

Restructuring Corporate Governance in the Critical Minerals Sector to Strengthen Indonesia's Economic Sovereignty in the Global Value Chain

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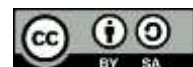
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ABSTRACT

Changes in the global economic structure have placed critical minerals in a strategic position because they are needed in the development of electric vehicles, batteries, energy networks, low-carbon technologies, and various strategic industries. Indonesia holds a key position in the global value chain for critical minerals, particularly nickel. However, high mineral production in a country does not necessarily indicate that the country controls the economic value generated along the production chain. Differences between resource location, corporate ownership, technological mastery, financing, and market access indicate issues that cannot be resolved solely through mining or trade policies. This study analyzes the construction of corporate governance for critical minerals in Indonesian law, its role in strengthening the capture of Indonesia's economic value in global value chains, and the need for corporate governance reconstruction to strengthen economic sovereignty. The study uses a normative juridical method with legislative, conceptual, case, and comparative approaches. Primary legal materials consist of Indonesian laws and regulations, Constitutional Court decisions, World Trade Organization documents, and relevant international instruments. Secondary legal materials come from scientific literature and publications from the OECD, IEA, and UNCTAD. The research findings indicate that Indonesian law has provided the basis for state control over mineral resources, mining operations, investment, and corporate governance, but has not yet integrated the strategic character of critical minerals into a corporate governance framework that specifically addresses economic sovereignty. This research proposes the concept of Strategic Mineral Corporate Governance, which encompasses ownership transparency, strategic responsibility of corporate organs, supply chain risk management, due diligence, technology development, domestic value capture, sustainability, and accountability. This reconstruction is not directed at restricting foreign investment, but rather at establishing governance that can enhance domestic capacity and Indonesia's position in the global value chain while still adhering to international business law.

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1. INTRODUCTION

Critical minerals are increasingly occupying a strategic position in the global economy. The development of electric vehicles, batteries, electricity grids, renewable energy, and other technologies is increasing the demand for a number of strategic minerals while simultaneously facing the risk of supply disruptions. The International Energy Agency points out that this increased demand coincides with a high concentration of production and processing of certain minerals. This situation makes supply security, source diversification, technological mastery, and processing capabilities both economic and strategic issues.¹ [1], [2]

Indonesia is at a crucial stage in this transformation. Nickel is a prominent example. According to IEA data, Indonesia's share of global mined nickel production increased from 34% in 2020 to 52% in 2023. In refined nickel production, Indonesia's share increased from 23% to 37% over the same period.² This development shows a significant change in Indonesia's position from an ore-producing country to one of the world's nickel processing centers [3], [4].

The Indonesian government has also classified certain minerals as critical. Decree of the Minister of Energy and Mineral Resources No. 296.K/MB.01/MEM.B/2023 defines the

types of commodities classified as critical minerals. The decree identifies critical minerals due to their importance to the national economy and defense, the risk of supply disruptions, and the lack of viable substitutes.³ This determination has important consequences because minerals are no longer seen solely as mining commodities, but as resources that have strategic significance for national interests [3], [5].

Constitutionally, the management of natural resources is based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Article 33 paragraph (4) further places independence, sustainability, environmental insight, and balanced economic progress as part of the principles of national economic management.⁴

The concept of state control is not synonymous with private ownership or direct government management of all economic activities. The Constitutional Court has explained that state control, in the context of Article 33 of the 1945 Constitution of the Republic of Indonesia, encompasses the functions of policy, administration, regulation, management, and oversight.⁵ Thus, the state can use various

¹ International Energy Agency, Global Critical Minerals Outlook 2025 (International Energy Agency, 2025), n. The report is the IEA's primary source on developments in demand, production, processing, investment and supply risks for critical minerals., <https://www.iea.org/reports/global-critical-minerals-outlook-2025>.

² International Energy Agency, Global Critical Minerals Outlook 2024 Market Review (International Energy Agency, 2024), n. The IEA noted that Indonesia's share of mined nickel production increased from 34% in 2020 to 52% in 2023, while its share of refined nickel production increased from 23% to 37%,

<https://www.iea.org/reports/global-critical-minerals-outlook-2024/market-review>.

³ Decree of the Minister of Energy and Mineral Resources Number 296.K/MB.01/MEM.B/2023 concerning Determination of Types of Commodities Included in the Critical Mineral Classification (2023), https://jdih.esdm.go.id/common/dokumen-external/Kepmen%20ESDM%20No%20296K_MB_01_MEM_B_2023.pdf.

⁴ Constitution of the Republic of Indonesia 1945, n. Article 33 paragraph (3) and paragraph (4), http://peraturan.bpk.go.id/Download/92288/UUD_45_SatuNaskah.pdf.

⁵ Decision Number 001-021-022/PUU-I/2003, 001-021-022/PUU-I/2003 (Constitutional

legal instruments to ensure that the use of natural resources provides optimal benefits for society.

In the context of critical minerals, the issue is further complicated because geographic control of a resource does not always equate to economic control of its value chain. The IEA points to significant differences between mine location and company ownership. Although Indonesia is a major nickel mining location, Indonesian companies own less than 10% of production based on the location of their headquarters, while Chinese companies control around 40% of production and European companies over 20%.⁶ These figures should not be interpreted as evidence that Indonesia is missing out on economic benefits. However, they do indicate that the size of mineral holdings is not solely determined by the geographic location of production [6]–[8].

The distinction between resource location and corporate ownership demonstrates the importance of viewing the entire value chain. The economic value of minerals is created through a series of activities, including exploration, mining, transportation, processing, refining, intermediate material production, manufacturing, technology, financing, distribution, and marketing. Actors who control higher-value-added stages can achieve a different economic position than those who only control the extraction stage [9].

This issue is directly related to corporate law. A corporation is a legal entity

with its own rights and obligations, separate from its shareholders. This structure allows for capital pooling, risk sharing, and large-scale business activities. In the critical minerals sector, corporations also serve as the venue for decisions regarding investment, technology, financing, procurement, supplier relationships, business development, and relationships with companies within the same business group [10].

Law Number 40 of 2007 concerning Limited Liability Companies regulates the structure and organs of companies, including the GMS, Board of Directors, and Board of Commissioners, as well as the company's social and environmental responsibilities.⁷ However, the legal framework does not specifically establish corporate governance for companies operating in the critical minerals sector [F7].

The question then becomes not whether companies should replace the state, but rather whether existing corporate governance is sufficient to accommodate the strategic nature of the critical minerals sector. This question is relevant because corporate interests and national economic interests are not always identical. Companies have their own objectives and legal interests. At the same time, the state has an interest in ensuring that strategic resources generate economic benefits, industrial development, technological mastery, and economic resilience. If these two interests are to be reconciled, the mechanism must be established through clear legal norms to avoid creating uncertainty regarding the

Court of the Republic of Indonesia December 15, 2004), <https://www.mkri.id/public/content/persidangan/putusan/Putusan001PUUI2003.pdf>; Decision Number 36/PUU-X/2012, 36/PUU-X/2012 (Constitutional Court of the Republic of Indonesia November 13, 2012), n. These two decisions are important primary sources in the development of the doctrine of the State's Right to Control, https://s.mkri.id/public/content/persidangan/putusan/putusan_sidang_36%20PUU%202012%20migas%20-%20telah%20baca%2013%20Nov%202012.pdf.

⁶ International Energy Agency, Global Critical Minerals Outlook 2024 Market Review, n. The IEA specifically distinguishes production based on the geographic location of mines from production based on company ownership. According to ownership measures based on the location of the owner's company headquarters, Indonesian companies own less than 10% of nickel production, Chinese companies around 40%, and European companies over 20%.

⁷ Law Number 40 of 2007 concerning Limited Liability Companies (2007), <https://peraturan.bpk.go.id/Details/39965/uu-no-40-tahun-2007>.

responsibilities of directors and corporate organs.

International developments indicate that corporate governance itself has expanded. The G20/OECD Principles of Corporate Governance 2023 places board responsibility for oversight of strategy, management performance, risk management, compliance, and attention to stakeholder interests. The principles also explicitly include supply chain disruptions and geopolitical tensions as external risks that require consideration within a corporate resilience framework.⁸ The OECD also places sustainability and resilience as a separate part of the corporate governance framework.⁹ [3], [12]

These changes demonstrate that modern corporate governance is no longer solely focused on the relationship between shareholders and management. Companies must be able to identify and manage various risks that impact the sustainability of business activities. In the context of critical minerals, these developments are relevant to include risks of technological dependency, supplier or buyer concentration, supply chain disruptions, geopolitical shifts, and international regulatory changes.

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct 2023 also reinforce the importance of risk-based due diligence. The OECD defines due diligence as the process of

identifying, preventing, mitigating, and accounting for how a company handles actual and potential impacts as part of its decision-making and risk management systems.¹⁰ In the minerals sector, the OECD has provided specific guidelines on responsible mineral supply chains.¹¹ [12]

This development is significant for Indonesia because critical mineral companies interact not only with the countries and communities where the mines are located, but also with parent companies, investors, suppliers, buyers, financial institutions, and markets in various countries. Corporate governance thus has a cross-border dimension.

This issue also relates to international trade law. Indonesia's downstreaming policy has become the subject of a WTO dispute in the Indonesia Measures Relating to Raw Materials (DS592) case. In that case, the WTO panel declared the disputed nickel ore export ban and domestic processing requirements inconsistent with Article XI:1 of the GATT 1994. Indonesia subsequently appealed.¹² The dispute shows that policies to increase domestic added value cannot be designed without taking into account Indonesia's obligations under international trade law.

This does not mean that downstreaming policies fundamentally contradict international law. The issue lies in the choice of legal instruments used. If increasing added value relies solely on export

⁸ Organisation for Economic Co-operation and Development, G20/OECD Principles of Corporate Governance 2023 (OECD Publishing, 2023), pt. V, "The Responsibilities of the Board." The principles place strategy, oversight, risk management, compliance, stakeholders, supply chain disruptions, and geopolitical tensions within the framework of board responsibilities., <https://doi.org/https://doi.org/10.1787/ed750b30-en>.

⁹ Organization for Economic Co-operation and Development, G20/OECD Principles of Corporate Governance 2023, pt. VI, "Sustainability and Resilience."

¹⁰ Organisation for Economic Co-operation and Development, OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Publishing, 2023), n. The

Guidelines explain risk-based due diligence and cover, among other things, human rights, employment, environment, disclosure, technology, business integrity, and supply chains., <https://doi.org/https://doi.org/10.1787/81f92357-en>.

¹¹ Organization for Economic Co-operation and Development, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas Third Edition (OECD Publishing, 2016), 120, <https://doi.org/https://doi.org/10.1787/9789264252479-en>.

¹² DS592: Indonesia - Measures Relating to Raw Materials, WT/DS592/7 (World Trade Organization), https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds592_e.htm.

restrictions, such policies could face challenges within the international trade regime. Conversely, strengthening corporate governance at the company and value chain levels can serve as a complementary instrument for enhancing domestic economic capacity.

Academic studies on Indonesian minerals have developed in various directions. Ali and Kim's research examines Indonesian mining governance, emphasizing environmental regulations, licensing, transparency, and accountability.¹³ Literature on Indonesia's nickel policy has also developed within the study of international trade law. Meanwhile, Lisa Tilley, in an article published in 2026, analyzed Indonesia's nickel sovereignty by linking it to global financial value structures and subordination.¹⁴ The study of global value chains developed by Gereffi, Humphrey, and Sturgeon explains how governance structures in value chains influence relationships between actors and the ability to upgrade.¹⁵ [5]

These studies provide important groundwork, but there is still room to connect three domains typically discussed separately: corporate law, economic sovereignty, and global value chain governance. The focus of this research is how corporate law can be restructured so that corporate governance of critical minerals functions not only as an internal corporate mechanism but also contributes to Indonesia's ability to maintain and enhance the economic value derived from strategic resources [10].

This research, therefore, does not base economic sovereignty on the rejection of foreign investment. Foreign capital can remain a part of Indonesia's industrial

development. The question is how the relationship between capital, ownership, technology, national companies, and multinational corporations is structured so that involvement in global value chains results in increased domestic capacity [1].

Based on this framework, this study proposes the concept of Strategic Mineral Corporate Governance. This concept is an analytical construct of research, not a term claimed to have become a legal doctrine. The concept combines ownership transparency, strategic responsibility of corporate organs, supply chain risk management, due diligence, technology development, domestic value capture, sustainability, and corporate accountability.

The novelty of this research, therefore, does not lie in the claim that there has never been research on Indonesia's mineral sovereignty. Recent literature, in fact, shows that the issue has evolved. The novelty lies in the reconstruction of corporate governance as a legal instrument to link economic sovereignty to Indonesia's position in the global critical mineral value chain.

Formulation of the problem

Based on this description, this research will discuss three problems, namely:

- 1) How is the construction of critical mineral corporate governance in Indonesian law in relation to economic sovereignty?
- 2) How can corporate governance of critical minerals strengthen Indonesia's control and capture of economic value in global value chains?

¹³ Propana Okionomus Ali and Kyung Nam Kim, "Analysis of Indonesia's Priority Selection: Energy Transition, Energy-Related Measures, Mining Governance, and Resource Transition Using the Analytic Hierarchy Process (AHP)," *Energy for Sustainable Development* 83 (2024): 101559, <https://doi.org/https://doi.org/10.1016/j.esd.2024.101559>.

¹⁴ Tilley Lisa, "Indonesian Nickel Sovereignty and Global Raced Finance: The Value

of Element 28 in an Age of 'transition,'" *Review of International Political Economy* 33, no. 4 (2026), <https://doi.org/https://doi.org/10.1080/09692290.2026.2642935>.

¹⁵ Gary Gereffi et al., "The Governance of Global Value Chains," *Review of International Political Economy* 12, no. 1 (2005): 78–104, <https://doi.org/https://doi.org/10.1080/09692290500049805>.

- 3) How can the reconstruction of critical mineral corporate governance strengthen Indonesia's economic sovereignty in the global value chain while still adhering to the principles of international business law?

2. METHODS

This research is normative legal research with an analytical prescriptive character.¹⁶ The legislative approach is used to examine the 1945 Constitution of the Republic of Indonesia, the Limited Liability Company Law, the Investment Law, regulations on mineral and coal mining, and provisions on critical minerals. The conceptual approach is used to analyze corporate governance, fiduciary responsibility, economic sovereignty, permanent sovereignty over natural resources, responsible business conduct, and global value chain governance. The case approach is used for the WTO DS592 case, while the comparative approach is used by taking into account developments in the G20/OECD Principles of Corporate Governance, the OECD Guidelines for Multinational Enterprises, mineral supply-chain due diligence guidelines, and the European Union legal framework on critical raw materials [3], [12], [13].

Primary legal materials consist of laws and regulations, Constitutional Court decisions, WTO documents, UN General Assembly resolutions, and relevant international instruments. Secondary legal materials include books, journal articles, and reports from international institutions. Legal materials were collected through literature and document studies. Analysis was conducted through the identification and interpretation of norms, legal synchronization, identification of normative gaps, conceptual analysis, and formulation of legal reconstruction.

¹⁶ Salim HS and Erlies S. Nurbani, Application of Legal Theory in Thesis and Dissertation Research (PT RajaGrafindo Persada, 2013), 9.

2.1 Purpose and Benefits of Writing

This study aims to analyze the legal construction of corporate governance of critical minerals in Indonesia and its relationship to economic sovereignty; analyze the role of corporate governance in strengthening Indonesia's ability to capture economic value in the global value chain of critical minerals; and formulate a reconstruction of corporate governance that can strengthen economic sovereignty without ignoring the principles of international business law [14].

Theoretically, this research is expected to broaden the study of corporate law by placing corporate governance within the context of the strategic resource sector and linking it to international economic law and global value chain governance. Practically, this research can be used as a consideration in formulating policies related to critical mineral companies, particularly regarding ownership, risk management, transparency, technology development, supply chains, and increasing domestic added value.

3. RESULTS AND DISCUSSION

3.1 The Construction of Corporate Governance of Critical Minerals in Indonesian Law in Relation to Economic Sovereignty

Critical mineral management must be positioned within the relationship between the state, natural resources, and business entities. Article 33 of the 1945 Constitution of the Republic of Indonesia provides the basis that natural resources must be managed for the greatest prosperity of the people [10]. State control, as interpreted by the Constitutional Court, encompasses policy, management, regulation, administration, and oversight.¹⁷ This framework allows the state to determine the direction of resource utilization while opening up space for business entities to carry out economic activities.

¹⁷ Decision Number 001-021-022/PUU-I/2003; Decision Number 36/PUU-X/2012.

In the mining context, the latest legal developments are important to consider. Law Number 2 of 2025 is the fourth amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining.¹⁸ These changes demonstrate the continued adjustment of Indonesia's mining legal framework. At the implementation level, Government Regulation No. 39 of 2025 amends Government Regulation No. 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities for the second time.¹⁹

On the other hand, corporate law has a different logic. A corporation is an independent legal entity with its own interests and responsibilities. The board of directors manages the company in its best interests, in accordance with its purposes and objectives.²⁰ While the Board of Commissioners carries out supervision in accordance with the company's legal framework.²¹ This structure is necessary to ensure certainty of business activities and protection of shareholders.

Problems arise when companies operate in sectors that are strategic to the economy. The government has designated critical minerals as minerals of particular importance to the national economy and defense and security.²² However, this strategic status does not automatically result in different corporate governance practices. This is where there is room for a clearer connection between natural resource policy and corporate law [15].

This relationship should not be built by making the board of directors the implementers of government policy. The board of directors remains accountable to the company in accordance with corporate law. What is needed is to incorporate legally based risks and strategic objectives into the corporate decision-making system. This way, national economic interests are not treated as unlimited obligations, but are translated into predictable legal obligations.

This approach aligns with evolving international corporate governance principles. The G20/OECD Principles of Corporate Governance 2023 states that the corporate governance framework should ensure the company's strategic direction, management oversight, and board accountability. The board is also responsible for risk management systems and legal compliance.²³ The same principle requires that the board consider the interests of stakeholders such as workers, creditors, consumers, suppliers and affected communities.²⁴ [3]

In the context of critical minerals, this responsibility can translate into more specific risk management. Corporate risks extend beyond price fluctuations or financial conditions. Companies also face supply chain disruptions, changing trade policies, geopolitical tensions, technological dependencies, and environmental and social risks. The OECD explicitly includes supply chain disruptions and geopolitical tensions as external risks that require attention within its corporate resilience framework.²⁵ [12]

¹⁸ Law Number 2 of 2025 concerning the Fourth Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining (2025), <https://peraturan.bpk.go.id/Details/316682/uu-no-2-tahun-2025>.

¹⁹ Government Regulation Number 39 of 2025 concerning the Second Amendment to Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities (2025), <https://peraturan.bpk.go.id/Details/331105/pp-no-39-tahun-2025>.

²⁰ Law Number 40 of 2007 concerning Limited Liability Companies, art. 92.

²¹ Law Number 40 of 2007 concerning Limited Liability Companies, art. 108.

²² Decree of the Minister of Energy and Mineral Resources Number 296.K/MB.01/MEM.B/2023 concerning the Determination of Types of Commodities Included in the Critical Mineral Classification.

²³ Organization for Economic Cooperation and Development, G20/OECD Principles of Corporate Governance 2023, pt. V.

²⁴ Ibid

²⁵ Ibid. The OECD explicitly mentions supply chain disruptions and geopolitical tensions

Thus, corporate governance of critical minerals does not require the creation of a new paradigm that sever ties with existing corporate law. What is needed is the interpretation and development of existing instruments so that the strategic nature of minerals becomes part of corporate risk management, oversight, disclosure, and decision-making [1].

This construction also aligns with the principle of permanent sovereignty over natural resources. UN General Assembly Resolution 1803 (XVII) recognized the permanent sovereignty of nations and states over their natural wealth and resources. The resolution also addressed the exploration, development, and utilization of resources, foreign investment, profit sharing, and the right of states to manage resources according to their interests.²⁶ This principle should not be understood as a rejection of foreign investment, but as an acknowledgement that the state still has the authority to determine the framework for the use of its natural resources [5].

Based on this, economic sovereignty in this study is not interpreted as autarky. Economic sovereignty is understood as a state's ability to maintain its capacity to determine the direction of strategic resource utilization, obtain added value, develop production and technological capabilities, and maintain policy space in international economic relations. The findings in this section indicate that Indonesian law already possesses the basic elements for establishing corporate governance for critical minerals, but these elements are still scattered across constitutional, mining, investment, and corporate law [15]. The main problem lies in the fragmentation and lack of integration of economic sovereignty interests into corporate governance.

3.2 Corporate Governance of Critical Minerals Can Strengthen Indonesia's Control and Capture of Economic Value in Global Value Chains

Control of mineral resources is inseparable from the structure of global value chains. Gereffi, Humphrey, and Sturgeon explain that governance in global value chains is influenced by, among other things, transaction complexity, the ability to codify transactions, and supplier capacity.²⁷ This structure determines the pattern of relationships between companies and the ability of economic actors to upgrade [5].

In the critical minerals sector, the value chain encompasses more than mining. Minerals can move from exploration and extraction to processing, refining, intermediate materials, components, manufacturing, and final products. A country's economic position is therefore determined not only by how much mineral is mined, but also by which stages domestic companies can control. IEA data on Indonesian nickel illustrates this issue. Indonesia is a major nickel mining location, but the ownership structure of production varies significantly. Indonesian companies own less than 10 percent of production based on the location of the owner's headquarters, while Chinese companies control around 40% and European companies over 20%.²⁸ The data shows that resource location and corporate ownership are two different categories [1].

This distinction is crucial in measuring economic sovereignty. States can control access to resources through national laws, but the economic value generated from those resources remains influenced by ownership structures, technology, financing, production networks, and markets. Therefore, control of resources must be accompanied by the ability

as examples of external risks relevant to corporate resilience.

²⁶ United Nations General Assembly, "Permanent Sovereignty over Natural Resources General Assembly Resolution 1803 (XVII),"

December 14, 1962, https://legal.un.org/avl/ha/ga_1803/ga_1803.html.

²⁷ Gereffi et al., "The Governance of Global Value Chains."

²⁸ International Energy Agency, Global Critical Minerals Outlook 2024 Market Review.

to capture value along the production chain [16].

In this context, corporate governance has a broader function. Corporate decisions regarding investment, technology development, research and development, financing structures, procurement, and supplier relationships can determine a company's ability to upgrade. Good governance can create incentives for long-term decision-making and better risk management.

G20/OECD Principles 2023 places sustainability and resilience as part of corporate governance. This framework requires companies and investors to consider the risks and opportunities associated with economic, environmental, and social change.²⁹ Boards are also encouraged to ensure that material sustainability matters are incorporated into decision-making and risk management processes.³⁰ [3]

In critical minerals companies, these principles can be used to expand risk management to strategic supply-chain risk. Risks that need to be addressed can include dependence on specific suppliers, market concentration, technological dependency, changes in partner country policies, and trade disruptions. The OECD Guidelines 2023 provide an additional dimension through responsible business conduct. These guidelines cover human rights, labor, the environment, business integrity, disclosure, science and technology, competition, taxation, and supply-chain due diligence.³¹ [12], [13]

The OECD defines due diligence as the process of identifying, preventing, mitigating and accounting for actual and potential impacts as part of decision-making and risk management.³²

In the context of critical minerals, due diligence becomes increasingly relevant because mineral supply chains involve multiple companies and jurisdictions. In their reports on traceability, the OECD and IEA emphasized that traceability systems can help integrate information on the origin, development, and ownership of minerals into risk-based due diligence processes.³³ [13]

Traceability Supply chain transparency is crucial for economic sovereignty because it provides information on who is involved in the production process and where economic value is created. This information does not automatically change ownership structures, but it allows countries and businesses to understand their position in the value chain.

Another important consideration is beneficial ownership. Transparency regarding formal shareholders alone does not always provide a complete picture of a corporation's control structure. In companies connected to multinational business groups, control can involve the parent company, affiliated companies, intra-group contracts, financing, and technology. Therefore, transparency of ownership structure is a crucial component of corporate governance in strategic sectors.

However, strengthening economic sovereignty should not be equated with rejecting foreign investment. Foreign investment can provide capital, technology, market access, and production networks. The issue is how these relationships result in capability upgrading. UNCTAD notes that developing countries with critical minerals face opportunities to increase industrialization, but also risks if they remain

²⁹ Organization for Economic Co-operation and Development, *G20/OECD Principles of Corporate Governance 2023*, pt. VI.

³⁰ Ibid

³¹ Organization for Economic Co-operation and Development, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*.

³² Ibid

³³ Organisation for Economic Co-operation and Development and International Energy Agency, *The Role of Traceability in Critical Mineral Supply Chains* (OECD Publishing, 2025), n. The report explains the relationship between traceability, due diligence, transparency, chain of custody, and information on the origin and ownership of minerals., <https://doi.org/https://doi.org/10.1787/edb0a451-en>.

commodity suppliers without increasing processing and industrial capacity.³⁴

Therefore, downstreaming should not be measured solely by the construction of processing facilities. A more substantive measure is whether the process enhances Indonesia's capabilities in technology, research and development, skilled labor, supplier companies, financing, and manufacturing.

In the context of international trade law, this issue becomes even more important. DS592 demonstrates that export restriction policies and domestic processing requirements can be assessed under WTO obligations.³⁵ Thus, strategies to increase domestic value-added require a combination of legal instruments. Trade policies still have a place, but corporate governance can be used to influence corporate behavior and decisions without making trade restrictions the sole tool.

From this perspective, corporate governance can function as a value capture instrument. This instrument does not transform companies into state organs. Its function is to ensure that corporate decisions regarding investment, technology, supply chains, and risk are directed towards corporate sustainability while supporting increased domestic economic capacity. The findings of this section indicate that economic sovereignty in global value chains is determined not only by control of resources but also by the ability to control and capture value at higher levels of the economy. Corporate governance is one legal instrument that can influence this ability [15].

3.3 Reconstructing Corporate Governance in Critical Minerals to Strengthen Indonesia's Economic Sovereignty

Previous analysis has shown a gap between the strategic nature of critical minerals and the corporate governance of the companies that operate them. Therefore, the reconstruction is not aimed at replacing existing corporate law, but rather at integrating the strategic interests recognized in natural resource law into corporate governance.

The concept proposed in this research is Strategic Mineral Corporate Governance. This term is a conceptual construct of this research, developed through a synthesis of corporate governance, economic sovereignty, responsible business conduct, and global value chain governance. This concept is not positioned as a legal doctrine existing within Indonesian positive law.

The first pillar is strategic mineral classification. Designating a commodity as a critical mineral must have clear policy consequences. This strategic characterization can serve as a basis for the government to establish risk management, transparency, and oversight standards that are more appropriate to the commodity's importance.

The second pillar is strategic ownership transparency. Critical mineral companies need to provide adequate information regarding their ownership structure, beneficial owners, parent companies, affiliated relationships, and corporate control. The goal is not to limit foreign ownership, but rather to ensure that the economic control structure is known and monitored.

The third pillar is strategic fiduciary responsibility. The board of directors must continue to act in the best interests of the company. However, when making strategic decisions, the board must consider the risks inherent in the nature of critical minerals. The OECD emphasizes that the board must perform strategic functions, oversee management, ensure risk management, and

³⁴ United Nations Trade and Development, Critical Minerals Boom: Global Energy Shift Brings Opportunities and Risks for Developing Countries, April 26, 2024, <https://unctad.org/news/critical-minerals-boom>

global-energy-shift-brings-opportunities-and-risks-developing-countries.

³⁵ DS592: Indonesia - Measures Relating to Raw Materials.

consider stakeholder interests.³⁶ [12] In the context of this research, these principles can be expanded to include geopolitical risks, technological dependencies, supply chain disruptions, and corporate resilience.

The fourth pillar is mineral supply-chain due diligence. Critical mineral companies need systems to identify, prevent, mitigate, and report risks throughout the supply chain. The OECD framework on responsible business conduct and mineral due diligence can serve as a reference in establishing such systems.³⁷ [12], [13]

The fifth pillar is domestic value-capture governance. Corporate governance needs to support increased domestic capacity. This can be directed at research and development, workforce development, domestic supplier development, technological enhancement, and enhancing the position of national companies in the value chain. The goal is not simply to produce more processed products, but to enhance Indonesia's ability to capture greater added value.

The sixth pillar is strategic disclosure and accountability. Critical mineral companies are required to disclose material information regarding ownership structures, supply chain risks, sustainability, and other aspects relevant to investor and stakeholder decision-making. The G20/OECD Principles 2023 emphasize the importance of reliable, consistent, and comparable information, including material information on sustainability.³⁸ [3]

These six pillars can be described as relationships:

Critical Minerals → Strategic Corporate Governance → Ownership Transparency + Strategic Responsibility of Board of Directors + Supply Chain Due

Diligence + Domestic Value Capture + Technology Development + Strategic Disclosure → Economic Resilience → Economic Sovereignty.

This model has important consequences for the relationship between the state and corporations. The state does not need to take over corporate functions. Instead, the state establishes a legal framework that provides predictable boundaries and objectives, while corporations conduct their business activities based on the principle of independent legal entity.

This approach must also maintain compatibility with international business law. Indonesia remains bound by its international obligations. Therefore, the instruments designed must have legitimate regulatory objectives, be transparent, and predictable, and not be designed solely to discriminate against investors based on their country of origin.

In this context, economic sovereignty should not be defined as the ability to stand alone without any connection to the global economy. A more operational definition is the ability to participate effectively, upgrade, capture value, develop national capacity, and maintain legitimate policy space in international economic relations [14].

This approach also distinguishes this research from studies on downstreaming that focus solely on export bans or smelter construction. Downstreaming is an important instrument, but its success must be assessed in terms of its impact on the broader economic structure. If Indonesian companies simply shift from ore mining to processing but remain dependent on technology, financing, and markets entirely controlled by other actors, increased value-added may not

³⁶ Organization for Economic Co-operation and Development, G20/OECD Principles of Corporate Governance 2023, pt. V.

³⁷ Organization for Economic Co-operation and Development, OECD Guidelines for Multinational Enterprises on Responsible Business Conduct; Organization for Economic Co-operation

and Development, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas Third Edition.

³⁸ Organization for Economic Co-operation and Development, G20/OECD Principles of Corporate Governance 2023, pt. VI.

necessarily result in a commensurate increase in economic capacity.

The findings of this study expand the study of mineral sovereignty. Tilley's literature on nickel sovereignty shows that Indonesia's efforts to increase the added value of nickel are closely linked to global value structures and financial subordination.³⁹ This research takes this issue to a different level by asking how corporate law can be used to influence decision-making structures and value distribution at the corporate level [6].

This research also expands the global value chain literature. Gereffi, Humphrey, and Sturgeon's framework explains how governance structures influence the relationships and capabilities of actors in the value chain.⁴⁰ This research adds a corporate law dimension by positioning corporate governance as an instrument that can be used to increase the capacity of domestic companies to upgrade [3].

Thus, the main contribution of this research lies in the proposition that economic sovereignty over critical minerals is not sufficiently built through state control of resources and downstreaming policies, but needs to be internalized into corporate governance that regulates ownership, strategic decision-making, risk management, supply chains, technology, and information disclosure [6], [9].

The proposed Strategic Mineral Corporate Governance model does not position companies as administrative instruments of the state. Instead, it seeks to establish a legally grounded alignment between the interests of the company, shareholders, stakeholders, and national economic goals [9], [17].

Within this framework, corporate governance takes on a new function as a bridge between state control of resources and economic control of value chains. The state carries out regulatory and supervisory functions, while corporations carry out production and investment functions. The

relationship between the two is aimed at ensuring that Indonesia's participation in global value chains results in increased national capacity, not simply increased extraction volume.

4. CONCLUSION

First, Indonesian law already has a constitutional and sectoral basis for managing strategic minerals through the principle of state control, mining law, investment law, and corporate law. The designation of critical minerals through ESDM Ministerial Decree No. 296.K/MB.01/MEM.B/2023 reinforces recognition of the strategic character of certain commodities. However, these various frameworks have not been fully integrated into corporate governance that specifically considers economic sovereignty as a strategic dimension of critical mineral companies.

Second, corporate governance plays a crucial role in determining Indonesia's ability to capture economic value from the global critical minerals value chain. Being a key production location does not necessarily equate to company ownership, technological mastery, financing, and market position. Therefore, the success of downstreaming is not solely measured by increased production volume or processing capacity; it must also be seen in terms of technological capabilities, domestic company capacity, human resource development, and Indonesia's position at higher-value-added stages of the value chain.

Third, this study proposes the concept of Strategic Mineral Corporate Governance, which comprises strategic mineral classification, strategic ownership transparency, strategic fiduciary responsibility, mineral supply-chain due diligence, domestic value-capture governance, and strategic disclosure and accountability. This concept is intended to expand the function of corporate governance from an internal corporate mechanism to become part of strategic economic governance. Its implementation should not

³⁹ Lisa, "Indonesian Nickel Sovereignty and Global Raced Finance: The Value of Element 28 in an Age of 'transition.'"

⁴⁰ Gereffi et al., "The Governance of Global Value Chains."

lead to restrictions on foreign investment, but rather to the establishment of a legal structure that enables cross-border investment, technology, and corporate activities to enhance Indonesia's economic capacity.

Theoretically, this research contributes by integrating corporate law, economic sovereignty, and global value chain governance. Practically, the concepts proposed can form the basis for policy development regarding critical mineral companies, particularly regarding ownership transparency, risk management, due diligence, technology, and increasing domestic added value.

This research has limitations because it uses a normative juridical approach so it has not empirically tested how the corporate governance structure of critical mineral companies works in practice.

SUGGESTIONS

The government needs to develop a regulatory framework that more clearly links the strategic status of critical minerals to corporate governance. These regulations can be directed at ownership transparency, risk management, information disclosure, and supply chain oversight. Lawmakers and regulators need to improve harmonization

between corporate law, mining law, investment law, and downstream policies. Harmonization is necessary so that the goal of increasing added value extends beyond regulating mining activities to encompassing the governance of the companies carrying out these activities.

Critical mineral companies need to strengthen their risk management systems by incorporating supply chain, geopolitical, technological, sustainability, and market concentration risks. The Board of Directors and Commissioners must also ensure that strategic decisions take into account long-term business sustainability. Investment policies should assess not only the amount of capital invested, but also its contribution to increasing technological capacity, research and development, skilled labor, domestic supplier development, and enhancing Indonesia's position in the global value chain.

Finally, strengthening economic sovereignty over critical minerals should utilize a combination of instruments. Trade, mining, investment, industrial, and corporate governance policies need to be integrated within a complementary framework so that Indonesia can increase value capture without isolating itself from the global production chain.

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