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(TransContinental Partnerships: EU Regulations and Sustainable Investments)

Reconstructing Mining Divestment Policy: Regulating Share Valuation Mechanisms to Protect National Interests

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Abstract

This paper introduces and analyzes the divestment scheme in Indonesia mining sector. As the mining activities significantly grow in Indonesia, the government has invented a scheme to obtain benefit from it through the divestment where a minimum 51% of the company shares must be owned by Indonesia in the 10 years time after the company operated. Even though the scheme had been implemented, in practice Indonesia still got no significant benefit through it. One of the main reasons is because of the low ability of Indonesia's government and parties to buy the shares that are already promoted by the mining companies. This condition happened due to the high value of the shares that had been decided by the companies. Regarding this problem, this study investigates how the reconstruction of the mining divestment policy to regulate the share valuation mechanism can protect the national interests in a way to maximize the benefits that can Indonesia gain from the divestment mining sector. This research finds the needs of clear regulation in order to determine the value of the divest share to prevent the practice of overvaluing shares of the companies. By implementing the rational choice theory through fair market value principle and discounted cash flow, it will easily create a clear regulation to maximize the benefits of the mining shares for Indonesia.

Keywords : Mining; Divestment Scheme ; Rational Choice Theory

Introduction

Based on Article 33 (2) and (3) of the 1945 Constitution of the Republic of Indonesia, all the existing natural resources are used for the goods of the people. Indonesia as a country that has a lot of natural potential inside should apply its respect to the needs of its people. As the potential of natural resources is the basic capital for national development, the management of natural resources must be



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used for the greatest prosperity of the nation itself.¹ All activities related to the exploration and exploitation should be in the humanity perspective and to obtain the benefits for the national economy. But in practice, to be able to obtain the benefits from the environment, the government needs a lot of incentives to do their job. Indonesia as one of the countries known for high potential reserves of mining goods, such as nickel, coal, tin ore, copper, gold, etc has a great chance and responsibility to maximize their benefits from the environment. Nowadays almost all mining producer countries, especially developing countries, urgently need foreign capital to support the development of the nation, including Indonesia. The national regulations have paved the way for the entry of foreign investment in Indonesia mining sector, such as The Law No.1 of 1967 on Foreign Investment Law and Law No.11 of 1967 on the Basic Provisions of Mining that has no longer applicable since the the Law No.4 of 2009 of Mineral and Coal Mining had been made. This caused a lot of foreign investors and foreign private companies to establish their mining activity in Indonesia.

Based on the graphic data released by the Ministry of Investment Republic Indonesia (BKPM) about the amount of investment projects in the mining sector shows in 2021 the value of the investment had reached 1200 USD Billion.² Based on the data that was released by the Minister of Energy and Mineral, in November 2024 there were about 4634 active mining licenses in Indonesia.³ As the amount of foreign private companies and foreign investors increase in Indonesia's mining sector, logically it should have brought great development to the national economy. However the impact of investment in the mining sector, especially

¹Triono Eddy, 'Management of Natural Resources Based on Local Wisdom by Traditional Law

Communities' (2024) International Journal of Educational Research & Social Sciences, 9 pages ISSN 2774-5406 <https://ijersc.org/index.php/go/article/download/190/217/1592> accessed 17 July 2025

²Sekretariat KADIN Indonesia, *Indonesia's Mining Sector in Brief* (KADIN, 22 June 2022) <https://bsd-kadin.id/2022/06/22/indonesias-mining-sector-in-brief/> accessed 17 July 2025.

³Indonesia Mining Association, *Kementerian ESDM catat ada 4.634 izin tambang minerba di Indonesia* (Indonesia Mining Association, November 2024) <https://ima-api.org/detail/news/mining/kementerian-esdm-catat-ada-4634-izin-tambang-minerba-di-indonesia> accessed 17 July 2025.

nickel, on the economy, both nationally and regionally, has yet to be discovered.⁴ It may give a certain increase in the region's economy, but in a wider perspective, which is the national perspective, the proportion of the amount of mining activities to its benefit to the economy isn't ideal. In most of the times, local people were left with only the destruction of the environment without gaining any significant benefits from it.⁵

In response to the significant development of the mining sector in Indonesia, the government had taken a serious path to overcome our unbeneficial position by implementing divestment regulation upon foreign mining activity in Indonesia. In the Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 43 of 2018 Concerning the Amendment to the Regulation of the Minister of Energy and Mineral Resources Number 09 of 2017 on the Procedures for Share Divestment and the Mechanism for Determining Divestment Share Prices in Mineral and Coal Mining Business Activities, Article 2 (1) clearly stated that after 5 years operating those who hold those mining business license should do the divestment for minimum 51% owned by Indonesia parties.⁶ But even though the national government had tried to push their benefits gained from the mining activity through divestment they still failed to reach their goal. One of the main reasons is the share price being promoted by the foreign investors was too high and the government doesn't have the ability to buy the shares. It's just like the one that happened in the PT Freeport case.⁷ This condition

⁴ Institute for Development of Economics and Finance (INDEF), *Mining Sector Performance Report*, July 2023 (December 2023)

https://indef.or.id/wp-content/uploads/2023/12/072023_pb_mining_eng.pdf accessed 17 July 2025. ⁵BBC News, 'The rush for nickel: 'They are destroying our future' (BBC News, [July 2023]) <https://www.bbc.com/news/world-asia-66131451> accessed 17 July 2025.

⁶Peraturan Menteri Energi dan Sumber Daya Mineral Nomor 43 Tahun 2018 tentang Penggunaan Barang/Jasa Dalam Negeri serta Pemberian Kesempatan Kepada Perusahaan Nasional Bidang Usaha Jasa Penunjang Kegiatan Usaha Minyak dan Gas Bumi, Pasal 2(1). <https://peraturan.bpk.go.id/Home/Details/106252/permen-esdm-no-43-tahun-2018> accessed 17 July 2025.

⁷Raras Ayu Mirati, 'Kajian Hukum Divestasi pada Perusahaan Pertambangan Asing di Indonesia' (2016) *Lex et Societatis*4(7) 94–103 <https://ejournal.unsrat.ac.id/v3/index.php/lexetsocietatis/article/download/12621/12221> accessed 17 July 2025.



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affects Indonesia for not being able to fulfill the 51% goal for minimum divestment.

Divestment schemes exist as an instrument to reach the maximum benefit from the mining activity. But if the government cannot control the instrument itself, it will be a useless tool without giving any benefit to the people. Referring to the challenge that faced by Indonesia in fulfilling the divestment minimum goal, the government needs to take a serious step to overcome the problem. By clearly regulating the mechanism and the limitation towards the value of the divestment shares, it will prevent the overvalue practice from the foreign investors. This mechanism will operate based on rational choice theory and by still respecting the Fair Market Value and Discounted Cash Flow of the natural resources. By implementing this reconstruction to our national regulation, the government has the right to determine the mechanism of deciding the value of the natural resources. By this reconstruction, Indonesia will have greater possibility to dominate the mining sector activity.

Rational Choice Theory

Referring to the definition of rational choice theory, it can be defined as a diverse set of approaches to studying society that rely on the assumption of individuals rationality. One of the theory's key strengths is the way it clearly describes issues that were previously poorly understood. This rational choice theory mostly focuses on actual situations or "states of affairs," but actually it can also be used to account for anything that motivates human behavior, which aligns it closely with utilitarian thought.⁸

This framework can be applied to legal studies, rational choice-based value theories contributed to the rise of the law and economics movement. This movement has brought the most thorough and comprehensive analysis of legal systems and rules to date. The most basic properties of the rational choice theory are reflexivity, transitivity, and completeness.⁹ This concept fundamentally

⁸ ScienceDirect (Elsevier), *Rational Choice Theory* (ScienceDirect Topics, accessed 17 July 2025) <https://www.sciencedirect.com/topics/social-sciences/rational-choice-theory>

⁹ ScienceDirect (Elsevier), *Rational Choice Theory* in *The Cambridge Rawls Lexicon*

underpins human decision-making processes and shaping the actions undertaken by individuals. Max Weber classified social action that provides a valuable perspective into the various dimensions of human behaviour that complement the framework of rational choice theory.¹⁰

1. Individuals will exercise the construction of their goals and select those goals guided by rational calculations to achieve them efficiently. These individuals make decisions based on a rational assessment of means and ends. This perspective explains the principles of rational choice theory and emphasises the instrumental to pursue self-interest.
2. Decisions that are made rooted in deeply ethical considerations. Individuals will examine their choices against moral standards and overarching principles. This dimension will deepen our understanding of decision-making processes, and acknowledge the influence of personal values on making decisions.
3. Behavior is driven by habitual practices rather than rational calculations. This classification underscores the importance of cultural and historical contexts in shaping human conduct where rationality may subordinate to tradition-bound norms.
4. Actions driven by emotions or feelings. Weber acknowledges the role of affective states in shaping behavior, highlighting the multifaceted nature of human decision-making.

Based on Weber's classification, we can see that in decision-making processes there are various factors that affect individuals. Starting from the elimination process to the point of being affected by the individual background. In divestment terms, if we need to make a relation between rational choice theory and the divestment shares, this theory will suggest individuals to make decisions based on their goals. While most of the individuals' goals are to gain maximum benefits.¹¹

(December 2014)
<https://www.cambridge.org/core/books/abs/cambridge-rawls-lexicon/rational-choice-theory/0707D12AEAFF97F93C46EF75CE8261CB> accessed 17 July 2025.

¹⁰Ariyanti Indrayani, 'Implementasi Kebijakan Divestasi Saham pada Kegiatan Usaha Pertambangan Mineral dan Batubara di Indonesia' (2023) *Jurnal Kebijakan Pemerintahan* 14(2) 109–118 <https://ejournal.ipdn.ac.id/JKP/article/download/4223/1874> accessed 17 July 2025.

¹¹Monica Margaret and Alrizq Athallah Sulung Esa, 'Rational Choice Penjual. dan Pembeli dalam Perdagangan Barang Counterfeit di Pasar Taman Puring, Jakarta' (2022) 6(2) *Jurnal IKRAITH-HUMANIORA*

In other words, it is to maximize potential gains and minimise potential losses. The rational choice theory states that individuals seek to gain outcomes that align the most with their objectives to maximize their self-interest.

Fair Market Value

Referring to the *United States v. Cartwright*, 411 US 546: fair market value (FMV) can be defined as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell both having reasonable knowledge of relevant facts."¹² If we align it with Fair Market Value for stocks then it will be a value that represents what a single share in stock (i.e. Shares) would be worth on the market. The Fair Market Value is highly influenced by economic factors such as the company's earnings, comparative market analysis, competitiveness, etc.¹³ To calculate the fair market value there are three basic approaches to determine Fair Market Value :¹⁴

1. The Assets or Cost Approach

The assets or cost approach depends on whether the asset is a privately held business or real property. But for in this case because it relates to a business then the asset approach is reflecting the current market value of the assets that are being used in running the business and it will include the net working capital, tangible and intangible operating assets, etc. A separate assessment may be required to determine the value of the non-financial assets. They include the tangible and intangible assets, for example the goodwill, investors lists, etc.

2. The Market Approach

In this approach, there are three methods that can be used to implement the approach:

- The Comparative Transaction Method

<https://journals.upi-yai.ac.id/index.php/ikraith-humaniora/article/download/1495/1222/>
accessed 17 July 2025.

¹²Legal Information Institute (Cornell Law School), *Fair Market Value* (Wex, last reviewed February 2022) https://www.law.cornell.edu/wex/fair_market_value accessed 17 July 2025.

¹³The Carta Team, *Fair Market. Value (FMV)* (Carta, 24 March 2025) <https://carta.com/learn/startups/equity-management/fmv/> accessed 17 July 2025.

¹⁴Corpinvest, *Determining Fair Market Value* (Corpinvest, accessed 17 July 2025) <https://corpinvest.com/determining-fair-market-value/>

This method will use information from the prior reported transaction of comparative assets to determine the value of subject "property". Market comparative can be obtained from the databases that contain the private business activity and transaction from their financial report.

- The Gross Revenue Multiple Method

This method can only be used when there is credible data on the revenue and sales price for a comparable company that has sold, but there is no available information regarding the company's financial condition or their transaction.

3. The Income Approach¹⁵

There are multiple methods that can be used to implement this approach, such as:

- The Income Capitalization Method

This method applies an appropriate cap rate to the annual net operating income in order to determine value.

- The Discounted Cash Flow Method

This method will estimate the value of an asset by projecting the future value of the asset itself. This method is expected will generate and discount those cash flow into the present value by using an appropriate discount rate.

- The Excess Earnings Method

This method uses two capitalization rates, a rate of return on tangible assets, and a rate attributable to company goodwill.

To be able to determine which is the best approach to determine the Fair Market Value, the company need to examine the situation and look for the available information.

The Discounted Cash Flow

¹⁵ PwC, *Valuation approaches, techniques, and methods* (PwC Viewpoint, accessed 17 July 2025) https://viewpoint.pwc.com/dt/us/en/pwc/accounting_guides/fair_value_measureme/fair_value_measureme_9_US/chapter_4_concepts_u_US/44_valuation_approac_US.html accessed 17 July 2025

The discounted cash flow (DCF) will estimate a company's intrinsic equity value by discounting the projected future free cash flows to equity (FCF) using the **time value of money**. So basically in Discounted Cash Flow, there are some values that become the main principle, which are :

- Equity Value
Regarding the total value of company's shares and represent shareholder ownership.
- Present Value
The current value of an expected future financial return. In a simpler words, it represents the sum of money in the future and how it would be worth today.
- Free Cash Flow to Equity
Funds that are available for the shareholders and differs from dividends that a company must return to its shareholders.
- Time value of money
The principle that a sum today is worth more than in the future due to its potential earning capacity.

The calculation that is used in Discounted Cash Flow (DCF) takes into consideration the time value of money in a compounding setting.

$$DCF = \frac{CF_1}{(1+r)^1} + \frac{CF_2}{(1+r)^2} + \frac{CF_3}{(1+r)^3} + \dots + \frac{CF_n}{(1+r)^n} = \sum_{t=1}^n \frac{CF_t}{(1+r)^t}$$

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There are some pros and cons on using the Discounted Cash Flow. The main advantages by using DCF is that it can easily be applied to a wide variety of companies, as long as the future cash flows can be estimated. This method also can be easily adjusted to many kinds of scenarios to estimate the cash flows for each scenario. This aims to analyze their return under different conditions. But Direct Cash Flow also has some limitations, which are it is very sensitive to the estimation of the cash flows, terminal value, and discount rate.¹⁷

¹⁶CFI Team, *Discounted Cash Flow (DCF)* (Corporate Finance Institute, accessed 17 July 2025) <https://corporatefinanceinstitute.com/resources/valuation/discounted-cash-flow-dcf/>

¹⁷ *Ibid*



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The Discounted Cash Flow can be used to estimate the value of the share divestment by simply projecting the existing assets compared to the future value. This will help companies to determine the most suitable price/ value for its shares.

Reconstruction of Mining Divestment Policy

Comparison of Determining Share Valuation Mechanisms

The Australasian Code for Public Reporting of Technical Assessments and Valuation of Mineral Assets, usually called the VALMIN code, is a professional standard. It frames how independent experts must assess and value mineral and petroleum assets, also related to securities, when preparing public reports for corporate and financial disclosure.¹⁸ The purpose and scope of VALMIN itself is to promote reliable, consistent, transparent public reporting of technical assessments and support investors and stakeholders by ensuring that evaluation reports are comprehensible.¹⁹ This policy will apply to Independent Expert Reports that are mandated under the Corporation Act and technical valuation assessment for mineral and petroleum assets and related securities.

In implementing this professional standard, VALMIN also regulate who can be called a practitioner. VALMIN practitioner is an Expert as defined in the Corporations Act, who is responsible for preparing a Public Report on a Technical Assessment or Valuation Report for Mineral Assets or Securities.

- (1) Specialists are individuals whose profession, reputation, and relevant industry in a technical discipline that support them with the ability to assess mineral assets, and the one who prepare and accept responsibility for a public report.
- (2) Securities Experts are individuals whose profession, reputation, or experience support them with the ability to assess securities, and the one who prepare and accept responsibility for a public report.

¹⁸ Australasian Institute of Mining and Metallurgy & Mining and Petroleum Valuation Committee, *VALMIN Code 2015* (AIMM & MPVC, December 2015) https://www.valmin.org/docs/VALMIN_Code_2015_final.pdf accessed 17 July 2025

¹⁹ The VALMIN Committee (Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists & Mineral Industry Consultants Association), *Code and Guidelines for Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports (VALMIN Code)* (2005 edn, updated 2015) 6 <https://mrmr.cim.org/media/1024/valmin-code.pdf> accessed 17 July 2025.



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So in producing the report, only people who have fulfilled the requirements set by VALMIN can validate all the datas that exist in the report.

Besides the practitioners requirements, in a further explanation, VALMIN also regulate four fundamental pillars, which are :

- (1) Competence - All the experts who are responsible in performing assessments must be competent. Not only have the academic aspect, but also the experience. Usually people who have the responsibility to assess for the report need to have experience with over 10 years relevant experience and sub-specialists over 5 years.²⁰
- (2) Materiality - Reports should include all information that holds the possibility to influence investor decisions.
- (3) Independence - Experts and specialists must be independent to prevent biased judgement.
- (4) Transparency - Reports should clearly disclose methodologies, assumptions, data sources, limitations, uncertainties, costs, conflict of interest, and the individuals responsible.

These principles reflect the best practice standard and regulatory expectations. By implementing these principles, the purpose of VALMIN itself should have been obtained. ²¹ The existence of VALMIN has got regulatory acceptance and even industry recognition. It is shown by how ASIC and ASX treat compliance as "indicative of best practice" and even endorsed by international organizations, ASX, etc. About the binding power of VALMIN itself is a binding standard for AusIMM/ AIG members that governs public technical assessments and valuation.²²

Besides VALMIN, there is another international standard that is used to

²⁰ Trevor R Ellis, 'The Australian Valmin Code for Mineral Appraisals' (1995) *AIMA Newsletter* Vol 1 No 4, 1, <https://www.minevaluation.com/wp-content/uploads/2012/09/EllisAusCode95AIMA1095.pdf> accessed 17 July 2025.

²¹ The VALMIN Committee (Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists & Mineral Industry Consultants Association), *Code and Guidelines for Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports* (VALMIN Code) (2015 edn) 6 https://www.ausimm.com/globalassets/about-us/valmin_code_2015_final.pdf accessed 17 July 2025

²² *Ibid*

determine the value of the mining assets that is known as Canadian Institute of Mining, Metallurgy and Petroleum Valuation Standards and Guidelines (CIMVAL). Basically CIMVAL is a set of principles, standards, and guidelines that is used for the valuation of mineral properties in Canada. CIMVAL is also part of the international movement to standardize mineral asset valuations for both public reporting and private transactions.²³ The code that includes in CIMVAL are:²⁴

- (1) CIMVAL Standards (Part 1) - Mandatory rules in valuation (competence, materiality, etc).
- (2) CIMVAL Guidelines (Part 2) - Non-mandatory that works as best practice recommendations complementing the standards.
- (3) Definitions (Part 3) - Clear definitions that align with NI 43-101 terms.

In implementing the standards, there are six fundamental principles that should be implemented :²⁵

- (1) Competence - Valuers should be qualified professionals with relevant expertise and have related experiences.
- (2) Materiality - All significant information affecting valuation must be included or referenced.
- (3) Reasonableness - Using realistic assumptions, professional judgement, and appropriate valuation methods.
- (4) Transparency - Clear disclosure of assumptions, methodology, and references.
- (5) Independence - Valuation must be free from bias.
- (6) Objectivity - Neutral, in a way unbiased analysis based on data and documented methods.

The objectives and scope of CIMVAL code guides valuation of mineral

²³ Canadian Institute of Mining, Metallurgy and Petroleum (CIM) Mineral Economics Society (CIMVal Committee), *Standards and Guidelines for Valuation of Mineral Properties* (CIMVal, February 2003) 1–2<https://mrmr.cim.org/media/1020/cimval-standards-guidelines.pdf> accessed 17 July 2025.

²⁴ Canadian Institute of Mining, Metallurgy and Petroleum (CIM) Special Committee on Valuation of Mineral Properties (CIMVal), *The CIMVAL Code for the Valuation of Mineral Properties* (CIM, adopted 29 November 2019)<https://mrmr.cim.org/media/1135/cimval-code-november2019.pdf> accessed 17 July 2025

²⁵ *Ibid*

properties and focuses on asset valuation rather than company valuation and those who can be CIMVAL valuator must be professionally certified, have relevant experience in valuing mineral properties, and be independent and disclose any conflicts.²⁶ About its effective binding power, CIMVAL is only binding when required by regulators, such as in Canadian securities regulators (TSX Venture Exchange rules) and frequently adopted for compliance and investor trust.

Along with VALMIN & CIMVAL, there are other international instruments that are also used as a tool to determine share value known as The South African Code for the Reporting of Mineral Asset Valuation (SAMVAL). SAMVAL is specifically designed for the monetary valuation of mineral assets in South Africa that works as minimum standards and guidelines for public reporting of the value of mineral assets.²⁷ The goals of SAMVAL itself are :

- (1) Ensuring valuations support investment decision making.
- (2) Reinforcing transparency and credibility in public disclosure.
- (3) Protecting investors against misleading valuations.

In implementing SAMVAL code there are some principles that are needed to be implemented :²⁸

- (1) Materiality - Public reports contain all relevant information that are needed to help investors and professional advisors make a reasoned and balanced judgement.
- (2) Transparency - The report shouldn't contain misleading information and need to be stated clearly.
- (3) Competency - The public report is based on work from individuals that are qualified and have a specific experience in valuing minerals. These individuals also need to follow all Professional Code of Ethics.

Just like the other international instruments, SAMVAL also regulates the requirements for competent valuers. In SAMVAL, competent valuator is an

²⁶ *Ibid*

²⁷ Martin Creamer, 'South Africa's "Samcodes way" a world-beater – Mullins' (Mining Weekly, 12 June 2018) <https://www.miningweekly.com/article/south-africas-samcodes-way-a-world-beater-mullins-2018-06-12> accessed 17 July 2025

²⁸ The SAMVAL Committee (Southern African Institute of Mining and Metallurgy & Geological Society of South Africa, et al), *The South African Code for the Reporting of Mineral Asset Valuation (SAMVAL Code)* (April 2008, amended July 2009, 2016 edn) 1 <https://mrmr.cim.org/media/1022/samval-code.pdf> accessed 17 July 2025

individual who is registered with ESCA, SACNASP, or PLATO or a member of the SAIMM, the GSSA, SAICA, or a Recognised Overseas Professional Organization. These valuers hold the authority to prepare, lead, and sign the documentation detailing mineral assets valuation.

Relating to the valuation mechanism, SAMVAL code mandates the valuers to use at least two of three valuation approaches, such as :²⁹

- (1) Cash Flow Approach - This approach relies on the 'value-in-use' principle and determines the present value of future cash flows over the useful life of the Mineral Asset.
- (2) Market Approach - This approach relies on the principle of 'willing buyer, willing seller' and the value of the mineral asset is determined as if the sale occurred under fair conditions between independent, unrelated parties.
- (3) Cost Approach - This approach relies on historical and/or future amounts spent on the Mineral Asset.

SAMVAL also has a meaningful position by ensuring the mineral valuations are based on clear and defensible methodology in order to protect investors, market integrity, and credibility of South Africa's mining industry.

The Implementation in Indonesia

To overcome the problem of lacking the ability to buy the shares, Indonesia needs to adapt those international rules that have been implemented in some countries through VALMIN, CIMVAL, and SAMVAL. These regulations have a clear limitation on how the companies can determine the value of their share. Based on the Rational Choice Theory, the government plays the significant role to make the regulation related to the divestment. The government needs to address the need of the state and the value of the environment in order to be able determine the suitable value for the divestment share. The government can assess the value of the divestment share through,

²⁹ The SAMVAL Committee (Southern African Institute of Mining and Metallurgy & Geological Society of South Africa, et al), *The South African Code for the Reporting of Mineral Asset Valuation (SAMVAL Code)* (2016 edn) <https://mrmr.cim.org/media/1022/samval-code.pdf> accessed 17 July 2025.



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- (1) The nation's goal represents from Article 33 (2) and (3) of the 1945 Constitution of the Republic of Indonesia that all natural resources in Indonesia must be used for the wealthy of the people.
- (2) The protection for both of the parties, referring to the professional ethic consideration.

These two main things need to be highlighted since there are national goals that want to be reached and also the international law that binds the foreign investment scheme. In order to reach the stability between those two interests, Indonesia can easily obtain it by implementing those international rules, which are VALMIN, CIMVAL, and SAMVAL that will work as guidelines for mining companies to determine the value of the shares. Just like those three regulation work, the regulation adaptation in Indonesia will also include the Fair Market Value principle and Discounted Cash Flow approach. This international rules will be adapt into *Peraturan Menteri Energi dan Sumber Daya Mineral* that will work as derivative regulation from the Article 112 of The Law Number 3/ 2020 about the mineral and coal mining that regulates about the obligation for Indonesia to own minimum 51% of the divestment shares in foreign mining companies that operate in Indonesia. This regulation will bind all the foreign mining companies in Indonesia and each of the companies have the obligation to follow all the rules that are stated in the regulation. Things that will be regulated inside the *Peraturan Menteri Energi dan Sumber Daya Mineral* are :

- (1) The purpose and scope of the regulation

This section will explain the goals and how big the scope of the regulation is in binding the parties.

- (a) *Standardize mining assets valuations for the divestment scheme.*
- (b) *This regulation binds the foreign mining companies that operate in Indonesia.*

- (2) The principles that should be considered in the application of the regulation.

- (a) *Competence*
- (b) *Materiality*
- (c) *Independence*



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(d) Transparency

(3) Competence and Responsibility

This section will regulate the authority of the verified valuers in valuing and signing the mining assets qualification report, such as having the relevant academic background and experience in the same field for a specific period of time.

(4) Valuation Fundamentals, Approaches, & Methods

This section will regulate the approaches option that can be used by the valuator in valuing the mining assets. In this section the Fair Market Value and Discounted Cash Flow approaches will be implemented to give a clear guide to the available methods in valuing the divestment shares.

Value relates to future expectations and is the present value (or economic worth) of all future benefits expected to be received.

(a) The assets or cost approach

(b) The market approach

(c) The income/ cash flow approach

By ratifying these international rules, it will combat the practice of overvaluing the value of divestment share by giving clear guidelines in valuing the mining assets that will affect the value of the divestment share. By doing this, Indonesia will hold its authority toward its own natural resources, especially in the mining sector. The divestment scheme will be implemented by following the nation's need but still in the corridors of respecting the right of the foreign investor.

Conclusion

According to Article 33(2) and (3) of the 1945 Constitution, Indonesia's enormous natural resource wealth is a national asset that must be managed for the benefit of its citizens. But managing this wealth in practice, especially through the mining industry, has turned out to be much more difficult. Although the government has welcomed international investors in an attempt to spur economic growth and profit from the value of commodities like gold, coal, and nickel, the outcomes have not always been in the best interests of the country. Local people often bear the environmental burden of mining activities while receiving



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minimum economic return, and the government itself has faced major problems in asserting meaningful control especially through mechanisms like the mandatory 51% share divestment. Actually, the spirit behind the divestment regulation is clear, which is to restore national control and ensure that Indonesia can gain fair benefits from the mining activity. However, the implementation has not met its best way. The case of PT Freeport is a telling example where overvaluation by foreign companies causes the government unable to fulfill the mandated stake. This fail the very essence of the divestment scheme that aims to maximize Indonesia ownership of the natural resources itself.

To overcome this, Indonesia must take bold steps to reform its divestment policy. One of the most promising strategies is to ratify international best practices specifically from the VALMIN, CIMVAL, and SAMVAL codes. These internationally recognized frameworks provide not only valuation methods but also fundamental principles such as transparency, independence, competence, and materiality. The integration of principles like Fair Market Value and Discounted Cash Flow (DCF) into national regulation offers a rational, balanced method to determine share values. These approaches rely on realistic projections, actual market data, and respect for both the investor's and the nation's interests. By adopting such mechanisms, Indonesia can prevent overvaluation and align valuation practices with its constitutional mandate and development goals. Moreover, this strategy reflects the application of Rational Choice Theory, where each stakeholder including the government acts in pursuit of their best interests through informed, calculated decisions. Rational regulation must serve not only the technical and legal dimensions of the mining sector but also the ethical, social, and environmental interests of the Indonesian people.

Adapting international standards through a well-drafted Ministerial Regulation under Law No. 3/2020 will serve as a solid legal foundation. It will empower Indonesia to enforce fair valuation practices, strengthen national ownership, and ensure that the wealth from its natural resources is more evenly and justly distributed. By embracing this reconstruction, Indonesia can finally shift from being a passive resource host to a proactive economic actor, reclaiming



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its rightful stake in its natural riches not only in law, but in practice. This is not just a policy shift; it is a step toward economic sovereignty.

Bibliography

Eddy T, 'Management of Natural Resources Based on Local Wisdom by Traditional Law Communities' (2024) *International Journal of Educational Research & Social Sciences* (9 pages) ISSN 2774-5406 <https://ijersc.org/index.php/go/article/download/190/217/1592> accessed 17 July 2025.

Sekretariat KADIN Indonesia, *Indonesia's Mining Sector in Brief* (KADIN, 22 June 2022) <https://bsd-kadin.id/2022/06/22/indonesias-mining-sector-in-brief/> accessed 17 July 2025.

Indonesia Mining Association, *Kementerian ESDM catat ada 4.634 izin tambang minerba di Indonesia* (Indonesia Mining Association, November 2024) <https://ima-api.org/detail/news/mining/kementerian-esdm-catat-ada-4634-izin-tambang-minerba-di-indonesia> accessed 17 July 2025.

Institute for Development of Economics and Finance (INDEF), *Mining Sector Performance Report, July 2023* (December 2023) https://indef.or.id/wp-content/uploads/2023/12/072023_pb_mining_eng.pdf accessed 17 July 2025.

Peraturan Menteri Energi dan Sumber Daya Mineral Nomor 43 Tahun 2018 tentang Pengutamaan Penggunaan Barang/Jasa Dalam Negeri serta Pemberian Kesempatan Kepada Perusahaan Nasional Bidang Usaha Jasa Penunjang Kegiatan Usaha Minyak dan Gas Bumi.

Mirati R A, 'Kajian Hukum Divestasi pada Perusahaan Pertambangan Asing di Indonesia' (2016) *Lex et Societatis* 4(7) 94–103 <https://ejournal.unsrat.ac.id/v3/index.php/lexetsocietatis/article/download/12621/12221> accessed 17 July 2025.

Legal Information Institute (Cornell Law School), *Fair Market Value* (Wex, last reviewed February 2022) https://www.law.cornell.edu/wex/fair_market_value accessed 17 July 2025.

ScienceDirect (Elsevier), *Rational Choice Theory* (ScienceDirect Topics, accessed 17 July 2025) <https://www.sciencedirect.com/topics/social-sciences/rational-choice-theory>.

ScienceDirect (Elsevier), *Rational Choice Theory* in *The Cambridge Rawls Lexicon* (December



Erasmus+ Jean Monnet Modules, Summer Course Program: "EU Regulations and Sustainable Investment"
(TransContinental Partnerships: EU Regulations and Sustainable Investments)

2014)<https://www.cambridge.org/core/books/abs/cambridge-rawls-lexicon/rationa>



Erasmus+ Jean Monnet Modules, Summer Course Program: "EU Regulations and Sustainable Investment"
(TransContinental Partnerships: EU Regulations and Sustainable Investments)

[l-choice-theory/0707D12AEAFF97F93C46EF75CE8261CB](#) accessed 17 July 2025.

Indrayani A, 'Implementasi Kebijakan Divestasi Saham pada Kegiatan Usaha Pertambangan Mineral dan Batubara di Indonesia' (2023) *Jurnal Kebijakan Pemerintahan* 14(2) 109–118
<https://ejournal.ipdn.ac.id/JKP/article/download/4223/1874> accessed 17 July 2025.

Margaret M and Esa A A S, 'Rational Choice Penjual dan Pembeli dalam Perdagangan Barang Counterfeit di Pasar Taman Puring, Jakarta' (2022) 6(2) *Jurnal IKRAITH-HUMANIORA* 8–14
<https://journals.upi-yai.ac.id/index.php/ikraith-humaniora/article/download/1495/1222/> accessed 17 July 2025.

The Carta Team, *Fair Market Value (FMV)* (Carta, 24 March 2025)
<https://carta.com/learn/startups/equity-management/fmv/> accessed 17 July 2025

Corpinvest, *Determining Fair Market Value* (Corpinvest, accessed 17 July 2025)
<https://corpinvest.com/determining-fair-market-value/>

CFI Team, *Discounted Cash Flow (DCF)* (Corporate Finance Institute, accessed 17 July 2025)

<https://corporatefinanceinstitute.com/resources/valuation/discounted-cash-flow-dcf/>

PwC, *Valuation approaches, techniques, and methods* (PwC Viewpoint, accessed 17 July 2025)

https://viewpoint.pwc.com/dt/us/en/pwc/accounting_guides/fair_value_measurem9_US/chapter_4_concepts_u_US/44_valuation_approac_e_US.html

Australasian Institute of Mining and Metallurgy and Mining and Petroleum Valuation Committee, *VALMIN Code 2015* (AIMM & MPVC, December 2015)

https://www.valmin.org/docs/VALMIN_Code_2015_final.pdf accessed 17 July 2025.

The VALMIN Committee (Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists & Mineral Industry Consultants Association), *Code and Guidelines for Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports (VALMIN Code)* (2005 edn, updated 2015) <https://mrmr.cim.org/media/1024/valmin-code.pdf> accessed 17 July 2025.



Erasmus+ Jean Monnet Modules, Summer Course Program: "EU Regulations and Sustainable Investment"
(TransContinental Partnerships: EU Regulations and Sustainable Investments)

Ellis T R, 'The Australian Valmin Code for Mineral Appraisals' (1995) *AIMA Newsletter* Vol 1 No 4, 1
<https://www.minevaluation.com/wp-content/uploads/2012/09/EllisAusCode95AIMA1095.pdf> accessed 17 July 2025.

Canadian Institute of Mining, Metallurgy and Petroleum (CIM) Mineral Economics Society (CIMVal Committee), *Standards and Guidelines for Valuation of Mineral Properties* (CIMVal, February 2003) <https://mrmr.cim.org/media/1020/cimval-standards-guidelines.pdf> accessed 17 July 2025

Canadian Institute of Mining, Metallurgy and Petroleum (CIM) Special Committee on Valuation of Mineral Properties (CIMVal), *The CIMVAL Code for the Valuation of Mineral Properties* (CIM, adopted 29 November 2019) <https://mrmr.cim.org/media/1135/cimval-code-november2019.pdf> accessed 17 July 2025.

Creamer M, 'South Africa's "Samcodes way" a world-beater – Mullins' (Mining Weekly, 12 June 2018) <https://www.miningweekly.com/article/south-africas-samcodes-way-a-world-beater-mullins-2018-06-12> accessed 17 July 2025.

The SAMVAL Committee (Southern African Institute of Mining and Metallurgy & Geological Society of South Africa, et al), *The South African Code for the Reporting of Mineral Asset Valuation (SAMVAL Code)* (2016 edn) <https://mrmr.cim.org/media/1022/samval-code.pdf> accessed 17 July 2025 .