


The Legal Character of Mining Service Contracts by State-Owned Enterprises/SOEs (Persero) in Indonesia

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Abstract

Introduction: Mining service contracts executed by State-Owned Enterprises (SOEs) in the form of persero play a strategic role in Indonesia's natural resource governance. Although formally framed as commercial contracts, these agreements involve public assets, state authority, and environmental responsibilities, creating legal complexities that challenge traditional private contract doctrines.

Purposes of the Research: This article aims to examine the legal character of mining service contracts entered by Indonesian SOEs persero and to determine whether such contracts can be classified as purely private commercial agreements or should be understood as contracts with inherent public dimensions.

Methods of the Research: This study employs normative legal research using statutory, and conceptual approaches. Legal materials are examined through document analysis of legislation, doctrinal writings, and relevant legal principles governing contracts, state owned enterprises persero, and mineral and coal mining activities.

Results Main Findings of the Research: The study finds that mining service contracts by SOEs cannot be categorized as ordinary private contracts. Instead, they constitute public-commercial contracts characterized by limited contractual freedom, heightened public accountability, and embedded state obligations. This conceptualization offers a refined legal framework for understanding SOE contracts in strategic sectors.

Keywords: State-Owned Enterprises Persero; Mining Service Contracts; Public-Commercial Contracts; Contract Law.


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INTRODUCTION

The governance of mineral and coal resources occupies a central position in Indonesia's constitutional and legal order. The Indonesian Constitution mandates that natural resources, including minerals and coal, are subject to state control under the principle of the State's Right to Control, which grants the state comprehensive authority over policy formulation, regulation, licensing, and supervision of mining activities.¹ This constitutional mandate confirms that mining activities cannot be treated merely as ordinary commercial enterprises detached from public interests and state responsibilities. In the contemporary

¹ A I Ananda, L O Dediasriadi, and Y Haerani, "The State's Right to Control and Local Government Authority in the Mining Sector: A Legal-Policy Research," *Administrative and Environmental Law Review* 6, no. 1 (2025): 33-34, <https://doi.org/10.25041/aelr.v6i1.4079>.

regulatory framework, the exercise of state control over mining has evolved through shifting governance structures. Although decentralization policies once delegated significant authority to regional governments, recent legal reforms particularly the enactment of Law No. 3 of 2020 have recentralized mining governance at the national level.² This recentralization reflects the state's intention to strengthen control and policy coherence, yet it has also generated governance challenges, including regulatory overlaps and inefficiencies. These structural dynamics directly affect contractual practices in the mining sector, especially when contracts are executed by entities that operate simultaneously within private law and public governance frameworks.

Within this context, State-Owned Enterprises (SOEs), particularly those organized as Persero, play a strategic role in Indonesia's mining industry. SOEs Persero are state-owned companies whose finances are legally separated from the state budget, distinguishing them from other forms of state enterprises such as Perjan, which are directly funded by public finances. As corporate entities, SOEs Persero are designed to operate under private law principles and commercial rationality. Nevertheless, they remain instruments of state policy and are expected to contribute to national economic objectives, including the management of strategic natural resources. In the mining sector, SOEs Persero are also encouraged to collaborate with local firms, provided that such firms meet the required technical and operational qualifications.³ The dual legal position of SOEs Persero significantly influences the nature of contracts they conclude, particularly mining service contracts. From a formal legal perspective, these contracts are typically classified as private commercial agreements. However, the involvement of SOEs Persero introduces public dimensions that complicate this classification. Procurement and contracting practices of SOEs are regulated through ministerial regulations governing the procurement of goods and services, including direct appointment mechanisms. These regulatory instruments, while intended to promote efficiency and expedite project implementation, have been criticized for their potential inconsistency with competition law, particularly Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.⁴ In practice, the government frequently assigns projects directly to SOEs to accelerate infrastructure development and simplify tender procedures. While such assignments are justified on grounds of efficiency and national interest, they have attracted criticism due to concerns over transparency, competitive neutrality, and the risk of favoritism toward SOEs.⁵ These practices highlight the inherent tension between the commercial autonomy of SOEs Persero and their privileged position within the state economic system. This tension is not merely administrative but has direct implications for the legal character of contracts executed by SOEs, including mining service contracts.

Further complexity arises from the broader legal environment in which SOEs operate. Indonesian economic policy has historically permitted monopolies, both natural monopolies and monopolies established by law, particularly in sectors deemed vital to

² Ananda, Dedihasriadi, and Haerani.

³ Maharani Hapsari, "Disciplines on State-Owned Enterprises in Indonesia Vis-à-Vis the Trans-Pacific Partnership Agreement," in *Emerging Global Trade Governance* (Abingdon, Oxon ; New York, NY : Routledge, 2019. | Series: Routledge-ERIA studies in development economics ; 13: Routledge, 2018), 258-71, <https://doi.org/10.4324/9781351051309-13>.

⁴ M Fajar et al., "Direct Appointment of State-Owned Enterprises in the Procurement of Goods and Services: Unfair Competition in Tender in Indonesia," *International Journal of Procurement Management* 13, no. 6 (2020): 818-30, <https://doi.org/10.1504/IJPM.2020.111359>.

⁵ R A Wibowo and K D N Putri, "Government Assignment of Contracts to State-Owned Enterprises to Provide Infrastructure: Indonesia's Experience," *UUM Journal of Legal Studies* 15, no. 2 (2024): 675-705, <https://doi.org/10.32890/uujls2024.15.2.11>.

national interests. While such privileges are legally recognized, they may conflict with competition law principles when SOEs engage in commercial contracting practices that disadvantage private actors. Consequently, the legal framework requires careful calibration to ensure that SOEs do not abuse their dominant position while fulfilling their public mandates.⁶ In the mining sector specifically, contractual governance challenges are not limited to SOEs. Empirical studies on mining contracts, including those between mining companies and artisanal or small-scale miners, reveal persistent issues such as bargaining asymmetries, limited legal literacy among contracting parties, and fragmented regulatory oversight.⁷ Although these studies primarily focus on private contractual relationships, they underscore broader systemic problems in mining contracts, including fairness, enforceability, and accountability. When SOEs Persero are involved, these issues become more pronounced due to the public interests and state responsibilities embedded in their contractual activities. Against this backdrop, the prevailing tendency to treat mining service contracts executed by SOEs Persero as ordinary private contracts appears increasingly inadequate. Such an approach fails to capture the public dimensions arising from constitutional mandates, state ownership, regulatory privileges, and the strategic nature of mineral and coal resources. Moreover, it obscures the normative expectations placed upon SOEs Persero to balance commercial efficiency with public accountability and equitable resource governance.

Legal scholarship and policy discourse have therefore emphasized the need for improved regulatory oversight, enhanced transparency, and standardized contractual frameworks in the mining sector.⁸ These recommendations, while primarily directed at improving governance outcomes, also implicitly call for a clearer doctrinal understanding of the legal character of mining service contracts executed by SOEs Persero. Without such conceptual clarity, efforts to reform procurement practices, enforce competition law, or integrate environmental and social safeguards risk being fragmented and ineffective. This article addresses this conceptual gap by examining the legal character of mining service contracts executed by SOEs Persero in Indonesia. Rather than focusing on policy reform or contractual performance, the analysis concentrates on the doctrinal question of how such contracts should be classified within contract law. By situating mining service contracts within the broader framework of state control over natural resources, SOE governance, and commercial contracting practices, this article argues that these agreements cannot be adequately understood as purely private contracts. Instead, they should be conceptualized as public-commercial contracts, reflecting their private law form and their inherent public law dimensions.

METHODS OF THE RESEARCH

This article employs normative legal research, as the study focuses on examining and clarifying the legal character of mining service contracts executed by State-Owned

⁶ A Hadi and P.A.F.D. Santo, "Natural Monopoly or Monopoly by Law for State Owned Enterprises," in *E3S Web of Conferences*, ed. Mursitama T.N. et al., vol. 426 (Business Law Program, Law Department, Faculty of Humanities, Bina Nusantara University, Jakarta, 11480, Indonesia: EDP Sciences, 2023), <https://doi.org/10.1051/e3sconf/202342602085>.

⁷ D P Rahayu et al., "Legal Effectiveness of Business Contracts in Tin Mining: Socio-Legal and Governance Challenges in Corporate-Community Relations in Indonesia," *Resources Policy* 111 (2025), <https://doi.org/10.1016/j.resourpol.2025.105767>.

⁸ I Sumarsih, "Challenging Nominee Agreements In The Mining Industry: Between Constitutional Mandates and Legal Evasion," *Indonesia Law Review* 15, no. 1 (2025), <https://doi.org/10.15742/ilrev.v15n1.5>.

Enterprises (*Persero*) in Indonesia. The research departs from normative ambiguities arising from the intersection of private contract law and public law obligations inherent in state-owned enterprises operating in strategic natural resource sectors. The research applies several approaches. First, the statutory approach is used to analyze constitutional provisions, legislation, and ministerial regulations governing state control over natural resources, State-Owned Enterprises (*Persero*), and mining activities. Second, a conceptual approach is employed to examine legal doctrines and theories concerning contract law, state ownership, and public-commercial contracts. Legal materials are collected through document study, consisting of primary legal materials (statutes and regulations) and secondary legal materials (scholarly articles, books, and legal commentaries). The analysis is conducted qualitatively through systematic interpretation and doctrinal reasoning to construct a coherent legal classification of mining service contracts by SOEs (*Persero*).

RESULTS AND DISCUSSION

A. The Legal Position of State-Owned Enterprises (*Persero*) in Mining Service Contracts

State-Owned Enterprises organized in the form of *Persero* occupy a distinctive legal position within Indonesia's economic and legal system. Unlike public service-oriented state enterprises, SOEs *Persero* are established as limited liability companies and are expected to operate based on commercial considerations, efficiency, and profitability. Their corporate assets and liabilities are legally separated from the state budget, which places them formally within the domain of private law and subjects them to general principles of company and contract law.⁹ This legal construction is often used as the primary justification for treating contracts concluded by SOEs *Persero*, including mining service contracts, as ordinary private commercial agreements.

However, the private law form of SOEs *Persero* does not fully capture their substantive legal character. As entities wholly or majority owned by the state, SOEs *Persero* function as instruments through which the state exercises its constitutional mandate to control and manage natural resources. The principle of The Right to Control the State confers upon the state broad authority over mineral and coal resources, encompassing regulatory, managerial, and supervisory powers.¹⁰ When SOEs *Persero* engage in mining activities or conclude mining service contracts, they do so not merely as market participants but also as extensions of state authority in implementing natural resource governance. This hybrid position places SOEs *Persero* at the intersection of private law autonomy and public law responsibility. On the one hand, SOEs *Persero* enjoy contractual freedom comparable to private corporations, allowing them to select contractual partners, negotiate terms, and structure commercial relationships. On the other hand, their activities are embedded within a regulatory framework that reflects public interests, including economic nationalism, resource sovereignty, and equitable distribution of mining benefits. The coexistence of these dimensions complicates the application of classical contract law doctrines, which presuppose autonomous private actors operating without public mandates. The legal position of SOEs *Persero* is further shaped by regulatory arrangements governing

⁹ S Suherman et al., "Legal Reform in Indonesia's Natural Resource Exploitation: A Study of SOE Privatization and Corporate Responsibility," *Journal of Law and Legal Reform* 6, no. 3 (2025): 1243-74, <https://doi.org/10.15294/jllr.v6i3.20064>.

¹⁰ Heru Pramono, "Legal Protection For Creditors To Ensure The Fulfillment Of State-Owned Enterprises (*Persero*)'S Liabilities In The Indonesian Legal System," *Prophetic Law Review* 5, no. 2 (2023): 129-56, <https://doi.org/10.20885/PLR.vol5.iss2.art1>.

procurement and contracting practices. Ministerial regulations authorize SOEs to procure goods and services through mechanisms such as direct appointment, particularly for strategic projects. While these mechanisms are designed to enhance efficiency and accelerate project implementation, they also confer a privileged position on SOEs *Persero* that is unavailable to private firms. Scholarly analyses have noted that such privileges may conflict with competition law principles, especially when they result in market foreclosure or preferential treatment that undermines competitive neutrality.¹¹ These regulatory features reinforce the view that contracts concluded by SOEs *Persero* cannot be equated with contracts concluded by purely private entities.

Government assignments to SOEs *Persero* constitute another defining aspect of their legal position. In practice, the state frequently assigns strategic projects directly to SOEs to simplify tender procedures and ensure timely execution of national development agendas. Although this practice is often justified on grounds of public interest and administrative efficiency, it has been criticized for its lack of legal clarity and potential to blur the boundary between commercial discretion and state mandate.¹² In contractual terms, such assignments indicate that SOEs *Persero* do not operate solely based on market competition but also act under directives that reflect governmental priorities.

The interaction between SOEs *Persero* and competition law further illustrates their hybrid legal position. Indonesian economic policy recognizes both natural monopolies and monopolies created by law in sectors deemed vital to national interests. SOEs *Persero* operating in the mining sector may therefore lawfully enjoy dominant positions. Nevertheless, the legal framework simultaneously requires that such dominance not be exercised in a manner that violates anti-monopoly norms or results in unfair competition.¹³ This duality imposes additional normative constraints on the contractual behavior of SOEs *Persero*, distinguishing their legal position from that of private mining companies.

From a contractual governance perspective, studies on mining related contracts highlight persistent problems of bargaining asymmetry, limited transparency, and fragmented oversight.¹⁴ Although much of this literature focuses on private contractual relationships in the mining sector, its findings are instructive for understanding contracts involving SOEs *Persero*. When an SOE *Persero* enters into a mining service contract, the imbalance of power may be even more pronounced, given the SOE's access to regulatory authority and state-backed resources. This reality further challenges the assumption that such contracts are governed solely by the principle of equality of parties.

These factors demonstrate that the legal position of SOEs *Persero* in mining service contracts is inherently hybrid. While formally operating under private law as corporate entities, SOEs *Persero* remain bound by constitutional mandates, regulatory privileges, and public accountability obligations arising from their role in managing strategic natural resources. Consequently, mining service contracts executed by SOEs *Persero* cannot be adequately understood as ordinary private contracts. Their legal position necessitates a

¹¹ Hapsari, "Disciplines on State-Owned Enterprises in Indonesia Vis-à-Vis the Trans-Pacific Partnership Agreement."

¹² Yulia Mirwati and Yakub, "The Legality of Land Lease by The State-Owned Company PT. KAI (Persero)," *International Journal of Engineering & Technology* 7, no. 2 (2018): 157, <https://doi.org/10.14419/ijet.v7i2.29.13308>.

¹³ Qinghua Wang et al., "Concept Transformation and Management Upgrade of Mining Rights Protection of Tarim Oilfield," *China Petroleum Exploration* 28, no. 6 (2023), <https://doi.org/10.3969/j.issn.1672-7703.2023.06.007>.

¹⁴ Denis Shepelev, Dina Shepeleva, and Natalia Kondrakhina, "Power Supply for State-Owned Enterprises," *Light & Engineering* 27, no. 1 (2019): 109-15, <https://doi.org/10.33383/2018-091>.

conceptualization that recognizes both their commercial form and their public function, thereby laying the groundwork for understanding these agreements as public-commercial contracts rather than purely private contractual arrangements.

B. The Characteristic of Mining Service Contracts Executed by SOEs (*Persero*)

The distinctive legal position of State-Owned Enterprises (*Persero*), as discussed in the preceding section, directly shapes the nature of mining service contracts they execute. Although SOEs *Persero* operate with financial autonomy through the legal separation of their budgets from the national budget,¹⁵ this autonomy does not automatically translate into purely private contractual relationships. Instead, it creates a contractual environment in which commercial mechanisms are continuously influenced by public mandates and state involvement.

From a regulatory perspective, mining service contracts executed by SOEs *Persero* are concluded within a fragmented and sometimes inconsistent legal framework. Scholarly analyses highlight regulatory uncertainty, particularly in the alignment of financial regulations and bankruptcy law applicable to SOEs.¹⁶ Such inconsistencies affect contractual certainty, as the enforcement and stability of contracts may be influenced by public law considerations that do not typically arise in private commercial contracts. This condition reinforces the argument that mining service contracts by SOEs *Persero* cannot be equated with contracts governed solely by classical private law doctrines.

Contractual mechanisms further illustrate the hybrid nature of these agreements. One prominent feature is the frequent use of government assignments, whereby the state directly mandates SOEs *Persero* to undertake specific projects without recourse to conventional public procurement procedures.¹⁷ While this mechanism enhances administrative efficiency and accelerates project execution, it alters the contractual landscape by embedding state directives into what would otherwise be market-based agreements. As a result, mining service contracts executed under such assignments reflect a blend of contractual consent and public authority, challenging the assumption of fully voluntary and competitive contracting.

In addition to government assignments, mining service contracts involving SOEs *Persero* often incorporate partnership and subcontracting arrangements. Regulatory requirements mandate that foreign entities engaged in mining activities collaborate with capable local firms through partnerships or subcontracting schemes.¹⁸ These arrangements are not merely commercial choices but reflect broader policy objectives aimed at local participation and capacity building. Consequently, the structure and content of mining service contracts are shaped by regulatory imperatives that serve public economic goals, further distinguishing them from ordinary private contracts.

Financial and operational considerations also contribute to the specific character of mining service contracts by SOEs *Persero*. Empirical findings indicate that SOEs operating

¹⁵ Hapsari, "Disciplines on State-Owned Enterprises in Indonesia Vis-à-Vis the Trans-Pacific Partnership Agreement."

¹⁶ Waluyo Waluyo, Hilaire Tegnau, and Noni Oktiana Setiowati, "Aligning State Finance Regulations with SOE Bankruptcy Policy: Evidence from the United States," *Journal of Human Rights, Culture and Legal System* 5, no. 1 (2025): 246-78, <https://doi.org/10.53955/jhcls.v5i1.470>.

¹⁷ Wibowo and Putri, "Government Assignment of Contracts to State-Owned Enterprises to Provide Infrastructure: Indonesia's Experience."

¹⁸ Hapsari, "Disciplines on State-Owned Enterprises in Indonesia Vis-à-Vis the Trans-Pacific Partnership Agreement."

in the mining sector generally exhibit stronger debt sustainability compared to SOEs in other sectors, such as construction.¹⁹ This relative financial stability enhances their capacity to enter long term contractual commitments. However, the financial resilience of SOEs *Persero* is often supported by state interventions, including State Equity Participation (*Penyertaan Modal Negara*), which injects public capital into SOEs to strengthen operational performance.²⁰ The presence of such state backed financial support underscores the public dimension embedded in contracts executed by SOEs *Persero*.

At the same time, studies suggest that the performance of SOEs is more significantly influenced by business strategy and governance practices than by equity participation alone.²¹ This finding highlights the dual expectations placed upon SOEs *Persero* when executing mining service contracts: they are required to operate efficiently as commercial entities while simultaneously creating public value in line with state objectives. These dual expectations shape contractual terms, risk allocation, and performance obligations in ways that differ fundamentally from contracts concluded by private mining companies. These characteristics demonstrate that mining service contracts executed by SOEs *Persero* are neither purely private nor entirely public in nature. The separation of budgets and corporate form suggest private law autonomy, yet regulatory uncertainty, government assignments, mandatory partnerships, and state financial involvement introduce public law elements that permeate the contractual relationship. The nature of these contracts is therefore best understood as commercial contracts with inherent public dimensions, reflecting the hybrid legal position of SOEs *Persero*.

This characterization provides a doctrinal bridge between the legal position of SOEs *Persero* and the contractual instruments they employ in the mining sector. By recognizing mining service contracts as public-commercial in nature, it becomes possible to explain why classical private contract principles require contextual adaptation when applied to agreements involving SOEs *Persero*. This conceptual understanding is essential for assessing contractual governance in Indonesia's mining sector and lays the analytical foundation for further examination of contractual principles and obligations in subsequent discussions.

C. Mining Service Contracts as Public Commercial Contracts

The legal position of State-Owned Enterprises (*Persero*) and the specific nature of mining service contracts they execute ultimately converge in the classification of these agreements as public-commercial contracts. In comparative legal scholarship, public-commercial contracts are understood as contractual arrangements that, while employing private law mechanisms, are inherently linked to public authority functions and the delivery of public goods or services.²² Mining service contracts executed by SOEs *Persero* fall squarely within this category, as they facilitate the exploitation of strategic natural resources under state control while relying on commercial contractual structures. Mining service contracts are

¹⁹ Esther Sri Astuti Soeryaningrum Agustin, Eko Listiyanto, and Nur Komaria, "Debt Sustainability of State-Owned Enterprises in Indonesia," *Cogent Business & Management* 12, no. 1 (2025), <https://doi.org/10.1080/23311975.2025.2453822>.

²⁰ S Maimunah, S Winarningsih, and I Farida, "How Does State Equity Participation Contribute to Performance of State-Owned Enterprises in Indonesia?," *Cuadernos de Economia* 45, no. 127 (2022): 32–43, <https://doi.org/10.32826/cude.v1i127.603>.

²¹ U Nugraha, A Y S Rahayu, and C Wijaya, "Public Value Creation in State-Owned Enterprises and Economic Recovery Post Covid-19: The Case of Bank Rakyat Indonesia," *Review of Integrative Business and Economics Research* 12, no. 4 (2022): 149–62.

²² Amr Abu Helw and A Samer Ezeldin, "Comparative Study of the Application of Public Contract Laws on Construction Projects," *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* 12, no. 3 (2020), [https://doi.org/10.1061/\(ASCE\)LA.1943-4170.0000414](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000414); Kamil Mucha, Dawid Chaba, and Katarzyna Midor, "Legal Aspects of the Evaluation of Tenders in Public Procurement Procedures in the Polish Mining Industry," *Sustainability* 15, no. 21 (2023): 15421, <https://doi.org/10.3390/su152115421>.

frequently associated with collaborative arrangements between public authorities and private entities. In many jurisdictions, such contracts are conceptualized within the broader framework of public-private partnerships (PPPs), which are justified on the grounds that cooperation between public and private actors enhances project feasibility and ensures the provision of essential public goods.²³ Although mining service contracts by SOEs *Persero* may not always be formally designated as PPPs, they share core characteristics with such arrangements, including long term cooperation, shared objectives, and the pursuit of both commercial returns and public value.

The public-commercial character of mining service contracts is further reflected in their structural design. Public contracts, including those in the mining sector, are typically more rigid than private contracts, as they are subject to heightened requirements of transparency, accountability, and compliance with public procurement norms.²⁴ This rigidity is not incidental but serves as a legal strategy to mitigate political risk, prevent discretionary abuse, and ensure public oversight.²⁵ Consequently, mining service contracts executed by SOEs *Persero* often contain rule-based clauses, formal amendment procedures, and standardized obligations that depart from the flexibility commonly associated with private commercial contracts.

Risk allocation constitutes another defining element of public-commercial contracts in the mining sector. Mining projects are inherently exposed to geological, operational, and financial risks, which necessitate careful contractual design to allocate responsibilities between the contracting parties.²⁶ In mining service contracts executed by SOEs *Persero*, risk sharing mechanisms are shaped not only by commercial considerations but also by public interests, including continuity of operations and protection of state assets. This dual orientation reinforces the hybrid nature of these contracts, as risk management serves both private efficiency and public accountability objectives. The regulatory environment governing mining service contracts also supports their classification as public-commercial contracts. Legal frameworks across jurisdictions impose stringent regulatory controls on contracts involving public resources to prevent manipulation of public funds and ensure fair dealing.²⁷ While the specific regulatory instruments vary, the underlying rationale remains consistent: contracts involving public interests must be subject to enhanced legal scrutiny. Comparative studies indicate that the absence of uniform contractual standards in the mining sector, such as standardized pro forma contracts, can lead to diverse contractual practices with varying degrees of legal certainty.²⁸ In Indonesia, this diversity further

²³ Dmitri Vinogradov and Elena Shadrina, "Public-Private Partnerships as Collaborative Projects: Testing the Theory on Cases from EU and Russia," *International Journal of Public Administration* 41, no. 5-6 (2018): 446-59, <https://doi.org/10.1080/01900692.2018.1426012>; Amir Fazli Allah Abadi and Majid Ataee-pour, "Evaluating Public-Private Partnerships in Mining: An Evolutionary Game Theory Approach to Strategic Dynamics and Regulatory Impacts," *Resources Policy* 104 (May 2025): 105575, <https://doi.org/10.1016/j.resourpol.2025.105575>.

²⁴ Jean Beuve, Marian W Moszoro, and Stéphane Saussier, "Political Contestability and Public Contract Rigidity: An Analysis of Procurement Contracts," *Journal of Economics & Management Strategy* 28, no. 2 (2019): 316-35, <https://doi.org/10.1111/jems.12268>.

²⁵ Marian Moszoro, Pablo T Spiller, and Sebastian Stolorz, "Rigidity of Public Contracts," *Journal of Empirical Legal Studies* 13, no. 3 (2016): 396-427, <https://doi.org/10.1111/jels.12119>.

²⁶ B McCosker, "A Model Services Contract for the Mining Industry: A Dream or Can It Become Reality?," in *International Coal Preparation Congress 2010, Conference Proceedings* (McCullough Robertson Lawyers, Brisbane, QLD, Australia, 2010), 152-60; B McCosker and R McCullough, "Services Contracts for Mining Works," *Australian Mining* 100, no. 8 (2008): 55-56.

²⁷ Omar Kandil, Nabil Yehia, and Tarek Hamed, "Threats to Contractor's Cash Flow under Remeasured Public Works Contracts," *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* 14, no. 1 (2022), [https://doi.org/10.1061/\(ASCE\)LA.1943-4170.0000507](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000507).

²⁸ Alwyn Smith and Michiel C Bekker, "An Evaluation of the Adequacy of the Most Commonly Used Pro Forma Contracts Within the South African Mining Construction Industry," in *PICMET '08 - 2008 Portland International Conference on Management of Engineering &*

underscores the need to conceptualize mining service contracts by SOEs *Persero* within a public-commercial framework rather than treating them as ordinary private agreements.

Stakeholder engagement constitutes an additional dimension that differentiates public-commercial contracts from purely private contracts. Mining projects have significant social and environmental impacts, necessitating engagement with local communities, public authorities, and other stakeholders.²⁹ As a result, mining service contracts increasingly incorporate obligations related to corporate social responsibility (CSR) and environmental protection.³⁰ For SOEs *Persero*, such obligations are closely linked to their public mandate and reinforce the public law elements embedded in their contractual relationships. These characteristics demonstrate that mining service contracts executed by SOEs *Persero* exhibit a distinctive hybrid legal nature. They rely on private law instruments such as contractual consent and commercial risk allocation, yet they are simultaneously constrained and shaped by public law considerations, including state control over natural resources, regulatory oversight, and public accountability. This combination of elements justifies their classification as public-commercial contracts, a category that more accurately captures their legal reality than traditional private contract classifications. By conceptualizing mining service contracts in this manner, this article provides a coherent doctrinal explanation for why the application of classical private contract principles requires contextual adaptation when applied to agreements involving SOEs *Persero*. This classification not only aligns with comparative legal developments but also offers a clearer analytical foundation for understanding contractual governance in Indonesia's mining sector.

CONCLUSION

This article demonstrates that mining service contracts executed by State-Owned Enterprises (*Persero*) in Indonesia cannot be adequately classified as ordinary private commercial contracts. Although SOEs *Persero* are legally structured as limited liability companies and operate with financial autonomy under private law, their contractual activities in the mining sector are intrinsically linked to the state's constitutional mandate to control natural resources. The involvement of state ownership, regulatory privileges, and public accountability obligations fundamentally distinguishes these contracts from those concluded by purely private entities. The analysis further shows that the legal position of SOEs *Persero* directly shapes the nature of mining service contracts they execute. Government assignments, regulatory intervention, mandatory partnership arrangements, and state backed financial support introduce public law elements into the contractual relationship. These elements affect contractual autonomy, risk allocation, and governance mechanisms, resulting in contracts that simultaneously pursue commercial efficiency and public value. Consequently, classical private contract principles such as absolute freedom

Technology (Graduate School of Technology Management, University of Pretoria, South Africa: IEEE, 2008), 1380–88, <https://doi.org/10.1109/PICMET.2008.4599750>.

²⁹ Kate Odziemkowska and Sinziana Dorobantu, "Contracting Beyond the Market," *Organization Science* 32, no. 3 (2021): 776–803, <https://doi.org/10.1287/orsc.2020.1388>; I Jonek-Kowalska, T V Ponomarenko, and O A Marinina, "Problems of Interaction with Stakeholders During Implementation of Long-Term Mining Projects," *Journal of Mining Institute* 232 (2018): 428–37, <https://doi.org/10.31897/pmi.2018.4.428>.

³⁰ E J Dzage, S A Nyamador, and G N Szabados, "'When Gold Remains in the Ground, It Will Not Rot': Corporate Social Responsibility Imbalances between Mining Companies and Host Communities in Ghana," *Journal of Sustainability Research* 6, no. 4 (2024), <https://doi.org/10.20900/jsr20240075>; Ralph Hamann, "Corporate Social Responsibility, Partnerships, and Institutional Change: The Case of Mining Companies in South Africa," *Natural Resources Forum* 28, no. 4 (2004): 278–90, <https://doi.org/10.1111/j.1477-8947.2004.00101.x>.

of contract and strict equality of parties require contextual adaptation when applied to mining service contracts involving SOEs *Persero*. Based on these findings, this article concludes that mining service contracts executed by SOEs *Persero* are best understood as public-commercial contracts, namely commercial agreements that employ private law mechanisms while embodying inherent public law dimensions. This classification provides a clearer doctrinal framework for interpreting and assessing contracts involving SOEs in strategic sectors. By clarifying the legal character of such contracts, this study contributes to the development of contract law scholarship and offers a conceptual foundation for future research on contractual principles, accountability, and sustainability in Indonesia's mining sector.

REFERENCES

- Abu Helw, Amr, and A Samer Ezeldin. "Comparative Study of the Application of Public Contract Laws on Construction Projects." *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* 12, no. 3 (2020). [https://doi.org/10.1061/\(ASCE\)LA.1943-4170.0000414](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000414).
- Agustin, Esther Sri Astuti Soeryaningrum, Eko Listiyanto, and Nur Komaria. "Debt Sustainability of State-Owned Enterprises in Indonesia." *Cogent Business & Management* 12, no. 1 (2025). <https://doi.org/10.1080/23311975.2025.2453822>.
- Allah Abadi, Amir Fazli, and Majid Atae-pour. "Evaluating Public-Private Partnerships in Mining: An Evolutionary Game Theory Approach to Strategic Dynamics and Regulatory Impacts." *Resources Policy* 104 (2025): 105575. <https://doi.org/10.1016/j.resourpol.2025.105575>.
- Ananda, A I, L O Dedihasriadi, and Y Haerani. "The State's Right to Control and Local Government Authority in the Mining Sector: A Legal-Policy Research." *Administrative and Environmental Law Review* 6, no. 1 (2025): 33-34. <https://doi.org/10.25041/aelr.v6i1.4079>.
- Beuve, Jean, Marian W Moszoro, and Stéphane Saussier. "Political Contestability and Public Contract Rigidity: An Analysis of Procurement Contracts." *Journal of Economics & Management Strategy* 28, no. 2 (2019): 316-35. <https://doi.org/10.1111/jems.12268>.
- Dzage, E J, S A Nyamamor, and G N Szabados. "When Gold Remains in the Ground, It Will Not Rot': Corporate Social Responsibility Imbalances between Mining Companies and Host Communities in Ghana." *Journal of Sustainability Research* 6, no. 4 (2024). <https://doi.org/10.20900/jsr20240075>.
- Fajar, M, R Fahlevi, Y Nurhayati, and H Tegnan. "Direct Appointment of State-Owned Enterprises in the Procurement of Goods and Services: Unfair Competition in Tender in Indonesia." *International Journal of Procurement Management* 13, no. 6 (2020): 818-30. <https://doi.org/10.1504/IJPM.2020.111359>.
- Hadi, A, and P.A.F.D. Santo. "Natural Monopoly or Monopoly by Law for State Owned Enterprises." In *E3S Web of Conferences*, edited by Mursitama T.N., Noerlina null, Utama D.N., and Abrori S.A., Vol. 426. Business Law Program, Law Department, Faculty of Humanities, Bina Nusantara University, Jakarta, 11480, Indonesia: EDP Sciences, 2023. <https://doi.org/10.1051/e3sconf/202342602085>.

- Hamann, Ralph. "Corporate Social Responsibility, Partnerships, and Institutional Change: The Case of Mining Companies in South Africa." *Natural Resources Forum* 28, no. 4 (2004): 278–90. <https://doi.org/10.1111/j.1477-8947.2004.00101.x>.
- Hapsari, Maharani. "Disciplines on State-Owned Enterprises in Indonesia Vis-à-Vis the Trans-Pacific Partnership Agreement." In *Emerging Global Trade Governance*, 258–71. Abingdon, Oxon ; New York, NY : Routledge, 2019. | Series: Routledge-ERIA studies in development economics ; 13: Routledge, 2018. <https://doi.org/10.4324/9781351051309-13>.
- Jonek-Kowalska, I, T V Ponomarenko, and O A Marinina. "Problems of Interaction with Stakeholders During Implementation of Long-Term Mining Projects." *Journal of Mining Institute* 232 (2018): 428–37. <https://doi.org/10.31897/pmi.2018.4.428>.
- Kandil, Omar, Nabil Yehia, and Tarek Hamed. "Threats to Contractor's Cash Flow under Remeasured Public Works Contracts." *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* 14, no. 1 (2022). [https://doi.org/10.1061/\(ASCE\)LA.1943-4170.0000507](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000507).
- Maimunah, S, S Winarningsih, and I Farida. "How Does State Equity Participation Contribute to Performance of State-Owned Enterprises in Indonesia?" *Cuadernos de Economia* 45, no. 127 (2022): 32–43. <https://doi.org/10.32826/cude.v1i127.603>.
- McCosker, B. "A Model Services Contract for the Mining Industry: A Dream or Can It Become Reality?" In *International Coal Preparation Congress 2010, Conference Proceedings*, 152–60. McCullough Robertson Lawyers, Brisbane, QLD, Australia, 2010.
- McCosker, B, and R McCullough. "Services Contracts for Mining Works." *Australian Mining* 100, no. 8 (2008): 55–56.
- Mirwati, Yulia, and Yakub. "The Legality of Land Lease by The State-Owned Company PT. KAI (Persero)." *International Journal of Engineering & Technology* 7, no. 2 (2018): 157. <https://doi.org/10.14419/ijet.v7i2.29.13308>.
- Moszoro, Marian, Pablo T Spiller, and Sebastian Stolorz. "Rigidity of Public Contracts." *Journal of Empirical Legal Studies* 13, no. 3 (2016): 396–427. <https://doi.org/10.1111/jels.12119>.
- Mucha, Kamil, Dawid Chaba, and Katarzyna Midor. "Legal Aspects of the Evaluation of Tenders in Public Procurement Procedures in the Polish Mining Industry." *Sustainability* 15, no. 21 (2023): 15421. <https://doi.org/10.3390/su152115421>.
- Nugraha, U, A Y S Rahayu, and C Wijaya. "Public Value Creation in State-Owned Enterprises and Economic Recovery Post Covid-19: The Case of Bank Rakyat Indonesia." *Review of Integrative Business and Economics Research* 12, no. 4 (2022): 149–62.
- Odziemkowska, Kate, and Sinziana Dorobantu. "Contracting Beyond the Market." *Organization Science* 32, no. 3 (2021): 776–803. <https://doi.org/10.1287/orsc.2020.1388>.
- Pramono, Heru. "Legal Protection For Creditors To Ensure The Fulfillment Of State-Owned Enterprises (Persero)'S Liabilities In The Indonesian Legal System." *Prophetic Law Review* 5, no. 2 (2023): 129–56. <https://doi.org/10.20885/PLR.vol5.iss2.art1>.

- Rahayu, D P, M Rustamaji, F Faisal, and R Sari. "Legal Effectiveness of Business Contracts in Tin Mining: Socio-Legal and Governance Challenges in Corporate-Community Relations in Indonesia." *Resources Policy* 111 (2025). <https://doi.org/10.1016/j.resourpol.2025.105767>.
- Shepelev, Denis, Dina Shepeleva, and Natalia Kondrakhina. "Power Supply for State-Owned Enterprises." *Light & Engineering* 27, no. 1 (2019): 109–15. <https://doi.org/10.33383/2018-091>.
- Smith, Alwyn, and Michiel C Bekker. "An Evaluation of the Adequacy of the Most Commonly Used Pro Forma Contracts Within the South African Mining Construction Industry." In *PICMET '08 - 2008 Portland International Conference on Management of Engineering & Technology*, 1380–88. Graduate School of Technology Management, University of Pretoria, South Africa: IEEE, 2008. <https://doi.org/10.1109/PICMET.2008.4599750>.
- Suherman, S, I E Joesoef, H S Bakhtiar, A Kholiq, and J C Phuoc. "Legal Reform in Indonesia's Natural Resource Exploitation: A Study of SOE Privatization and Corporate Responsibility." *Journal of Law and Legal Reform* 6, no. 3 (2025): 1243–74. <https://doi.org/10.15294/jllr.v6i3.20064>.
- Sumarsih, I. "Challenging Nominee Agreements In The Mining Industry: Between Constitutional Mandates and Legal Evasion." *Indonesia Law Review* 15, no. 1 (2025). <https://doi.org/10.15742/ilrev.v15n1.5>.
- Vinogradov, Dmitri, and Elena Shadrina. "Public-Private Partnerships as Collaborative Projects: Testing the Theory on Cases from EU and Russia." *International Journal of Public Administration* 41, no. 5–6 (2018): 446–59. <https://doi.org/10.1080/01900692.2018.1426012>.
- Waluyo, Waluyo, Hilaire Tegan, and Noni Oktiana Setiowati. "Aligning State Finance Regulations with SOE Bankruptcy Policy: Evidence from the United States." *Journal of Human Rights, Culture and Legal System* 5, no. 1 (2025): 246–78. <https://doi.org/10.53955/jhcls.v5i1.470>.
- Wang, Qinghua, Lei Min, Peng Zhou, Juncheng Luo, Xianzhang Yang, Zhenping Xu, Xueqi Zhang, and Deyu Cui. "Concept Transformation and Management Upgrade of Mining Rights Protection of Tarim Oilfield." *China Petroleum Exploration* 28, no. 6 (2023). <https://doi.org/10.3969/j.issn.1672-7703.2023.06.007>.
- Wibowo, R A, and K D N Putri. "Government Assignment of Contracts to State-Owned Enterprises to Provide Infrastructure: Indonesia's Experience." *UUM Journal of Legal*

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