations and guidance for actors. business.

### 2.3 Legal Basis for Investors

Law Number 25 of 2007 concerning Investment: This law regulates foreign and domestic investment in Indonesia. This law establishes investor rights and obligations, licensing procedures, investment facilities, and investment protection, as follows: summary:

1. Main Objective: This law aims to create a conducive, attractive and competitive investment climate, as well as encourage economic growth. sustainable.
2. Definition of Investment: This law defines investment as an investment made by investors, both domestic and foreign, in the form of money, capital goods, and/or the right to conduct business in Indonesia with the aim of obtaining profit.
3. Authority and Implementation of Investment: This law establishes the Investment Coordinating Board (BKPM) as the institution responsible for coordinating and implementing investment in Indonesia.
4. Investment Classification: This law classifies investment into three categories, namely Foreign Investment (PMA), Domestic Investment (PMDN), and Joint Investment. (PMG).
5. Licensing Procedures: This law stipulates licensing procedures and requirements that must be met by investors to obtain a business permit, whether a principle permit or a business permit. operational.

Government Regulation Number 77 of 2021 concerning Investment Through One-Stop Services: This regulation establishes procedures and requirements for investment through one-stop services, which aims to simplify the following investment processes : summary :

1. Main Objective: This regulation aims to increase competitiveness and ease of doing business in Indonesia by simplifying procedures, speeding up service times, and increasing transparency and accountability in investment.
2. One-Stop Service: This regulation establishes the principle of one-stop service in the investment process, which integrates all licensing processes and investment-related services under one authority or agency, usually under the Investment Coordinating Board. (BKPM).
3. Online System: This regulation encourages the implementation of an online system in the investment process to make it easier for investors to submit applications, monitor the licensing process, and receive related services. investment.
4. Simple and Transparent: This regulation establishes simple and transparent principles in the investment process, including clear explanations of the requirements, procedures and stages in obtaining a permit. investment.
5. Improving Service Quality: This regulation emphasizes the importance of improving the quality of service to investors, including the implementation of high service standards, improving the competence of officers, and developing an investment information system. effective.

Presidential Regulation Number 10 of 2021 concerning Ease of Doing Business: This regulation aims to improve the investment climate in Indonesia by simplifying regulations, accelerating the licensing process, and improving public services. The following is a summary of this regulation:

1. Main Objective: This regulation aims to improve the ease of doing business in Indonesia by creating a conducive, attractive and empowering business climate. competitive.
2. Ease of Doing Business Principles: This regulation establishes the principles of ease of doing business, including providing fast, simple, transparent and fair services to business actors.

3. Stakeholders: This regulation establishes the roles and responsibilities of various stakeholders, including the central government, regional governments, public service institutions, and business actors, in creating a conducive business climate. conducive.
4. Regulatory Simplification: This regulation encourages regulatory simplification by identifying, reviewing, and eliminating regulations that are ineffective or hinder growth. business.
5. Improving Public Services: This regulation emphasizes the importance of improving public services in the business licensing and regulation process, including the use of information technology to accelerate the licensing process and increase transparency.

### III. RESEARCH METHOD

#### 3.1 Location Study

As a first step in the process of compiling this thesis, the author conducted a research activity. This research was conducted in Wawohine Village , Amonggedo District , Konawe Regency, so that the author could examine the case related to the title of the thesis. discuss.

#### 3.2 Type Study

Research on legal protection for investors in mining activities in Konawe Regency uses a legal principles, rules, or norms approach. The data obtained is then analyzed qualitatively. The research is then written in descriptive form. This type of research is normative law.

To examine the reverse burden of proof in corruption cases, the author uses a doctrinal approach , by examining the laws and regulations relating to the law of evidence both in the Criminal Procedure Code and in the law on the eradication of corruption.

Doctrinal approach is directly related to the field of legal science which is the basis for legal studies, so that the problems related to it are aspects of synchronization, attachment, responsibility  
The substance of the legal instruments of evidence in the law of evidence can be known and understood and solutions can be found.

#### 3.3 Data Types and Sources

The types of data used in this study are primary and secondary data, namely data obtained from direct research and data sourced from various pre-existing sources and intentionally collected to supplement the research data requirements. This data comes from books, government publications, internal organizational records, reports, journals, and various online sites related to this research.

#### 3.4 Collection Techniques Data

The data collection techniques in this study were interviews with related parties and by conducting indirect observations (*non- participant*). *observant* ) with existing data without having to be directly involved in the process. Then, a document study will be conducted, namely by analyzing and studying related documents that will be useful for this research.

#### 3.5 Analysis Techniques Data

The descriptive-qualitative method is the data analysis step that the author will carry out, namely carrying out analysis by breaking down and describing the interview results obtained. so that produce objective, consistent, logical and systematic conclusions in accordance with what the author expects in the research.

### IV. RESEARCH RESULTS AND DISCUSSION

#### 4.1 Legal Protection for Investors Against Activities Mining.

##### 4.1.1 Investor Legality Mining

The Mining Business Permit Area for Production Operations (IUP-OP) of PT. ST NICKEL RESOURCES according to the licensing levels evaluated at the Ministry of Energy and Mineral Resources of the Republic of Indonesia, Directorate General of Minerals and Coal, is as follows:

- a. Notarial Deed of WIWIK CONDRO, SH. Deed of Establishment of Limited Liability Company PT. ST NICKEL RESOURCES Number: 3 Dated April 5, 2008 and Ratification, DECREE OF THE MINISTER OF LAW AND HUMAN RIGHTS OF THE REPUBLIC OF INDONESIA Number :AHU-33468.AH.01.01.Year 2008 Concerning RATIFICATION OF LEGAL ENTITY OF COMPANY.
- b. Notarial Deed of AULIA ABDI, SH, M.Kn. Deed of Statement of Shareholders' Resolutions ( Circularly ) of PT. ST NICKEL RESOURCES Number: 4 Dated November 11, 2017 and Receipt of Notification of Changes to Company Data, MINISTRY OF LAW AND HUMAN RIGHTS OF THE REPUBLIC OF INDONESIA Number: AHU-0157290.AH.01.11. Year 2017 Dated December 11 2017
- c. Certificate Number: 023/SK/VII/STNR/2019 dated July 10, 2019 Subject: Certificate of Company Address or new Company Domicile of PT. ST. NICKEL RESOURCES
- d. Letter of Inspection Permit (SKIP) Number: 545/67/2008 dated September 2, 2008 as the basis for an application to obtain a Mining Authority Area in Amonggedo District and its surroundings, Konawe Regency, Southeast Sulawesi Province
- e. Konawe Regent's Decree Number: 362 of 2008 concerning the GRANTING OF EXPLORATION MINING AUTHORITY (KW 08 JL ER 001) located in District Amonggedo And Pondidaha, Konawe Regency, Southeast Sulawesi Province , covering an area of 2,000 hectares
- f. Konawe Regent's Decree Number: 433 of 2009 concerning ENVIRONMENTAL FEASIBILITY OF NICKEL

#### LATERITE MINING ACTIVITIES IN AMONGGEDO DISTRICT, KONAWE REGENCY, SOUTHEAST SULAWESI PROVINCE BY PT. ST NICKEL RESOURCES

- g. Konawe Regent's Decree Number: 448 of 2009 concerning APPROVAL OF UPGRADING THE EXPLORATION MINING BUSINESS PERMIT TO A PRODUCTION OPERATION MINING BUSINESS PERMIT TO PT. ST NICKEL RESOURCES, dated November 6, 2009 Located in Amonggedo and Pondidaha Districts , Konawe Regency, Southeast Sulawesi Province , covering an area of 2,000 hectares
- h. Konawe Regent's Decree Number: 448 of 2009 concerning Approval of Upgrading the Exploration Mining Business Permit to a Production Operation Mining Business Permit for PT. ST Nickel Resources , dated November 6, 2009, located in Amonggedo and Pondidaha Districts , Konawe Regency, Southeast Sulawesi Province , covering an area of 2,000 hectares. Ha
- i. Konawe Regent Decree Number: 224 of 2014 Concerning Changes in the Coordinate Points of the Mining Business Permit (WIUP) Boundary of PT. ST Nickel Resources (revised coordinate points due to overlap with PT Sulemandara Konawe and PT Bosowa Mining) has no relation with PT MBS located in Amonggedo and Pondidaha Districts , Konawe Regency, Southeast Sulawesi Province , the original area was 2,000 Ha, the area after the change was 1,818 Ha. Ha
- j. CLEAR AND CLEAN CERTIFICATE Number: 1110/Min/12/2015 awarded to PT ST NICKEL RESOURCES Date August 4, 2015

#### 4.1.2 Legal Protection for Investors Mining

Criminal acts in the field of mineral and coal mining include legal subjects from a group of people who claim to be an association organization called Pambers who have deliberately obstructed the activities of mining investors with the pretext that the mining area of PT. ST Nickel Resources is located in Wawohine Village , Amonggedo District , Konawe Regency, which is an area or land controlled by a group of people before the provisions of Law Number 4 of 2009 concerning Mineral and Coal Mining, but in fact the association community does not have a single legal basis for proof of ownership of land rights in the mining area, as for the mode of conflict caused by the actions of a group of people demanding rights even without rights but forcing compensation of USD 1 / MT for each ore transport Nickel then the motive for the conflict between investors and the community was caused by the Pambers association asking for a compensation increase of USD 1.25 / MT in a thuggish manner , obstructing mining activities , holding demonstrations and making barriers / fences and stopping the activities of heavy equipment working in the area of the Mining Business Permit for Production Operations (IUP-OP) of PT. ST Nickel Resources , resulting in losses for investors.

Investor protection as a civil legal entity of PT. ST Nickel Limited Liability Company Resources as holders of Mining Business Permits for Production Operations (IUP-OP) for nickel ore commodities in carrying out mining activities require very large production costs and pay obligations for state revenues including Regional Taxes for the area of the Mining Business Permit, Non-Tax State Revenue (PNBP) for the sale of nickel ore, therefore the legal provisions for investor protection firmly provide criminal threats for anyone who obstructs mining activities that are carried out officially as regulated according to the provisions of Article 162 of Law No. 3 of 2020 concerning amendments to Law No. 4 the process flow states; *"Any person who obstructs or interferes with Mining Business activities from holders of IUP, IUPK, IPR, or SIPB who have fulfilled the requirements as referred to in Article 136 paragraph (2)" shall be punished with imprisonment for a maximum of 1 (one) year or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah). rupiah).*

Regarding the act of blocking or obstructing mining activities in the PT. ST Nickel Resources permit area, carried out by a community group called Pambers , the company has taken legal action through a report to the Southeast Sulawesi Regional Police (POLDA Sultra). The process is currently underway. investigation ongoing, party Pambers trying to contact the company with the intention that the case can be resolved peacefully ( restorative) Justice ) with the terms of the statement to be agreed upon, namely:

- a. The Pambers will immediately remove the barrier/fence and restore it to its original condition, and will not repeat the act of obstructing mining activities in the mining permit area of PT. ST Nickel. Resources.
- b. Pambers party requested that this case be resolved peacefully through police investigators without asking for compensation for land rights. sued,

The case between the company and the pambers ended in a peaceful settlement, so the police did not continue and stopped the investigation on the grounds of resolving the case in a *restorative manner. Justice.*

#### 4.1.3 Community Conflict Due to Activities Mining

The role of the regional government in its area of competence as a region producing natural resources of nickel ore minerals in accordance with the law has made mediation efforts between community groups and investors as a form of prevention for its community regarding the legal consequences of extortion practices without rights and then potentially committing criminal acts obstructing official (legal) mining activities which can harm investors and in order to maintain smooth flow of state revenue and profit sharing to regions producing natural resources.

The role of investors who invest their capital in mining business permit areas has attempted to approach the wisdom of local communities, by empowering community leaders as public relations and security personnel and empowering local workers who are equipped with skills training according to the needs of work in the mining sector, in order to prevent social jealousy and provocation that can be exploited by other parties. NGO.

## V. CONCLUSION AND SUGGESTIONS

### 5.1 Conclusion

Based on the results of the research conducted by the author, it can be concluded that :

1. Criminal acts in the field of mineral and coal mining include legal subjects from a group of people who, in the name of a community organization called Pambers, have deliberately obstructed the activities of mining investors with the pretext that the mining area of PT. ST Nickel Resources is located in Wawohine Village , Amonggedo District , Konawe Regency, is an area or land controlled by a group of people before the provisions of Law Number 4 of 2009 concerning mineral and coal mining, but in fact the community of the community does not have any legal basis for proof of ownership of land rights in the mining area, as for the mode, even without rights, they ask for compensation of USD 1 / MT for each time ore is transported. Nickel then there was a conflict between investors and the community because the Pambers association asked for an increase in compensation of USD 1.25 / MT in a thuggish manner, obstructing mining activities , carrying out actions demonstrations and building barriers/fences as well as stopping heavy equipment operating in the PT. ST Nickel IUP-OP area Resources , resulting in losses for investors.
2. Investor protection as a civil legal entity of PT. ST Nickel Limited Liability Company Resources as holders of Mining Business Permits for Production Operations (IUP-OP) for nickel ore commodities in carrying out mining activities require very large production costs and pay obligations for state revenues including Regional Taxes as wide as the Mining Business Permit, Non-Tax State Revenue (PNBP) from the sale of nickel ore, therefore the legal provisions for investor protection firmly provide criminal threats for anyone who obstructs mining activities carried out officially as regulated according to the provisions of Article 162 of Law No. 3 of 2020 concerning amendments to Law No. 4 of 2009 concerning Mineral and Stone Mining Bara.

### 5.2 Suggestion

1. It is necessary for regional governments within their areas of competence to play a role in providing outreach to their communities without the right to do so, potentially leading to criminal acts that hinder official (legal) mining activities in order to maintain the smooth flow of state revenue and profit sharing for resource-producing regions. natural.
2. It is necessary for investors who invest their capital in mining business permit areas to pay attention to the wisdom of local communities, by empowering community leaders as public relations and security personnel and empowering local workers who are equipped with skills training according to the needs of work in the mining sector, in order to prevent social jealousy and provocative.

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