GIJEA
Greenation International Journal of Economics and Accounting
+62 81210467572 https://research.e-greenation.org/GIJEA greenation.info@gmail.com
GREENATION RESEARCH

DOI: https://doi.org/10.38035/gijea.v4i3

Downstream Contracts and the Protection of National Interests: A Legal Analysis in Indonesia's Industrialization Era

Agus Salim[1], Agung Arafat Saputra[2], Iman Imanuddin[3]
[1]Universitas Pamulang, Banten, Indonesia, dosen01491@unpam.ac.id
[2]Universitas Pamulang, Banten, Indonesia, dosen02146@unpam.ac.id
[3]Universitas Pamulang, Banten, Indonesia, dosen02767@unpam.ac.id

Corresponding Author: dosen01491@unpam.ac.id[1]

Abstract: Policy of downstreaming of mining commodities in Indonesia constitutes an important foundation of national industrialization process under Article 33 paragraph (3) of the Constitution of 1945. The policy faces legal conflicts in its implementation due to the existence of the conventional form of commercial contracts based on private liberal laws. The purpose of the normative legal research is to examine the structure of downstreaming contracts and propose a legal model for the reformation of the terms of contracts to protect the national interest in an optimal manner. Statutory and conceptual analysis reveals that the existing terms of downstreaming contracts are still under the shade of the absolute foreign investment protection policy with the help of freeze and ISDS clauses. Strategic commitments like technology transfer, labor absorption in the local population, and environmental assurances become bound in flexible best-effort formulations owing to the inequity in negotiating powers and unsynchronized domestic regulations of various sectors. It is for this reason that this research strongly suggests a complete overhaul of the law involving the inclusion of public law instruments in contracts which are established on lawful reasons (Article 1320 of the Civil Code). This contract should be designed with adaptive provisions, restriction of international arbitration jurisdiction through graduated dispute resolution, and strict liability provisions such as TKDN, milestone technology transfer, environmental guarantees, and majority share divestment.

Keyword: Downstream Contracts, National Interest, Industrialization, State Sovereignty.

INTRODUCTION

The downstreaming strategy for minerals has become a strategic milestone of the Indonesian government in its effort to transform the economy towards an industrial country (Akhmadi, 2024). The basis of such economic transformation lies in the mandate stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, according to which the earth, waters, and natural resources within them belong to the state and should be managed in such a way as to ensure maximum welfare for the people (Permatasari, 2024). In other words, through this paradigm the state is not limited to being merely a supplier of raw materials for the world market. Rather, the state must actively participate in the management of all domestic natural resources (Purba et al., 2025).

As part of implementing its ambitious plan, the government has promulgated Law No. 3 of 2020 on Amendments to Law No. 4 of 2009 on Mining of Minerals and Coal (Satriawan, 2021). The regulation strictly bans the export of minerals in their crude state and forces mining companies to process their raw materials within the country. Economically, this policy has been found to increase government revenue and generate employment in different parts of the country (Yanto & Hikmah, 2023). Nonetheless, as regards the legality of the policy, the change in orientation from extractive industries to processing industries poses a complex conflict of interests between the country's economic sovereignty and the civil rights of investors recognized under international laws (Al Idrus, 2022).

Legal complexities arise once this downstreaming policy is included in the contractual agreement between the government, the SOEs, and the foreign investors. Downstreaming agreements do not form ordinary business agreements, but legal documents that bind state sovereignty for the long haul (Hikam, 2025). In reality, the drafting of downstreaming agreement clauses usually faces a dilemma between ensuring legal certainty of foreign investments and domestic economic sovereignty. The imbalance in bargaining power in negotiations often leads to contract clauses favoring investor interests over national interests (Putri, 2025).

The real risk of contracting downstreaming for national interests is the emergence of Investor State Dispute Settlement clauses (Sembiring, 2022). Investors from other nations can bring a lawsuit against the Indonesian government in international courts if the domestic policies are perceived as threatening the investors' investments (Kabir, 2021). The lawsuit brought forth by the European Union against Indonesia at the World Trade Organization (WTO) about the nickel export ban provides ample evidence that the national policy of sovereignty is easily undermined by international trade law. Thus, the freedom of the state to formulate economic laws is under the threat of international legal punishment (Hutagalung et al., 2025).

Beside the problem of safeguarding investors' interests, an issue that has not been given much attention in downstreaming contracts is the softness of clauses in regard to technology transfer and utilization of the locals. In an ideal case, industrialization of the economy should have a multiplicative effect on the capacity of human resources in Indonesia (Iswandi, 2025). Reality on the ground, however, tells a different story, because a lot of downstream projects are still employing foreign workers and the technology used is totally controlled by international corporations (Sudaryat, 2024).

In this regard, the problem is further compounded by inconsistencies and overlap in domestic regulations. Coordination among mining law, investment law, and labor law often becomes inconsistent (Akbar & Baharudin, 2026). For instance, leniency in immigration policies for foreign workers towards meeting investment goals often goes against the provision to protect the rights of native workers under labor cluster laws. Ultimately, the legal uncertainty caused by sectoral regulatory inconsistencies results in legal loopholes which can be exploited by the investors to escape their social and economic responsibilities in Indonesia (Hartana, 2017).

Several previous studies have analyzed the problem of downstreaming based on macroeconomic approaches, industrial efficiency approaches, and environmental approaches (Wasis, 2024; Wau et al., 2024; Sitohang et al., 2025). Nevertheless, there has been no previous research that examines the problems concerning the legal anatomy of the downstreaming contract clause and its relation with national interest protection instruments. Most of the studies in the legal aspect only focused on analyzing the validity of export ban under WTO without looking into how the operational level contract is designed to protect national interests. Therefore, there is an immediate need for research regarding the legal analysis of industrialization contract clauses.

Given this background information, the purpose of this research is to examine thoroughly the legality of downstreaming contracts in Indonesia as well as to develop a model of contract formulation which can maximize the protection of the national interest. Using the legalistic approach, the expectation of this research is to contribute in terms of academically giving some recommendations for the reconstruction of contract models. This reconstruction is necessary in order to make sure that in the future, every strategic contract in the age of industrialization in Indonesia is able to make a balanced position between legal certainty of investment atmosphere and the economic sovereignty of the nation.

METHOD

This study can be considered normative legal research (doctrinal research) whose emphasis is placed on the development and investigation of the rules, principles, and doctrines which regulate the terms of industrialization agreements in Indonesia (Soekanto, 2007). The methods used in this research include statute method in order to check the consistency of downstream laws and conceptual method in order to check the doctrine of state sovereignty over natural resources and safeguarding of national interests. The sources of data used in this research are secondary data including primary legal material in the form of laws and regulations concerning mining, investments, and employment, as well as secondary legal materials such as books and scientific articles related to the subject of study.

The technique of legal material gathering was performed via library research by identifying, classifying, and recording legal materials according to the problem formulation. Following that, all gathered legal materials were analyzed employing qualitative analysis techniques using deductive reasoning approach. The process of analyzing was carried out via examining the vertical and horizontal synchronization between downstreaming regulations at statutory level and the provisions included in the practice of commercial contracts. After that, the outcome of the analysis was described and analyzed to present the legal arguments on the downstreaming contract formulation model in order to protect national interest.

RESULT AND DISCUSSION

Legal Analysis of the Anatomy of Downstream Contracts: The Conflict Between Investor Legal Certainty and State Sovereignty

Contracts for downstream mining commodities in Indonesia have an exceptional but precarious legal status within the national legal system. Being a product of the legal system arising from the civil sphere, these contracts are absolutely legally binding on the parties on the basis of the doctrine of pacta sunt servanda according to Article 1338 of the Civil Code (KUHPerdata). But this private nature of the contract instantly conflicts with the public aspect of the legal order since the object of the contract falls under the strategic natural resources managed by the State in accordance with the constitutional mandate of Article 33 paragraph (3) of the 1945 Constitution (Ramadhan et al., 2025). It produces a double legal status of the government, namely, that of being a civil law subject which has equal status with the investors, while at the same time remaining as a public entity obligated to ensure the most prosperous use of natural resources by the people.

These contradictory ideas manifest themselves in practice when expectations of certainty and protection by foreign investors start restricting the space that the state has for regulatory actions. In the realm of international investment law, foreign investors see contracts as inviolable agreements that cannot be influenced by the political process in the host nation. Therefore, any attempt by the Indonesian government to change the nature of the industry from extraction to value-added industrialization is always constrained by the restrictive provisions in the contract. This puts the state in a situation where it has to choose whether it wants to honor the contract in order to preserve its reputation as an investment friendly country or prioritize domestic economic autonomy and enforce downstreaming on the contractors (Mulia, 2025).

Since the policy of industrialization is very much dependent on foreign capital and technology, Indonesia finds itself in a disadvantaged position while negotiating contracts. The fact that Indonesia finds itself in an unideal negotiating position can be easily noticed through the widespread use of stability clauses in major downstreaming contracts. This is because such clauses serve as a shield which aims to keep the legislation stable in the fiscal, environmental, and labor areas so as to correspond to the law that existed at the time when the agreement was made. From the standpoint of economic legal theory, the presence of such a complete stability clause signifies the delegation of power of legislation by the state to a private individual.

What is the most worrisome from a legal point of view about this clause on stability? It happens in the case of coercive regulation introduced by the state, such as the domestic refining obligation mentioned above in the Law Number 3 of 2020 regarding amendments to Law Number 4 of 2009 on the issue of minerals and coal mining (Minerba Law). When the government implements such new coercive regulations, the foreign investors will be able to argue the violation of their rights under this law and ask for significant compensation for the loss of the expected profit (lucrum cessans) (Wahyuni et al., 2023). In this way, it can be said that the clause on stability is not only a provision that guarantees legal certainty, but it is also used as an instrument which limits state sovereignty.

State sovereignty has become threatened more than ever through the introduction of Investor-State Dispute Settlement (ISDS) provisions in contract papers and related bilateral investment treaties. The advantage offered by ISDS provisions is not available to domestic players; it is the right of the foreign investor to go beyond the jurisdiction of Indonesian national courts and take disputes to international dispute resolution agencies such as the International Centre for Settlement of Investment Disputes (ICSID). By this process, actions taken by the government, which may include revocation of mining permits in the absence of smelters, can be tested for their validity by the subjective opinion of the international panel of arbitrators, who are usually biased toward protecting the capital rather than developmental interests of the developing nations (Lintang, 2025).

In international arbitration jurisprudence, unilateral policy modifications on downstreaming by host countries fall under the concept of indirect nationalization or FET breaches. This characterization rests on the premise that the prohibition of exports of raw materials has interfered with legitimate investor expectations during their initial investments (Hidayat, 2026). Nevertheless, if viewed from the lens of international legal doctrine, Indonesia’s move represents a manifestation of the state’s right to permanent sovereignty over its natural wealth (Permanent Sovereignty over Natural Resources). This doctrine is contained in UN General Assembly Resolution 1803 (XVII) 1962, which explicitly acknowledges that a country’s economic rights take precedence over foreign civil rights. However, in the practice of international law, this doctrine is superseded by the enforcement of international arbitration decisions.

This imbalance is compounded by confusion at a theoretical level on whether the nature of downstreaming contracts falls under public or private law. As the state enters into a contractual arrangement, it ceases to function as a sovereign entity (jure imperii) but assumes the form of a civil enterprise (jure gestionis) and becomes equally bound by market rules. The challenge here is that such a division will always remain incomplete in the extraction and downstreaming industry. The state cannot escape its role of serving the public interest because the consequences of the failure of downstreaming ventures – from ecological destruction and agrarian tensions to illegal immigration of foreigners – constitute the social cost of the state and local populations rather than the investors. Hence, defining the downstreaming contracts in terms of normal commercial dealings amounts to a legal fiction at the expense of public interest (Hasan, 2024).

Alongside the problem of investment protection, one of the major weaknesses that exist in the current structure of downstreaming agreements is the lack of self-executing and progressive sanction clauses for non-compliance of investors in respect to downstreaming agreements. In most cases, some clauses about the obligation to establish refinery plants are constructed ambiguously; that is, they can have different interpretations, like phrases such as "taking into consideration the state of world economy" or "in light of the existing infrastructure." Such a loophole in the draft agreement gives investors a legal right to keep on submitting addendums to delay smelter obligations without fear of forfeiting the right of operation. The ambiguous structure of the agreement indicates that the state does not know how to employ contracts as means of control.

In addition to the issue related to the problem of investment protection, another one of the key flaws of the existing structure of downstreaming agreements is the absence of self-executing and progressive sanctions in case of non-compliance of investors in relation to the existing downstreaming agreements. In most cases, some of the clauses concerning the obligation to build refinery plants are drafted ambiguously; that is, they may be interpreted differently, for example, such phrases as "considering the condition of the world economy" or "considering the existing infrastructure." The presence of such an ambiguity in the draft agreement grants the investors the right to continue filing addendums in order to postpone smelter obligations without the risk of losing the right of operations.

Philosophically, law must work as an instrument of social engineering for the purpose of promoting the equitable growth of the nation. Nevertheless, in the realm of conventional downstream contracts, such a role is impeded owing to the hegemonic character of the liberal-positivist tradition of law. In these contracts, formal-procedural legitimacy often takes precedence over distributive justice that is owed to the people of Indonesia, who are the true owners of customary rights and natural resources. The failure of the contract to distribute wealth has led to social resistance and economic dislocation of communities around the smelter business.

Furthermore, the protection of the rights of domestic workers is another vital yet highly contentious matter when it comes to the enforcement of present downstream contracts. Present contracts do not have clauses which strongly enforce the ratio between expatriate and domestic workers. This led to an imbalance of skills and wage differences in the downstream industrial sectors. The lack of any penalties for failing to recruit domestic workers is contrary to the very nature of the principle of legal development for the benefit of the people. This shows that regulations found in contracts do not act as a shield for the sovereignty of the labor force within the country.

Apart from labor matters, the issue of environmental sustainability suffers in terms of being compromised in order to fulfill the objectives of downstreaming as stated in the contract. Environmental rehabilitation and mining post-mining clauses in existing contracts only serve as formalities without any substantial environmental bond that may be liquidated by the government in case of massive environmental damage. When contracts leave loopholes for ecocide or massive environmental degradation in the name of industrial efficiency, citizens' constitutional rights to a good and healthy environment, as stipulated in Article 28H paragraph (1) of the 1945 Constitution, are diminished for the sole economic gain of private corporations.

The lack of corporate law from the corporate law point of view makes the asymmetry more complex because there is very little role played by BUMN and BUMD in downstreaming company shareholdings. Most of the time the state organizations play the role of spectators or minorities in shares, thus lacking any voting rights (blocking minority). In the absence of internal corporate law control via shareholdings, the whole direction of downstream policy of corporations will be completely controlled by the foreign holding corporations overseas via their transfer pricing mechanism.

The failure to have explicit technology transfer requirements in subsequent agreements has led to Indonesia falling into what can be termed a pseudo-industrialization trap. The majority of the local factories undertake only initial refineries that require low to medium technology whereas fabrication of high-value products continues in the investor's country of origin. It is through legal agreements that do not have clear milestones in terms of technology transfers that the local industry fails to attain technological self-sufficiency.

Based on the above discussion, it can be traced out a legal line that the existing structural design of downstream contracts being used in Indonesia today is under an emergency situation for reforms in contractual laws. The supremacy of private law, reinforced by the international protection of investments, has always restricted the sovereignty of a nation's public law system in order to defend its national interests. Hence, the continuance of such traditional approach to contracting without any strong legal initiative would mean giving legitimacy to the exploitation of natural resources of a nation in a new legal form.

Reconstruction Model for Downstream Contract Clauses to Protect National Interests

Given that the traditional downstream contract model has failed to protect the economic sovereignty of the country, there is need for legal reconstruction of the structure of the industrialization contracts in Indonesia. Such reconstruction should not only cater for procedural issues but should also try to move the position of the state from being just another civil business partner to become one of supremacy of public law governing investments. The philosophical basis of such legal reconstruction is premised on the reinforcement of the concept of permanent sovereignty over the natural resources that forms part of the requirements for a valid contract according to Article 1320 of the Civil Code (KUHPerdata). The reason for this is because through this process, the protection of national interests will be incorporated as the lawful cause in all the provisions of the contract

The initial strategy in the reconstruction process involves the thorough revamping of the stability clause that has been used as an absolute defense tool to avoid new legislation. The future contract model should see the elimination of the absolute stability clause and adoption of the adaptability clause, or dynamic regulatory adjustment clause. The adaptability clause clearly states that the contract will comply and adjust automatically in case of new legislation introduced by the state concerning vital public interests like environmental protection, national energy security, and workplace safety. Therefore, the state will not be at the mercy of default threats when performing its regulatory function for the benefit of the general public.

Moreover, it is important that the model for constructing a contract should have a provision for the revision clause as a risk mitigation strategy for the global economic environment. The revision clause is a legally binding agreement under which the government can revisit negotiations every five or ten years with respect to the profitability of the project and the sharing of the benefits to the country. The criteria for the revision clause should be established in quantitative terms such as changes in the international prices for the mining commodities at the metals exchange or the investor's internal rate of return.

In response to the challenge posed by international disputes, the process of legal reform should expressly define the limits of international arbitration's jurisdiction via tiered dispute resolution provisions. In new downstream agreements, there needs to be a pre-mature waiver of the lawsuit right, so foreign investments have to exhaust their legal options in Indonesia before filing a claim at international arbitration courts like ICSID. Also, disputes subject to international fora need to be strictly defined; disputes concerning state public policy, human rights, and environmental sovereignty will have to be non-arbitrable and of absolute jurisdiction of the national Indonesian courts.

Furthermore, protection for the domestic manufacturing industry needs to be increased by incorporating a strict liability clause of Domestic Component Level (TKDN). The TKDN clause in the new contracts will not use a flexible best effort approach but rather it will contain a quota of the level of local inputs, services and engineering that will increase annually. As a measure to guarantee compliance, the TKDN clause will need to be paired with an independent monitoring process along with immediate penalties of liquidated damages charged from the project implementation guarantee if the investor does not reach the agreed TKDN level from the contract matrix.

Finally, the transfer of technology, which for decades has been nothing more than a dream in pseudo industrialization, must be made a reality by using a milestone technology transfer clause. The reconstruction contracts must have a technical annex that thoroughly explains the plan of technology transfer from expatriates to domestic personnel. This technology transfer process must be related to the renewal of contract operational permits such that any investor’s failure to transfer at some phases will result in the suspension of their product export permits. Thus, foreign investors have a real legal burden to educate and improve the technological capacity of Indonesia's human resources.

Labor sovereignty needs to be strengthened by the imposition of rigorous and balanced re-rationalization of foreign labor (TKA) clauses. Future downstreaming agreements should have a clause restricting the number of foreign labour employed in the smelter regions, with the condition that mid tovlower level management and technical operations be given absolutely to the local labor. In addition, the agreements should mandate expenses of special training (skilling and upskilling) to be made fully at the expense of the investors, to train the indigenous people surrounding the industrial area. This is not only an attempt to absorb labor but a legal mechanism to prevent possible horizontal conflicts between the foreign labor and the indigenous people.

In terms of ecology preservation, it is necessary to introduce into the contract some new forms incorporating the precautionary principle via an unconditional bank guarantee clause related to environmental restoration after mining activities. Investors must pay the significant amount of environmental guarantee funds into the Indonesian government-owned bank from the very beginning of the contract. Such a clause needs to be written so that the government has the right to spend these funds without the necessity to go to court and with no conditionality (self-executing), if the investor will be guilty of negligence or environmental pollution.

In order to avoid state revenue loss because of the fraudulent actions of multinational corporations, it is essential to introduce the anti-tax avoidance clause into the reconstruction downstream contract. Such a clause must explicitly prohibit the transfer pricing mechanism by establishing that any sale transactions of finished product among Indonesian subsidiaries and their foreign parent companies should be based on the domestic market price determined by the corresponding ministry (arm's length principle). In addition, the state auditor (BPK/BPKP) must have the authority to perform the forensic audit of the financial statements of the investor at the worldwide corporate levels.

The ownership pattern in downstream management projects is also open to legal reforms in the form of mandatory share divesting clauses in the contract. The investors must divest their shares to the Central Government, the Regional Governments, or BUMN/BUMD until they hold absolute majority share of at least 51% within ten years since the beginning of the commercial operation of the smelter project. This share divestment must be guaranteed in terms of an equitable share value calculation using book value assets rather than discount cash flow which could amount to financial extortion for the government while taking over the company.

Additionally, the new contractual model must have a Corporate Social and Human Rights Responsibility clause that obliges the investors to contribute a certain percentage of the company's total profit toward building up social, health and educational infrastructure around the industrial project. This clause must also guarantee the compliance of the investor to protect the human rights of all people by not discriminating against, exploiting workers and evicting them from their customary land without their FPIC.

In addition, this reconstruction should focus on the development of the clause related to the unilaterally imposed termination from the part of the state due to the material breach committed by investors. As far as traditional contractual agreements go, the process of termination becomes rather complex and leads to the raising of counterclaims; but, in the case of reconstructive contract model, the state's right of unilateral termination should be a legitimate right without any involvement of the judiciary (with the waiver of Article 1266 of the Indonesian Civil Code).

The criteria of serious violation should be well-defined and include such actions as acts of corruption, bribery of officials, manipulating with the production report, causing irreversible damage to the environment. To give this new contractual agreement operational legitimacy, the state should also set up an independent and integrated contract monitoring agency (Integrated Contract Monitoring Authority). This agency would monitor investor's compliance with the matrix of contractual clauses in real time through the use of digital technology and periodic auditing on-site. The findings of this independent agency would be a basis for providing fiscal incentives for those investors who comply with the agreement.

With regard to the theories surrounding the enforcement of laws, the effectiveness of this reconstructive contractual model largely depends on the consistency of law enforcement and bureaucracy without rent-seeking activities. Regardless of how effectively the contracts are written, these tools of the law will not work if the law enforcers can be easily bribed to look the other way when investors violate the contracts. Thus, the reconstruction of this contractual model should come together with the improvement of governance in the mining and industrial sector to prevent corrupt practices.

In conclusion, this downstream contract system should not be seen as an attempt to alter the terms of a written contract, but as a political-legal manifesto to regain sovereignty of the nation over its natural resources. Through the introduction of legal public instruments into private contracts, Indonesia can free itself from colonial economic dependence and become a self-reliant industrialized nation. With this newly developed contract model, Indonesia would have a strong legal foundation that would enable it to coordinate the heartbeat of foreign investments with its own national interest for social justice and maximum prosperity.

Table 1. Comparative Matrix of Downstream Contract Clauses

No	Clause Component	Conventional Contract Model (Old)	Reconstructive Contract Model (New)	Legal Impact & National Interest Protection
1	Stabilization Mechanism	Absolute (Freeze Clause): Locks in regulations at the time of signing; immune to new public laws.	Dynamic (Adaptability Clause): Mandatory compliance with new public regulations enacted for national interests.	Eradicates the phenomenon of regulatory chill, preserving state legislative sovereignty.
2	Dispute Resolution	Direct ISDS (ICSID): Grants foreign investors immediate access to sue the state in international tribunals.	Tiered Clause + Exhaustion of Local Remedies: Mandates utilizing and exhausting the domestic judicial system first.	Safeguards the territorial jurisdiction of national courts from premature foreign intervention.

No	Clause Component	Conventional Contract Model (Old)	Reconstructive Contract Model (New)	Legal Impact & National Interest Protection
3	Economic Evaluation	Static: Rigidly binds both parties for decades without a mechanism for economic renegotiation.	Periodic Review Clause: Mandatory commercial renegotiation every 5–10 years based on global market prices.	Ensure distributive justice and fair revenue-sharing for the host state.
4	Technology Transfer	Loose Obligation: Relies on vague best effort phrasing with no verifiable performance metrics.	Milestone-Based: Strict, legally binding schedules for transferring technology blueprints to local engineers.	Breaks the trap of pseudo-industrialization and fosters genuine domestic technological independence.
5	Labor Protection	Minimal Restrictions: Loose quotas on Foreign Workers (TKA) due to investment-driven immigration policies.	Strict Ratio Clause: Rigid ceilings on foreign staff combined with mandatory financial penalties to fund local training.	Minimizes horizontal socio-economic conflicts and secures the right to work for domestic citizens.
6	Ecological Guarantee	Administrative Formalism: Post-mining reclamation relies primarily on non-binding written commitments.	Unconditional Bank Guarantee: Compulsory escrow funds deposited into a state bank at the contract's inception.	Enables self-executing environmental funds by the state if ecological degradation occurs.
7	Contract Termination	Protracted Process: Requires prior civil court judgments to dissolve agreements (waiving Article 1266 ICC).	Unilateral Termination: Immediate state revocation rights if the investor commits a material breach.	Accelerates enforcement against corrupt, manipulative, or ecologically destructive investors.

CONCLUSION

Upon analyzing the anatomy of downstream agreements from a legal perspective in Indonesia, it becomes apparent that there is an inherent conflict of the liberal-private law perspective protecting the investment capital and the public law perspective requiring that natural resources be sovereign under the state. The existing conventional contract arrangement has been shown to fail in its inability to safeguard national interests, since the prevailing freeze clauses and ISDS clauses hinder regulatory authority of the state. Unbalanced negotiations power has led to the inclusion of strategic obligations like technology transfer, employment of local labor, and ecological conservation in only best effort clauses without any legal enforceability. In addition, the mismatch of sectoral regulation within the domestic front has created loopholes for the foreign investors to avoid legal liabilities and entrapped Indonesia into a cycle of pseudo industrialization.

As a normative approach, safeguarding national interests in the context of industrialization calls for legal restructuring by incorporating public law tools within civil contracts in the context of the permissible grounds of Article 1320 of the Civil Code. The government should restructure the conventional structure of contract by substituting clauses of stability with clauses of dynamic adaptability and adopting a graduated dispute resolution process by demanding that disputes be settled domestically (exhaustion of local remedies) before going for international arbitration. In addition, control mechanisms such as the application of strict liability clauses of TKDN, technology transfer milestones, unconditional environmental guarantees, and graduated majority share divestiture should be incorporated as an absolute requirement for sustainable contracting. By adopting the above clause drafting approach, downstream contracts will regain their role as instruments of social engineering aimed at attaining a balance of law between the certainty of investments and national economic sovereignty for maximum prosperity of the people.

REFERENCES

Akbar, A., & Baharudin, B. (2026). Analisis Yuridis terhadap Kepastian Hukum Penanaman Modal Asing di Indonesia Pasca Pemberlakuan Undang-Undang Cipta Kerja. *Jurnal Penelitian Serambi Hukum*, *19*(01), 151-166.

Akhmadi, F. (2024). Analisis dampak hilirisasi terhadap pertumbuhan ekonomi di Indonesia. *Hatta: Jurnal Pendidikan Ekonomi dan Ilmu Ekonomi*, *2*(1), 25-31.

Al Idrus, N. F. (2022). Dampak politik hukum dan respon masyarakat atas pembaharuan Undang-Undang Minerba. *Jurnal Penegakan Hukum Dan Keadilan*, *3*(2), 114-127.

Hartana, H. (2017). Hukum Pertambangan (kepastian hukum terhadap investasi sektor pertambangan batubara di daerah). *Jurnal Komunikasi Hukum (JKH)*, *3*(1), 50-81.

Hasan, M. A. (2024). *Implikasi Putusan WTO tentang Kebijakan Larangan Ekspor Bijih Nikel Terhadap Hilirisasi Industri Bijih Nikel* (Doctoral dissertation, Universitas Islam Indonesia).

Hidayat, T. H. (2026). Balancing Sovereignty and Protection: Rekonsiliasi Kebijakan Control Host State tentang Hilirisasi Sumber Daya Alam Dengan Pengutamaan Prinsip Fair and Equitable Treatment (FET). *Paradigma: Jurnal Filsafat, Sains, Teknologi, dan Sosial Budaya*, *32*(1), 662-672.

Hikam, B. A. A. (2025). Harmonisasi Dan Kepastian Hukum Regulasi Sebagai Upaya Efektivitas Hilirisasi Mineral Di Indonesia. *Jurnal Rechtsvinding: Media Pembinaan Hukum Nasional*, *14*(1).

Hutagalung, K. D., Kurnia, K., & Geganesywara, M. A. (2025). Sengketa Perdagangan Dan Hukum Lingkungan: Dampak Kebijakan Energi Hijau Terhadap Negara Berkembang (Studi Kasus Gugatan UNI Eropa Di WTO Akibat Larangan Ekspor Biji Nikel Oleh Indonesia). *Jurnal Kajian Hukum dan Pendidikan Kewarganegaraan*, *1*(3), 172-179.

Iswandi, M. (2025). Kebijakan Hilirisasi Nikel Indonesia dan Dampaknya pada Sengketa Perdagangan Internasional di World Trade Organization (WTO): Kasus Larangan Ekspor Bijih Nikel antara Uni Eropa dan Indonesia. *Jurnal Hukum Lex Generalis*, *6*(11).

Kabir, S. F. (2021). Krisis dan Reformasi: Penyelesaian Sengketa dalam Perjanjian Investasi Bilateral di Negara Dunia Ketiga. *Mimbar Hukum*, *33*(2), 401-435.

Lintang, F. (2025). Tantangan Penyelesaian Sengketa Internasional melalui Investor-State Dispute Settlement (ISDS): Studi terhadap Posisi Indonesia dalam Melindungi Kepentingan Umum. *Dialogia Iuridica*, *17*(2), 106-134.

Mulia, A. P. (2025). Dinamika perlindungan hukum terhadap investor asing dalam skema perjanjian investasi bilateral pasca Omnibus Law di Indonesia. *Causa: Jurnal Hukum dan Kewarganegaraan*, *13*(1), 131-140.

Permatasari, A. (2024). Tanggung jawab dan perlindungan negara atas hak-hak sosial ekonomi pengelolaan sumber daya alam menurut undang-undang dasar 1945. *Jurnal Kewarganegaraan*, *8*(1), 272-289.

Purba, B., Daole, A. S. A., & Purba, L. M. (2025). Peran Sumber Daya Alam Sebagai Penggerak Perekonomian Nasional: Penelitian. *Jurnal Pengabdian Masyarakat dan Riset Pendidikan*, *4*(2), 7589-7595.

Putri, I. R. (2025). Ketidakpastian Hukum dan Investasi dalam Hilirisasi: Studi Komparatif Indonesia dan China dalam Pengembangan Energi Terbarukan. *Jurnal RechtsVinding*, *14*(1), 83-106.

Ramadhan, M. I., Rachman, C. I., & Rofik, C. A. (2025). Penguatan Landasan Hukum Hilirisasi Komoditas. *Jurnal RechtsVinding*, *14*(1).

Satriawan, D. D. (2021). Pengelolaan Usaha Pertambangan Mineral Dan Batubara Pasca Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja. *Esensi Hukum*, *3*(2), 123-133.

Sembiring, L. N. (2022). Urgensi Perjanjian Investasi Bilateral Antara Indonesia dan Negara Lain Dengan Klausula Penyelesaian Sengketa Investor-State Dispute Settlement. *" Dharmasisya" Jurnal Program Magister Hukum FHUI*, *1*(4), 22.

Sitohang, C., Azis, H., & Hafiz, M. S. (2025). Hilirisasi komoditi mineral: Studi kasus nikel di Indonesia. *Jurnal Ilmiah Ekonomi dan Manajemen*, *3*(2), 1-12.
Soekanto, S. (2007). Penelitian hukum normatif: Suatu tinjauan singkat.
Sudaryat, S. (2024). Hilirization Obligations for Mining Companies with Contract of Works Status In Indonesian Positive Law. *Sultan Jurisprudence: Jurnal Riset Ilmu Hukum*, *4*(1), 141-158.
Wahyuni, I., Sujatmoko, E., & Harris, R. F. (2023). *Pengaturan Sumber Energi Baru-Energi Baru yang Berasal dari Energi Fosil*. Airlangga University Press.
Wasis, B. (2024). Pertambangan, hilirisasi industri, kerusakan lingkungan hidup dan pembangunan berkelanjutan. *Research Gate, no. March.* https://doi.org/10.13140/RG, 2(28867.78884)
Wau, F. T., Kiton, M. A., Wau, M., & Fau, J. F. (2024). Analisis strategis kebijakan hilirisasi mineral: Implikasi ekonomi dan pengaruhnya terhadap perekonomian Indonesia. *Journal Publicuho*, *7*(3), 1215-1224.
Yanto, A., & Hikmah, F. (2023). Aspek Hukum Hak Menguasai Negara DI Bidang Pertambangan Pasca Pembaruan Undang-Undang Mineral Dan Batubara Di Indonesia. *Jurnal Penelitian Hukum De Jure*, *23*(4), 419.