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Juridical Analysis of Nickel Mining Royalty Imposition on Integrated Ferronickel-Producing Mining Companies

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Abstract

Abstract *This study aims to analyze the legal construction of nickel mining royalty obligations on integrated mining companies producing ferronickel and to assess the legal certainty of its imposition from the perspectives of the principle of legality, state control over natural resources, and the downstreaming policy. This normative legal research employs a statutory approach. The findings reveal that the legal construction of royalty imposition originates from the legal relationship between the state, as the holder of rights over natural resources, and business entities holding mineral exploitation rights (IUP/IUPK). The obligation to pay royalties serves as compensation for utilizing state resources attached to the permit holder's status, rather than merely from producing ferronickel. The construction of processing facilities (smelters) and ferronickel production represent the fulfillment of downstreaming obligations mandated by Article 103 of Law No. 3 of 2020. Regarding legal certainty, the normative basis for royalty imposition is established under Law No. 3 of 2020, Government Regulation No. 96 of 2021, and Government Regulation No. 26 of 2022. However, explicit provisions detailing the royalty mechanism for ferronickel as an intermediate product in integrated companies are lacking, leading to potential misinterpretations. Therefore, harmonization of legal norms is essential to ensure that the royalty mechanism reflects legal certainty, justice, and proportionality, thereby supporting downstreaming policies while optimizing state revenues.*

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1. INTRODUCTION

Indonesia holds the world's largest nickel reserves, possessing approximately 55 million metric tons or 42% of global reserves according to data published by the United States Geological Survey (USGS). This vast natural wealth positions Indonesia as a key strategic player in the global nickel supply chain, particularly as a crucial vendor for stainless steel manufacturing and the burgeoning electric vehicle (EV) battery industry. From a constitutional law perspective, the governance and management of natural resources in Indonesia are firmly anchored in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This constitutional provision establishes the doctrine of State Control Rights (*Hak Menguasai Negara* - HMN), which mandates that earth, water, and the natural resources contained therein shall be controlled by the state and utilized for the greatest prosperity of the people. Through HMN, the state is vested with five fundamental public prerogatives: formulating policies (*beleid*), issuing regulations (*regelendaad*), executing management (*bestuursdaad*), conducting administration (*beheersdaad*), and performing supervision (*toezichthoudensdaad*).

To operationalize these constitutional imperatives within the extractive sector, the Indonesian Parliament enacted Law No. 4 of 2009, which was subsequently amended by Law No. 3 of 2020 concerning Mineral and Coal Mining (Mining Law). A pivotal structural shift introduced in Law No. 3 of 2020 is the aggressive reinforcement of the domestic downstreaming policy (*hilirisasi*). Article 103 of the Mining Law explicitly obligates all holders of Mining Business Licenses (*Izin Usaha Pertambangan* - IUP) and Special Mining Business Licenses (*Izin Usaha Pertambangan Khusus* - IUPK) to undertake domestic processing and refining activities for their extracted mineral commodities. This statutory requirement fundamentally reshaped the national mining landscape, transitioning the industry from raw ore export dependence toward a value-added manufacturing economy. Consequently, this policy environment fostered the rise of vertically integrated mining entities (*integrated mining companies*)—enterprises that execute an unbroken operational chain spanning from upstream extraction and haulage to downstream smelter processing, ultimately yielding refined intermediate products such as ferronickel.

However, the exercise of mineral exploitation rights concurrently imposes statutory financial obligations payable to the sovereign state in the form of Non-Tax State Revenue (*Penerimaan Negara Bukan Pajak* - PNBP), primarily consisting of production fees known as royalties. In contemporary regulatory practice, integrated mining companies face royalty assessments levied directly upon their final commercial transactions of ferronickel. Conversely, stand-alone smelter facilities—which operate purely under industrial processing licenses without holding upstream IUP or IUPK mining concessions—are completely exempt from paying mining royalties. This sharp regulatory divergence underscores a fundamental legal reality: royalty liabilities are strictly determined by an entity's legal standing as an IUP/IUPK concessionaire rather than by the physical nature of the refined product itself. Nevertheless, substantial ambiguities persist regarding the precise statutory construction and calculation formulas applied when imposing royalties on downstreamed intermediate goods like ferronickel, giving rise to acute legal uncertainty, potential double burden risks for integrated investors, and administrative disputes between corporate taxpayers and state regulators.

While prior academic scholarship has addressed various dimensions of Indonesia's nickel sector, significant gaps remain in the literature. For instance, Maytsa Atika Al Maghfiroh examined the downstreaming policy primarily through the lens of green economy transitions and net-zero emission goals. Similarly, Ika focused on technical constraints and regional infrastructure readiness regarding smelter development, whereas Terecya Harlita Baoli analyzed the international trade litigation between Indonesia and the European Union at the World Trade Organization (WTO) concerning raw ore export bans. None of these prior studies systematically investigated the intricate legal intersection connecting a firm's concessionaire status, statutory downstreaming mandates, and fiscal royalty schemes under administrative and constitutional law frameworks. This research directly fills that critical scholarly gap (*state of the art*) by dissecting the underlying legal construction of royalty liabilities and thoroughly assessing its legal certainty for integrated ferronickel producers in Indonesia.

2. METHOD

This research utilizes a normative juridical legal research methodology, which focuses on examining legal principles, legal dogmatics, and the systemic cohesion of positive legal norms governing mineral exploitation and fiscal obligations. The study is designed to evaluate vertical regulatory synchronization between higher-level statutes and subordinate executive regulations. To address the core research problems effectively, a statutory approach (*statute approach*) is applied alongside a conceptual approach, enabling a rigorous analysis of statutory hierarchies, legislative intents, and administrative doctrines.

The legal materials utilized in this study are categorized into primary, secondary, and tertiary sources. Primary legal materials consist of binding statutory provisions, including the 1945 Constitution of the Republic of Indonesia (specifically Article 33 Paragraph (3)), Law No. 3 of 2020 on Mineral and Coal Mining, Law No. 6 of 2023 on the Enactment of Job Creation Regulation in Lieu of Law, Law No. 12 of 2011 on the Establishment of Laws and Regulations (as amended by Law No. 13 of 2022), Government Regulation No. 96 of 2021 on the Implementation of Mineral and Coal Mining Business Activities, and Government Regulation No. 26 of 2022 concerning Types and Rates of Non-Tax State Revenues Applicable to the Ministry of Energy and Mineral Resources. Secondary legal materials comprise authoritative academic books, legal treatises, and peer-reviewed journal articles from recognized legal scholars. Tertiary materials include legal dictionaries and encyclopedias.

Legal materials were systematically collected through comprehensive qualitative library research (*library research*) involving document analyses of regulatory texts and academic literature. The gathered legal materials were subsequently processed and analyzed using qualitative legal interpretation methods, specifically grammatical interpretation (analyzing literal statutory wording) and systematic interpretation (evaluating the harmonious relationship between various regulations within the legal hierarchy). Through this interpretative process, deductive legal reasoning was employed to draw logical, structured, and objective conclusions regarding the legal construction and certainty of royalty imposition on integrated ferronickel enterprises.

3. RESULTS AND DISCUSSION

The constitutional foundation governing state control over mineral resources, as enshrined in Article 33 Paragraph (3) of the 1945 Constitution, dictates that mineral exploitation must yield direct economic compensation to the sovereign state. Under Law No. 3 of 2020, every IUP and IUPK holder bears non-negotiable public financial duties to the state comprising fixed annual fees (*iuran tetap*) and production royalties (*iuran produksi*). Technical provisions specifying royalty rates and computational bases are further detailed in Government Regulation No. 26 of 2022, which categorizes tariffs based on commodity types, processing states (raw ore versus processed metals), and Benchmark Mineral Prices (*Harga Mineral Acuan* - HMA). For vertically integrated mining enterprises, constructing and operating smelter facilities is not a standalone commercial option, but rather a statutory obligation aimed at executing the national downstreaming mandate. However, a major legal controversy arises regarding the precise statutory point of royalty accrual (*momen terutang*): whether royalty liability attaches at the initial moment of raw nickel ore extraction from the concession ground or upon the final commercial sale of processed ferronickel. From an administrative law perspective, levying public fiscal charges without clear and unambiguous statutory parameters violates the principle of legality (* principle of legality*) under Law No. 12 of 2011, exposing integrated investors to potential double burden risks if capital-intensive processing costs are insufficiently factored into royalty calculations.

The legal construction of royalty payment obligations is fundamentally rooted in the public law relationship existing between the state as the sovereign resource owner and the business enterprise as a permit grantee holding an IUP or IUPK. As legal scholar Salim HS posits, a mining permit issued by an administrative authority is a legal instrument that grants limited economic exploitation rights while simultaneously attaching non-derogable public liabilities to the permit holder. The statutory downstreaming mandate under Article 103 of Law No. 3 of 2020 obligates concessionaires to transform raw nickel ore into higher-value refined commodities. Consequently, the production of ferronickel represents the direct execution of a legal duty imposed by statute. The fundamental legal trigger for royalty liability lies exclusively in the entity's underlying legal status as a concessionaire (*IUP/IUPK holder*), rather than in the mere physical transformation of the mineral commodity itself. This crucial legal standing establishes the formal boundary separating integrated mining companies from stand-alone smelter operators. Stand-alone smelters acquire raw ore through civil purchase agreements without holding upstream extraction rights, thereby placing them entirely outside the scope of mining PNBP obligations. Thus, the commercial sale of ferronickel by an integrated firm merely serves as the computational benchmark and timing event for quantifying state royalty assessments.

From the perspective of the legality principle, Sudikno Mertokusumo and Utrecht emphasize that legal certainty requires unambiguous, precise, and predictable legal norms that strictly curb arbitrary state action and provide legal protection to regulated subjects. Although Law No. 3 of 2020, Government Regulation No. 96 of 2021, and Government Regulation No. 26 of 2022 establish the general statutory framework for mining PNBP, these regulations lack explicit, detailed norms explaining the precise mathematical mechanism for assessing royalties on intermediate processed goods (*intermediate products*) produced by integrated operations. Furthermore, evaluating State Control Rights (HMN) through the landmark jurisprudence of the Constitutional Court (such as Constitutional Court Decision No. 36/PUU-X/2012) confirms that HMN empowers the sovereign state to collect royalties as true compensation (*quid pro quo*) for the permanent depletion of non-renewable natural assets. Therefore, the national downstreaming mandate and the fiscal PNBP framework must operate in complete systemic harmony. Comprehensive regulatory harmonization between the Mining Law and PNBP executive regulations is urgently required to guarantee investment predictability for integrated corporate entities while ensuring the optimal and legitimate collection of state revenues from the mining sector.

4. CONCLUSION

The legal construction of nickel mining royalty obligations imposed on integrated companies producing ferronickel is fundamentally derived from the entity's legal standing as an IUP/IUPK permit holder granted mineral extraction rights by the state under public law. Transforming raw nickel ore into ferronickel constitutes the mandatory fulfillment of statutory downstreaming obligations pursuant to Article 103 of Law No. 3 of 2020, whereas the commercial sale of ferronickel functions strictly as the computational benchmark and timing event for calculating state royalty dues.

Legal certainty regarding royalty imposition is partially established under Law No. 3 of 2020, Government Regulation No. 96 of 2021, and Government Regulation No. 26 of 2022. However, clear, explicit, and detailed regulatory mechanisms defining royalty bases for intermediate downstream products like ferronickel are urgently required to uphold the principles of legality, equity, and proportionality—ensuring optimal state revenue collection without penalizing capital-intensive integrated investments.

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