

NITIATING THE CONCEPT OF NATIONALITY: NATIONALIZATION OF NATURAL RESOURCES MANAGEMENT IN INDONESIA

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Submission date: 17-Dec-2021 12:45PM (UTC+0700)

Submission ID: 1732589233

File name: nationalization-of-natural-resources-management-in-indonesia.pdf (395.22K)

Word count: 6091

Character count: 34200

INITIATING THE CONCEPT OF NATIONALITY: NATIONALIZATION OF NATURAL RESOURCES MANAGEMENT IN INDONESIA

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ABSTRACT

Nationalization of natural resource management through the transformation of corporates that manage natural resources into national corporate in line with the mandate of the constitution. The domination of the State for corporate that exercises business activities in the field of natural resources is a necessity because natural resources are related to human life and livelihood, social justice and the welfare of the nation and State. The nationalization of natural resource management through the transformation of corporates that manage natural resources can have a positive impact on the independence of country. Through this nationalization policy, the State can control the ownership, control, use and utilization of natural resources so that the State can be economically independent and the objectives of the State to improve welfare can be realized.

Keywords: Environment, Natural Resources, Nationality

INTRODUCTION

In Indonesia, the management of natural resources is based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which stipulates that “earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people”. Based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, several laws and regulations governing the management of natural resources were issued. The constitution expressly prohibits the control of natural resources in the hands of a person.¹ In other words, monopoly is not justified even though the current facts show that in business practices, and investment in the field of natural resource management this has happened. The control of mining and oil and gas, which are majority controlled by foreign capital, for example is clearly contrary to the constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia (Ilmar, 2012).

Previously, if Indonesia was dependent on developed countries in managing natural resources due to limited reliable and skilled human resources and limited sophisticated production equipment, now this should no longer be seen as an obstacle. Currently, human resources are very good, many Indonesians are studying in developed and modern countries. This is a big capital when the government can empower the potentials of Indonesian people who have struggled to learn in developed and modern countries. The government must be able to empower the quality of human resources to build an independent country. Human resources are the most important because if a country has skilled and quality human resources, then it will be able to process its natural resources (Kanumuyoso, 2001).²

Based on the thoughts above, several thoughts emerged to nationalize the management of natural resources in Indonesia. It is undeniable that currently there are still many foreign companies

or national companies owned by foreigners who control the management of natural resources in Indonesia that exploit various natural resources of Indonesia³. Muhammad Ilham Arisaputra⁴ even showed a map of control over oil and gas and coal methane in Indonesia, which is dominated by US's corporate. This can be seen in figure 1 and 2.

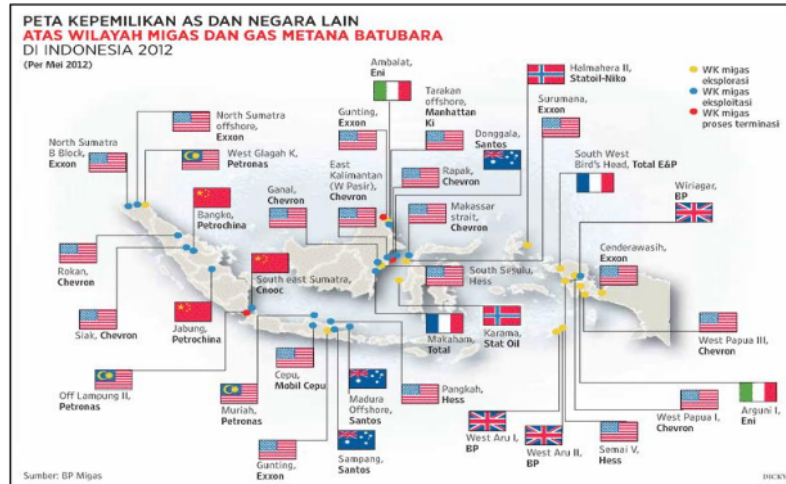


FIGURE 1
MAP OF FOREIGN OWNERSHIP FOR OIL AND GAS AND COAL METHANE IN INDONESIA



FIGURE 2
MAP OF FOREIGN OWNERSHIP FOR NATURAL RESOURCES IN INDONESIA⁵

Currently, Pertamina as a national oil and gas company only contributes 24 percent of domestic oil production⁶. As a result, the government' lifting target of 826.000 barre¹² per day was met by the performance of foreign operators such as Chevron or British Petroleum. In the field of mining and management of oil and gas blocks, Ameirca is one of the main players in Indonesia. Freeport McM⁸an, a mining company that manages land in Tembagapura, Mimika, Papua and as a company that has been operating in Indonesia for a long time. The daily production of the mine reaches 220.000 tons of gold and silver raw ore. Besides Freeport, there is Newmont, a company

from Colorado-America that manages several gold and copper mines in NTT and NTB. In 2018, its contribution to the government reached Rp. 689 billion, including all taxes from their total profit. If from NTT alone, in 2012 Newmont's revenue reached USD 4.17 million. Besides the United States, China is also a country that has made a lot of profit in Indonesia in the field of natural resource management. One of China's major investments in Indonesia is in the coal sector. In addition, natural resources such as nickel and bauxite are also being targeted by Chinese companies. China's medium and large-scale mining companies operate throughout the region, from Pacitan, East Java, to Kabaena Island, Southeast Sulawesi. One of the big Chinese companies is PT. Heng Fung Mining Indonesia, which invests in nickel, in Halmahera with a production target of 200 million tons⁷ (Dowling et al., 2000).

The question is if Indonesia relies on foreign corporates to manage its natural resources, when can Indonesia become an independent country? The answer is most likely never because Indonesia has become dependent on foreign corporates⁸.

The presence of Act No. 11 of 2020 concerning Job Creation is currently considered to be difficult to realize the nationalization of natural resource management because this act focuses more on creating investment, especially foreign investment. This is mainly in the field of natural resource management under the pretext that a large number of investments will boost the country's economy. On the one hand, this is correct, but on the other hand, it will injure the independence of the State and can even threaten state sovereignty if the foreign investment valve is opened without control (GiokSiong, 1960).

In the context of nationalizing natural resource management, Ilham Arisaputra⁹ argues the term Transformation of Natural Resources Management which is intended for foreign corporates that control natural resources in Indonesia, such as mining, fishery, agriculture, and plantation. This must be done because the mining, fisheries, agriculture and plantation sectors are related to the welfare of the Indonesian people. From this explanation, that main issue of this paper can be formulated is proper management of natural resources in Indonesia and its implications for the economy of country (Hussain et al., 2020).

METHOD OF RESEARCH

The research is a legal research. It is conducted to create new arguments, theories or concepts as prescriptions in solving legal problems. It was conducted by using several approaches, including statutory, conceptual and comparative approaches. Sources of legal research can be in the form of primary and secondary legal materials. Primary legal materials are legal materials that are authoritative or have authority.¹⁰ The primary legal materials that the author uses consist of laws and regulations related to natural resource management. While, the secondary legal materials are books and legal journals related to the legal issues of this research (Hussain et al., 2021).

DISCUSSION

Management of Natural Resources that Should be in Indonesia

Basically, natural resources are important assets owned by a country. These natural resources, include land and natural resources such as soil fertility, forest, mining, garden, and marine which greatly affect the industrial growth of a country, especially in terms of providing raw materials for production. With abundant natural resources and high potential, it will greatly support the economic development of a country. Economic development is efforts to improve the standard of living and welfare of a nation which is often measured by the level of real income per capita.

However, the existing natural resources are not processed by nature, but human resources are needed to process these natural resources.¹¹

The phenomenon of nationalism arises because there is a tendency for the two dominant schools of thought to contradict the economic and political constellations after the second world war until the 1980s. The discourse of nationalism appears without knowing ideological boundaries and one day it can appear in the context of left (revolutionary), right (conservative) and moderate ideologies. Nationalism is the formalization and rationalization of national consciousness nationalism teaches that a nation in a State can be built from a pluralistic society (Mahrinasari et al., 2021).¹²

Nationalism is also related to the management of natural resources in Indonesia, which is related to economic factors and this is the right time for us to raise nationalism in the midst of globalization. Nationalism is an ideology as well as a form of behavior or behavior.¹³ Nationalism can be a unifier and at the same time a divider of a country. Nationalism encourages citizens and all their elements to love their homeland, to sacrifice for the country, to give their highest loyalty to the country. Nationalism builds people's awareness as a nation and provides a set of attitudes and programs of action. Basically, nationalism awakens to love and defend the Unitary State of the Republic of Indonesia until now. The right of state control as stated in Article 33 of the 1945 Constitution positions the state as a regulator and guarantor of the people's welfare. The management of natural resources in favor of the people will be able to encourage the realization of a more just and pro-people order for the management and management of Indonesia's natural resources. Issues regarding sovereignty that need to be considered urgently, especially foreign control over natural resources in the mining, agriculture, and large-scale plantation sectors are increasingly massive (Hussain et al., 2021).¹⁴

The term nationalization includes at least 3 (three) meanings, namely confession, onteigening, and revocation of rights. Erades gives the meaning of nationalization, namely a regulation by which the authorities force all or certain groups to accept (dwingttogedegen) that their rights to all or certain kinds of objects are transferred to the state.¹⁵ Thus, nationalization is a way of forcibly transferring rights from the party to the State. In the context of this review, nationalization is seen as a species of the genus deprived of rights (Onteigening). In connection with this provision, it means that every onteigening in principle must be followed by compensation. Meanwhile, if it is not accompanied by compensation, then it can be called a confiscation. This confiscation is similar to revocation of rights (a kind of onteigening), but with a special feature without compensation. Confiscatie is usually carried out in hostilities of war without considering the element of compensation (Guntur, 2002).¹⁶

Gautama¹⁷ explained that "nationalization" refers to the process of "revocation of rights" by the state to a legal entity that does not belong to the State (private sector). The revocation of rights is followed by the provision of "compensation" from the state to the private bodies subject to the nationalization (naasting). It is the provision of compensation in the nationalization policy that distinguishes it from the concept of revocation of other forms, such as "confiscation" and "revocation of rights". Wasino¹⁸ further explained that:

The embryo of nationalization is "Indonesianization". It starts from the political process which has implications for the economic process and the legal process. As a political process, nationalization is associated with the process of "Indonesianizing" foreign ownership of assets in Indonesia. The Indonesianization process began to be implemented during the Japanese occupation of Indonesia in 1942-1945 and strengthened during the Indonesian independence revolution.

As previously explained, in Indonesia during the cabinet period of Kya Republik Indonesia, provisions regarding nationalization were regulated in Act No. 86 of 1958 concerning the Nationalization of Dutch-Owned companies within the territory of the Republic of Indonesia. Nationalization based on this law means that a company becomes state-owned, the company

concerned becomes a nation affair. Act No. 86 of 1958 was then followed up with the issuance and enactment of Act No. 3 of 1959 concerning the Establishment of the Nationalization Agency for Dutch Companies (Arisaputra, 2020).

Kollewijn expressed his opinion that “There is said to be nationalization principally if an expropriation forms part a more or less extensive reform of the social or economic structure of a country.” Meanwhile, Gouw Giok Siong, quoting Wortley’s opinion, emphasized that nationalization is not a term of art but used to point to expropriation in the pursuance of some national enterprises, or to strengthen, a nationally controlled industry. Nationalization differs in its scope and extent rather than in its judicial nature from other types of expropriation.¹⁹

In the implementation of nationalization by a country on property rights or objects related to a foreign company in a country that wants to take legal action on nationalization, it must pay attention to the principle of territoriality. This means that the object to be nationalized is within the territorial boundaries of the country conducting the nationalization. The principle of territoriality was basically implemented by Indonesia when it nationalized Dutch companies in Indonesia (Arisaputra, 2015).²⁰

The main substance of nationalization is a system in which the state, represented by the government, can own, control, and manage natural resources for the greatest benefit of the national interest, namely the interests of the people’s welfare. The foundation of self-reliant political economy and social justice values for all Indonesian people.²¹ The concept of transformation of natural resource management companies as described above can be understood as a technical concept of the nationalization of natural resource management. Muhammad Ilham Arisaputra further explained that:²²

The economic obligations arising from international cooperation between the government and foreign investors must be based on the principle of mutual benefit and respect for these rights so that there is no “deprivation” of the peoples sources of livelihood. Before this convention was ratified in 1976, the United Nations through the General Assembly session on December 14, 1962 had issued Resolution No. 1803 concerning Permanent Sovereignty Over Natural Resources. This resolution contains principles that must be adhered to by transnational companies, because two-thirds of their business activities in developing countries are activities of exploitation of natural resources. The resolution expressly states that nationalization, expropriation and other expropriation actions by the government in the investment recipient country are possible for reasons of public interest, state security or other national interests (Marzuki, 2011).

Thus, the legal basis for carrying out an act of nationalization of natural resources controlled by foreigners in the Indonesian context is very adequate. For example, Article 2 of Act No. 86 of 1958 concerning the Nationalization of Dutch-Owned Companies within the Territory of the Republic of Indonesia stipulates that (Sunarso, 2002)

- 1) The owners of the companies mentioned in article 1 above are compensated for the amount of which is determined by a committee whose members are appointed by the government.
- 2) Based on the decision of the committee as referred to paragraph 1 above, both the owner of the company and the government may request an appeal examination to the Supreme Court which will give the final decision according to the procedure for examining the appeal before him between the owner of the company and the Republic of Indonesia as a party to the dispute.
Payment of compensation as referred to above will further be regulated in a separate law.
- 3) In the context of the nationalization of natural resource management, Article 2 of Act No. 86 of 1958 can be adopted, in the sense that companies that must be nationalized are foreign companies that conduct natural resource management activities in Indonesia. The aim is to nationalize the Indonesian economic system. Foreign companies are not prohibited from carrying out management of natural resources in Indonesia (investment or investment), but must be limited. The limitation means that companies that will carry out natural resource management activities in Indonesia must be an Indonesian legal entity and the majority shareholder is the State. Thus, natural resource management activities will remain a mandatory state affair. In

this way, there will be no deviation from Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

Previously, Indonesia relied on developed countries to manage natural resources due to limited reliable and skilled human resources and limited sophisticated production equipment, now this should no longer be seen as an obstacle. Currently, Indonesia's human resources are very good, many Indonesians are studying in developed and modern countries. This is a big capital when the government can take advantage of the potentials of Indonesian people who have struggled to learn in developed and modern countries. The government must be able to empower the quality of Indonesia's human resources to build an independent country. Human resources are the most important because if a country has skilled and quality human resources, then it will be able to process its natural resources (Wasino, 2007).

The nationalization of natural resource management through the transformation of companies that manage natural resources into national companies is in line with the mandate of Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which stipulates that "production branches which are important for the state and which affect the livelihood of the people are controlled by the state." The production branches which are important to the state and which affect the livelihoods of many people in Indonesia are numerous and varied, but especially for production branches that conduct business activities in the field of agrarian resources must be under the domination of the State. According to the author, the privatization²³ of these production branches or companies cannot be conducted in any way or model because it can lead to private domination and even foreign investors over Indonesia's natural resources which leads to the impoverishment of the nation and State.

According to the author, it is not possible to privatize production branches that carry out business activities in the field of natural resources because companies that carry out business activities in the field of natural resources have their own characteristics that are different from other companies, such as PT. Kereta Api or banking companies that are possible to be privatized. The domination of the state in companies conducting business activities in the field of natural resources is a necessity because natural resources are related to human life and livelihood, social justice, and the welfare of the nation and state. State control over production branches that affect the livelihood of many people is also in line with the concept of a welfare state and the concept of an empowering state in which the state acts as a provider or guarantor of welfare (provider), regulator (entrepreneur), and as referee (umpire).

As described above, it can be emphasized that the nationalization of natural resource management begins with the transformation of companies that manage natural resources in Indonesia. The companies that must be transformed are mining, large plantation, fishing, and forestry. The companies mentioned are both old and new companies that will pioneer natural resource management activities in Indonesia (Wiersema, 2008).

It is undeniable that the presence of foreign companies through investment activities has a significant influence on the economic growth of a country. However, the foreign investment in question needs to be limited to certain fields. In the field of natural resource management, foreign investment is also needed but still must be within the corridor of the constitution in which the management of natural resources must be aimed at the greatest prosperity of the people. For this reason, the provisions of Article 11, 12, and 13 of the BAL must be the main reference. In this context, the nationalization of natural resource management must be carried out so that economic resources from natural resource management can be fully controlled by the state so that the goal of improving people's welfare as stated in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia can be realized.

In relation to foreign investment, foreign companies can enter Indonesia to invest in the management of natural resources. However, the entry of foreign companies is not in the context that

they are the ones conducting exploration and exploitation of Indonesia's natural resources. In the context of natural resource management, the State may cooperate with foreign investors, for example in the form of a joint operation or a contract of work or concession in which the State through the government is in full control of the natural resource management activities. In addition, the results of these natural resource management activities are aimed at improving the welfare of the Indonesian people as a whole.

Furthermore, during this transitional period of nationalization of natural resource management, foreign companies that have previously carried out natural resource management activities are given time until the expiration of their permit period and after that they must comply with the provisions of the nationalization in question.

Implications of the Nationalization of Natural Resource Management on the National Economy Muhammad Ilham Arisaputra²⁵ explained that

Humans need natural resources to be processed and utilized in maintaining their lives. Therefore, natural resources and human life have a very close relationship. Although, human sometimes exploit utilizes natural resources that causes disturbance of the environmental balance. As known that resources have limitations in many ways such as availability by quantity, quality, space and time.

In order to realize the welfare of the people, the Government needs to maximize every effort in the context of meeting the needs of the community, both through statutory instruments and good natural resource management activities. Legislative instruments are needed to reduce the dominance of certain groups or even foreign parties in land use and natural resource management. In this natural resource management activity, the Government must actively involve the community so that natural resource management is more participatory.²⁶

This nationalization is very interesting because it is offered as a solution to all the problems of a country. The natural resources in the Republic of Indonesia should be owned and managed by the Republic of Indonesia themselves and used as well as possible for the welfare of the people. However, it cannot be denied that natural resources such as oil mines require skilled human resources in their management and require a lot of special equipment and large capital to process them.

The goal of nationalization is to liberate the country from foreign economic influence and strengthen the security and defense of the State from outside (foreign) intervention. Usually in the revolutionary phenomenon as an unusual phenomenon, of course, Indonesia at the time of the revolution did not yet have the concept of a national economy to replace the Dutch colonial economic model. There are 2 (two) concepts offered, namely:²⁷

- The first, the foreign investors are still allowed to perform investment activities in Indonesia because during this transition period they are still needed to maintain stability and economic growth. However, if there are foreign companies that are proven to carry out activities that can be categorized as capitalism crimes, such as exploiting natural resources, then nationalization can be carried out against these companies.
- The second, all companies owned by foreign investors are confiscated and made into State enterprises in order to build an integrated national economic system based on their own strength.

As explained, it is clear that economically, the nationalization process has had a significant impact, particularly on the foreign investment sector. Dowling and Hiemen²⁸ in their analysis of Asian countries during the 1970s found that foreign aid contributed substantially to economic growth as did domestic savings and private capital inflows.

The benefits of the foreign companies can be seen in terms of salary, absorption of a wide workforce for investment recipient countries, education and training for local workers, encouraging the development of the goods industry and being able to develop disadvantaged areas in all

countries. This positive impact makes investment a determining factor in a country's economy. With the increase in investment, the total state expenditure will also increase or in other words, purchasing power and national competitiveness will also increase.

The benefits of having foreign direct investment (PMA – Penanaman Modal Asing) in the country are:

1. Create job vacancies for residents of the host country so that they can earn and increase their income and standard of living.
2. Create investment opportunities for residents of the host country so that they can share in the income of new companies.
3. Increasing exports from the host country, bringing in additional income from outside that can be used for various purposes for the benefit of the population.
4. Produce technical training and knowledge that can be used by residents to develop other companies and industries.
5. Expanding the potential awareness of the host country by producing local goods to replace imported goods.
6. Earn additional tax revenue that can be used for various purposes, for the benefit of the host population.
7. Making the host country's resources, both natural resources and human resources, better benefit than the original.

As described, it cannot be denied that the presence of foreign investment has a significant influence on the economic growth of a country. However, foreign investment opens up opportunities for a country to “invade” other countries. The concept of nationalization ultimately wants the presence of the independence of the nation and state so that foreign influences on economic growth and development of the nation and state can be suppressed or reduced. Thus, the existence of foreign investment is still needed and entry into Indonesia is not closed in terms of natural resource management, however, its existence is not without state control and it can even be said that foreign investors are not given the authority to determine policies related to their business. It certainly have a positive impact on the country's economy where through the nationalization process the country can become an independent country and the results of natural resource management can be enjoyed by all Indonesian people. However, it should be noted that nationalization without proper technical preparation can also contribute greatly to the decline in productivity. Professional, reliable and skilled workers must be prepared to replace foreign professional workers who work for nationalized companies. Likewise, with the manager, the person who will lead the company must have a vision and a spirit of nationalism.

Nationalization can impact to the State revenues. The government's role in controlling the economic sector is getting bigger. This is reflected in the experience since the enactment of Act No. 86 of 1958 where the Dutch's domination in the Indonesian economy has ended and has fundamentally changed the economic structure of Indonesia. Companies in the fields of plantations, agriculture, trade, and industry, which were the most important Dutch companies that had been nationalized, caused a considerable change in the economic order of the country where state income had increased quite rapidly because the state itself controlled the production and distribution of products, natural resources.

Thus, it is very clear that the nationalization of natural resource management through the transformation of companies that manage natural resources can have a positive impact on the independence of the country. With this nationalization policy, the state can control the ownership, control, use, and utilization of natural resources so that the state can be economically independent and the state's goal to improve people's welfare can be realized.

CONCLUSION

Currently, it is undeniable that there are still many foreign or national companies owned by foreigners that control the management of natural resources in Indonesia that exploit various natural resources of Indonesia. The question then is if Indonesia relies on foreign companies or owned by foreigners to manage its natural resources, when can Indonesia become an independent country? The answer is most likely never because Indonesia has become dependent on foreign companies or companies owned by foreigners.

Foreign companies are not prohibited to perform natural resources management in Indonesia (investment), but must be limited. The limitation means that companies that will carry out natural resource management activities in Indonesia must be an Indonesian legal entity and the majority shareholder is the State. Thus, natural resource management activities will remain a mandatory state affair. If in the past Indonesia was dependent on developed countries in managing natural resources due to limited reliable and skilled human resources and limited sophisticated production equipment, now this should no longer be seen as an obstacle. Currently, Indonesia's human resources are very good, many Indonesians are studying in developed and modern countries. This is a big capital when the government can take advantage of the potentials of Indonesian people who have struggled to learn in developed and modern countries.

The nationalization of natural resource management through the transformation that manage natural resources into national companies is in line with the mandate of Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Nature is related to human life and livelihood, social justice and the welfare of the nation and State. The state's control over production branches that affect the lives of many people is also in line with the concept of a welfare state and the concept of an empowering state²⁴ where the state acts as a provider, regulator, entrepreneur, and umpire. The nationalization of natural resource management through the transformation of companies that manage natural resources can have a positive impact on the country's independence. With this nationalization policy, the state can control the ownership, control, use, and utilization of natural resources so that the state can be economically independent and the state's goal to improve people's welfare can be realized.

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