THE NATİONALIZATİON OF FOREİGN COMPANIES İN INDONESİAWİTHİN THE HİSTORİCAL AND JURİDİC PERSPECTİVE

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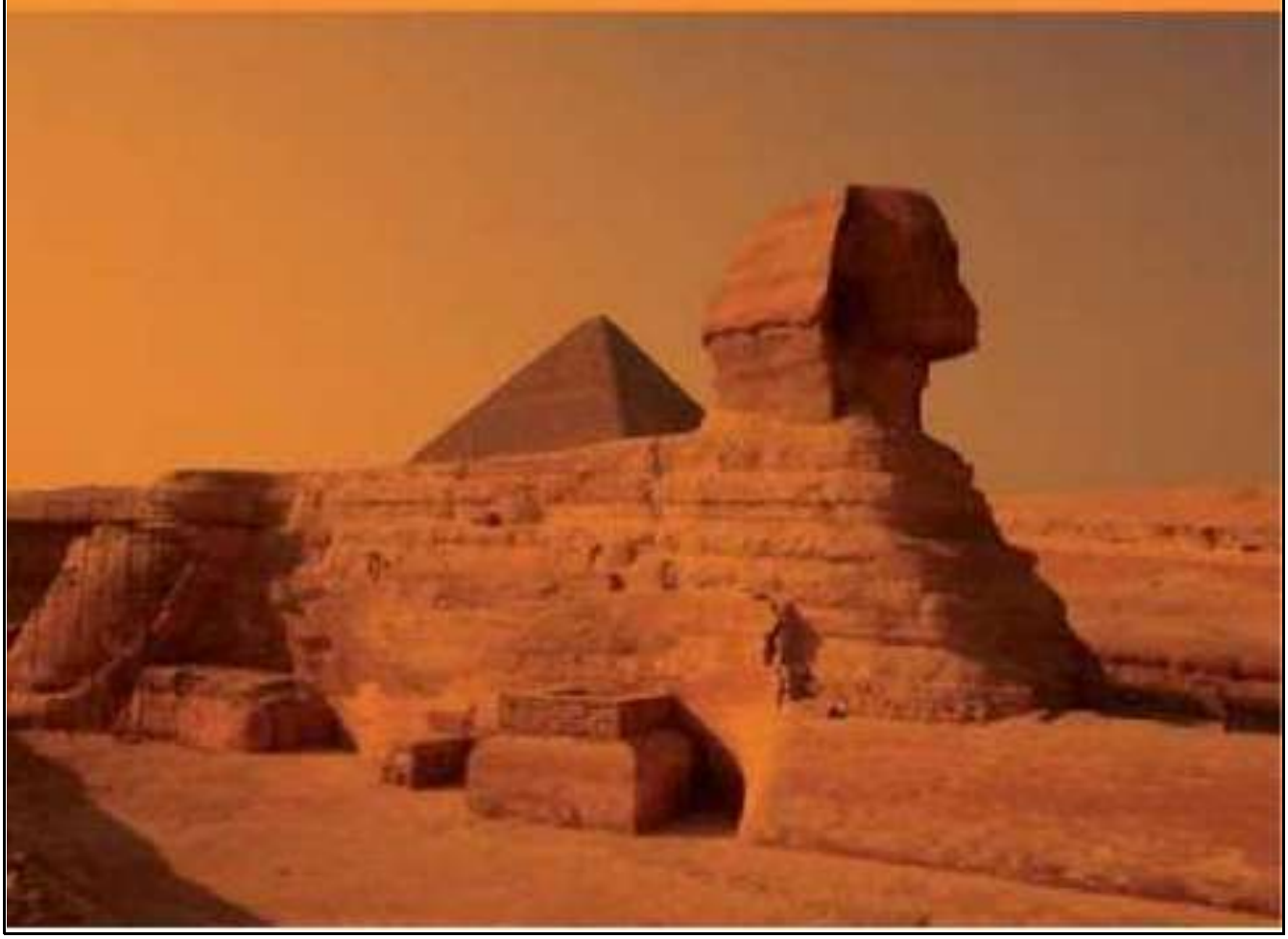

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THE NATIONALIZATION OF FOREIGN COMPANIES IN INDONESIAWITHIN THE HISTORICAL AND JURIDIC PERSPECTIVE

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ABSTRACT

This research is limited to three issues, namely the implementation of nationalization in Indonesia in terms of a historical perspective, the regulation of nationalization in Indonesia and how nationalization in Indonesia will be in the future. This study aims to find evidence of the implementation of nationalization, nationalization arrangements and the possibility of nationalization in Indonesia. The method used in this method is the normative juridical method, which is then analyzed qualitatively. The results of the study found that the implementation had taken place in Indonesia, namely during the old order. Juridically, nationalization is regulated in Act 25 of 2007 concerning Investment. The results of the study, among others, indicate that nationalization has taken place in Indonesia and given that in this era, Indonesia is in dire need of foreign capital to create jobs, the nationalization was not carried out.

INTRODUCTION

Every country - especially developing countries - needs an investment to accelerate its economic development. The investment in a country will be able to take place properly and benefit the country and its people, when the country is able to determine investment policies in accordance with the mandate of its constitution (Zaidun, 2008).

The philosophical basis of the investment is the fact that in order to develop a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, it is necessary to carry out sustainable national economic

development based on economic democracy to achieve the objectives of the state, carrying out the mandate listed in the Assembly Decree Republic of Indonesia People's Consultation Number XVI / MPR / 1998 concerning Economic Politics in the framework of Economic Democracy, investment policies should always underlie people's economy which involves the development of micro, small, medium and cooperative businesses, and accelerates national economic development and realizes political and economic sovereignty Indonesia needs an increase in investment to process economic potential into real economic power by using capital that comes from both domestic and abroad(The President of the Republic of Indonesia, 2007).

Investment policies must have a strong and clear philosophy and legal basis. Investment policy is like a ray of light which goes where to go and at the same time as the road that must be traversed, how to go through it and what rules must be followed in order to get to the destination safely in making an investment in a country. The science of investment law through theories, principles or legal principles and the rule of law as well as developing international conventions / agreements have provided sufficient foundation for the basis of developing investment law policies in a country (Zaidun, 'Paradigma Baru Kebijakan Hukum Investasi Indonesia 1'. Op. Cit).

In the matter of developing investment law, there are two major groups of theories that develop along with the needs and interests of each different party, especially in relation to foreign direct investment, namely the host country and the host country, investors who are usually represented by transactional corporations (TNC) or multinational corporations (MNCs)(Zaidun, 'Paradigma Baru Kebijakan Hukum Investasi Indonesia 1'. Ibid).

Investor motivation - according to MuchammadZaidun (2008) - in investing abroad includes the following factors: company excellence, market structure, market imperfections and market expansion, availability of raw materials (natural resources) and human resources, risk considerations, including political and legal stability, transaction costs, excellence and convenience (taxes and permits), host country policies (investment destination countries) and domestic government investor policies.

On the basis of theoretical considerations in setting investment policies in developing countries, there is always a tug of war between the host country and investors who have different considerations and motivations(Zaidun, 2008).

The challenge for the development of universal investment law is that national investment law must be able to protect and protect national (domestic) interests in an open competitive era between developing countries in the struggle for foreign investment. In the era of open competition, an exception to various principles and international law is possible if a host country is able to provide rational and strong arguments for why a country is exempted from the provisions of law that apply universally.

The efforts that can still be done in the future are:

1. A serious effort to perfect investment law by perfecting various related rules and implementing regulations, especially with the issuance of Law Number 25 Year 2007 concerning Investment which has sought to adopt various international principles in the field of investment law.Exceptions to the application of the principles of the World Trade Organization (WTO) in the investment sector are possible for Indonesia as long as Indonesia really tries to provide rational and strong arguments in accordance with national interests.
2. Indonesia still has enough opportunities to be considered as an investment destination country in terms of natural and human resource considerations as well as the strategic location of the territory of Indonesia as the location of investment and the extent of the product market.

The new paradigm of investment law internationally is open and fr(Rohendi, 2014). This openness is based on the principles agreed upon in the World Trade rganization (WTO) - the WTO is a forum for countries to agree on an exchange of "liberalization" commitments by reducing trade barriers and agreeing to the provisions that member countries must adhere to, such as opening reciprocal market access, which stipulates the existence of dynamic freedom / freedom between countries to make investments that are legal in nature, but legal certainty does not leave substantive justice, the essence of community justice. Legal certainty is important, but it's not just legal certainty that is procedural justice(Irianto, 2020).

According to ErmanRajagukguk, a legal uncertainty will affect the economy. There are three factors that cause the absence of legal certainty in Indonesia, namely: First, the hierarchy of laws and regulations does not function and still overlaps with the regulated material; Second, the authorities are weak in carrying out the rules; and Third, the resolution of disputes in the economic field cannot be predicted, synchronizing the laws and regulations from the central level to the level of regional regulations, and canceling local regulations that inhibit investment, alignments with the poor, reforming tax regulations, and must also be able conduct reflexivity with steps that are manageable, available, realistic, workable, and interwoven easily with all aspects of social life(Harjono, 2011).

Each country respects the sovereignty of each country to set legal policies on investment, but each country must protect and treat each other's investment activities in their country without discrimination between foreign investors and domestic investors, as well as among foreign investors. This principle emphasizes on the premise of the principle of protecting the balance of interests between each party by mutual respect and giving treatment without discrimination (Zaidun, 2008).

METHODOLOGY AND ANALYSIS

e research method used is normative juridical, which conceptualizes the law as what is written in the legislation (law in books) or the law as a rule or norm that is a benchmark of human behavior that is considered appropriate. This type of legal research is carried out by examining secondary data in the field of law as library data using deductive thinking methods.

The approach used in addressing the problem is to use the statutory approach (statue approach) and conceptual approach (conceptual approach)

The statutory approach (statue approach) is carried out by examining all laws and regulations relating to the legal issues under investigation. The approach to this law will open up opportunities for researchers to learn whether there is consistency and compatibility between one law and another law.

Conceptual approach (conceptual approach) is based on the views and doctrines that develop in the science of law, by studying the views and doctrines of doctrines in the science of law. Understanding of these views and doctrines is the basis for researchers in building a legal argument in solving the issues at hand.

The legal material collection procedure used in this study is the study of literature that is collecting data by reading legislation, official documents and literature that are closely related to the issues discussed.

The legal materials are then analyzed and formulated as supporting legal materials in this study. Processing of legal materials is done deductively, that is, drawing conclusions from a problem that is general in nature against the concrete problems faced.

Legal materials obtained in this study will be analyzed qualitatively using deductive methods, namely general data on the conception of legal materials in the form of legal principles, postulates and teachings (doctrines) and expert opinions which are arranged systematically as an arrangement of legal facts.

The data analysis technique is done qualitatively by collecting data, qualifying and then linking theories related to the problem and drawing conclusions to determine results. Data analysis is carried out starting from a study of the principles or principles as regulated in the primary legal material, and then will be further discussed using the means of secondary legal materials.

DISCUSSION

Law Number 25 of 2007 concerning Investment has adopted various international principles in the field of investment law, including regarding rules on Nationalization. Nationalization is the taking of ownership rights of foreign investors through legislation, with the provision of compensation which is determined by market prices - based on an independent appraisal appointed by both parties and carried out in a custom / practice that is carried out internationally - and by agreement between the government and the Parliament and if no agreement is reached on the agreed price, the dispute is resolved in the arbitration (The President of Indonesian Republic, Act 7).

The nationalization of foreign capital companies is not prohibited as long as it upholds the country's sovereignty, and Indonesia is one of the countries that regulate investment policy standards that must be clearly regulated in a host country (Syaifuddin, 2011). The act of nationalization of foreign companies is

a legal condition but it requires constitutional action through legislation. Investing requires legal certainty for the peacefulness in the business of investors.

The process of principled economic globalization in liberalism and capitalism in investment cannot be prevented, but can be controlled by the Government of Indonesia, using Law no. 25 of 2007 as an instrument of control, both in terms of prevention and repression(Syaifuddin, 2011),which have to be shaped based on the guidance of Pancasila as the*cita rechtsidentitas*, which is included in the Constitution of the National Indonesian Republic of 1945 (which next will be referred as the UUD NRI 1945) as the economic constitution of Indonesia which contains the concept ofThe Pancasila Welfare Law State.

The nationalization of foreign capital companies is a form of control (in the sense of prevention or repression) of the negative impact of foreign investment in the process of economic globalization in Indonesia using a legal instrument in the form of Act 25 of 2007.
The changes that occur in the context of nationalization of foreign corporate legal entities that become Indonesian government property will legally result in law, namely:

1. The Government of Indonesia is the owner / holder of capital and shares, replacing the relevant foreign investors;
2. The status and form of a legal entity in a foreign capital company will change from a private limited company to a state-owned enterprise (hereinafter abbreviated as SOE), which can be in the form of a corporation or public company as regulated in Act Number 19 of 2003 concerning State-Owned Enterprises.

The concept of nationalization of foreign capital companies as a takeover of ownership rights to foreign investment accompanied by compensation by the Government of Indonesia has a doctrinal basis (legal doctrine). According to P. Adriaanse, the term nationalization means (Ginting, 2007):

1. *Confiscation, which is the government's action to take over individual property that is not accompanied by compensation;*
2. *Expropriation, which is the government's action to take over personal property accompanied by compensation. This method, according to Ginting, is a revocation of rights (onteigening). In connection with the above provisions, it means that every "onteigening" must be followed by "compensation"*(Ginting, 2007).

The nationalization of foreign capital companies which is conceptualized in Act 25 of 2007 as a takeover of foreign investment ownership rights accompanied by compensation to foreign investors is in line with international law doctrines that develop in reference to existing international court decisions(Syaifuddin, 2011).However, Indonesia's nationalization of PT Freeport reaped polemics even though Indonesia was eventually able to acquire the 51% stake of PT Freeport(Afriyadi, 2018:To note, the Minister for State-Owned Companies, RiniSoemarno, previously said, the payment of PTFI shares by Inalum will be completed before December 15, 2018. Rini said, at the same time the Ministry

of Justice and Human Rights would note that the government had controlled 51% of shares Freeport Indonesia. Inalum itself already has funds to execute the purchase of PTFI shares. The company pocketed USD 4 billion from global bond issuance),after the long reign of PT Freeport IN Indonesia for 50 years (Setiawan, 2018; Head of Corporate Communication and Inter-Institutional Relations, Rendi A. Witular said the Papua regional government would get an allocation of shares. Inalum will provide loans to local-owned companies in the amount of US $ 819 million pledged with these shares. The loan installments will be paid with PTFI dividends to be obtained by the local-owned companies of Papua. However, the dividend will not be used fully to pay installments. As is known, of 100% PTFI shares, the Papua regional government will own 10%, Inalum 41.2%, and the US mining company Freeport McMoRan of 48.8%. However, the combination of Inalum and the Papua Regional Government will make the Indonesian entity the PTFI controller. By owning shares, the Papua regional government will get dividends of at least USD 100 million or IDR 1.45 trillion per year after 2022. PTFI operations will operate normally after the transition from open pit to underground mine. Of the 10% share of the Papua regional government, it is divided into 7% for the Mimika Regency including traditional land rights (traditional law), and 3% for the Papua Province. In addition to shares, based on Government Regulation No. 37/2018 on Tax Treatment and / or Non-Tax State Revenue in the Mineral Mining Business, the local government will also get 6% of PTFI's net profit. Later, the 6% will be divided into 2.5% for Mimika Regency, 2.5% for districts outside Mimika, and 1% for Papua Province.),and is currently under the ownership of SOEInalum Holding (Afriyadi, 2018; To note, the value of USD 3.85 billion is based on the results of negotiations with Inalum, with Freeport McMoRan (FCX) and Rio Tinto. The figure is also lower than the value that FCX had submitted to the Minister of Energy and Mineral Resources of USD 12.15 billion, the Minister's letter to FCX of USD 4.5 billion, and the results of Morgan Stanley valuation of USD 4.67 billion. To take PTFI shares, Inalum issued global bonds of USD 4 billion. Where, as much as USD 3.85 billion was used to buy shares and USD 150 million for refinancing. The bonds consist of 4 maturities with an average coupon of 5.99%. As for the details, first is USD 1 billion with a coupon of 5.23% and a tenor of up to 2021. Second, US $ 1.25 billion with a coupon of 5.71% and a tenor of up to 2023.Third, USD 1 billion with a coupon of 6.53% and a tenor until 2028. Finally, USD 750 million with a coupon of 6.75% to 2048),with a compensation of IDR 54 Trillion (Afriyadi, 2018;It is known, the Minister of SOE, RiniSoemarno, previously said that the payment of PTFI shares by Inalum will be completed before December 15, 2018. Rini said, at the same time the Ministry of Justice and Human Rights would note that the government had controlled 51% of Freeport Indonesia shares. Inalum itself had already have funds to execute the purchase of PTFI shares. The company pocketed USD 4 billion from global bond issuance; Setiawan said; Head of Corporate Communication and Inter-Institutional Relations, Rendi A. Witular said the Papua regional government would get a share allocation. Inalum will provide a loan to SOE of USD 819 million which is pledged with the shares. Loan installments will be paid out with PTFI dividends to be obtained by SOE Papua. However, the dividend will not be used fully to pay installments. As is known, of 100% PTFI shares, the Papua regional government will own 10%,

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The controversy between the Government of the Republic of Indonesia (PEMRI) and PT. Freeport-McMoran (Freeport) is likely to be able to settle disputes in international arbitration (UNCITRAL), starting from the desire of the Government of Indonesia to carry out the mandate of Act 4 of 2009 concerning Mineral and Coal Mining. The law mandates that the Contract of Work and PKP2B be converted into a Mining Business License (IUP), actions that have legal consequences in the form of adjustments to fiscal schemes, compliance mechanisms with other national legislation, and the affirmation of state superiority over business actors.

The law also mandates that mining concession holders build smelters as a condition for obtaining export licenses, and provisions for divestment of shares are also regulated so that the portion of state ownership and / or national business actors for mining activities can increase.

PT. Freeport is reluctant to adjust its business activities to the Mineral and Coal Law, arguing that it is contrary to the agreement of the two parties in the CoW which must also be respected in accordance with the principle of sanctity of the contract: Pacta Sun Servanda (Rahman et al., 2017).This principle is based on international legal standing, which assumes that the state is not equal to a private legal entity(Rahman et al., 2017) The conflict between the Government of Indonesia and Freeport is a situation that arises from a situation of "wrong" that is allowed to drag on, namely the government's action takes the form of a contract (civil) in managing wealth and natural resources (including mining potential). Management by the State is an embodiment of the State's Right to Control which is nothing but not aimed at the greatest welfare and prosperity of the people. But in reality, the form of the contract has reduced the meaning of the State's Right to Control which naturally negates the main purpose of the existence of that right. The presence of the Mineral and Coal Law is intended to correct the "erroneous" situation referred to above, one of which is to change the Contract regime to a Permit that is in line with the HMN concept. A permit regime is needed to reposition the parties involved in managing mining potential (in this case the State and Investors). In addition, the Permit regime is a choice that must be taken to prevent the country from being thrown into another disadvantageous situation arising from the use of contracts, one of which is the settlement of disputes that use international arbitration mechanisms that

position the country as an equal private sector sector. The presence of Resolution 1803 on PSNR and the principle of clausularebus sic stantibus as a customary international law can serve as a legal basis for the Indonesian government in dealing with Freeport and foreign mining investors in general to escape the threat of a lawsuit in international arbitration sheltered under the sanctity of the work contract (pactasuntservanda).In the verdict of Deutsch HogeRaad, it is stated that the interpretation of the goodwill (*pacta sun servada*) is based on the rationality and obedience (*redelijkheideabillijkheid*), where the pact needs to be conducted based on rationality and propriety (*volgens de eisen van redelijkheidenbillijkheid*), even though the meaning behind the goodwill is still blurry and ambiguous (Khairandy, 2003).The definition of propriety which is interpreted as a form of justice is still very abstru and full of philosophical debates. This disaster was felt by the United States. Section 1-203 UCC "Every contract or duty within this Act imposes an obligation of good h in its performance or enforcement. And in Sectio 1-209 states that good faith honesty in the terms of the transaction. - honesty in fact the conduct or transaction - section 2-103 (1) honesty and obedience in rational business transaction standards. And the existence of the principle of good faith is still a lot of contention - H. G Van Der Werf.

Even in the resolution of United Nations, the sovereignty over its natural resources is recognized, namely in the UN General Assembly Resolution number 1803 (Rahman, 2017) which is one of the most important innovation to connect the interest of the investor states and the interests of the receiver state (First, this resolution confirms that the sovereignty over natural resources and other sources of wealth in a country is a right that is owned by the state and the people in it (the right of people and nations). The fulfillment of these rights can only be done by taking into account the interests of national development and the welfare of the people in the country.Second, all exploration, exploitation or other forms of exploitation of the sources of prosperity and natural resources in a country as well as the foreign investment needed to carry out such operations must be in line with the rules and prerequisites that are felt necessary by the state and people in it. This gives the state authority to authorize, limit, or even prohibit the conduct of such exploitation activities.Third, in the case that the state authorizes (permits) the commercialization of natural resources by foreign investors, an agreement on the distribution of profitsobtained from these activities must be regulated based on applicable national regulations and international law. Agreements regarding benefit sharing must be carried out with care so as not to violate the principle of state sovereignty over natural resources.Fourth, acts of nationalization, expropriation of assets, or requests from investment recipient countries to make requisitioning of business activities carried out by foreign investors may only be carried out on the basis of:i) public interest;ii) security;ii) and national interests that can be clearly demonstrated and not individual / private interests, whether foreign or domestic.If the actions are taken, appropriate compensation 13 must be given and the action is carried out in accordance with the provisions of the applicable regulations that do not violate the general rules of international law. If a dispute arises as a result of this action, then based on the agreement of both parties the dispute resolution is carried out through an international adjudication or arbitration mechanism.

Appropriate compensation must be given and the action taken is in accordance with the provisions of the applicable regulations that do not violate the general rules of international law. If a dispute arises as a result of this action, then based on the agreement of both parties the dispute resolution is carried out through an international adjudication or arbitration mechanism).

The formulation of this resolution does not follow the Calvo Doctrine or the Hull Formula, but rather seeks a middle way that affirms the interests of both parties. Indonesia is one of the few countries that regulate economic activities in its constitution, and this cannot be separated from the spirit of the era when the 1945 Constitution was drafted. Kahin (1952) states that the formulation of the Indonesian constitution is influenced by: the spirit of anti-colonialism, Islam, the collectivism of indigenous peoples, and socialism. The characteristic of socialism in the 1945 Constitution can be seen by the existence of the regulation of the national economic system (Article 33), a provision commonly found in socialist-style countriesArticle 33 of the 1945 Constitution of the Republic of Indonesia constitutes a constitutional basis for the operation of a welfare-oriented economic system (paragraph 1) which is carried out by exercising "state control" over the branches of production (paragraph 2) and agrarian resources (paragraph 3). Referring to this formulation, all forms of land-based business activities, including mining business activities, must be carried out within the framework of "state control" to guarantee the greatest prosperity of the people, even so with Freeport's mining activities in Papua.

Differences in nationalization at the beginning of independence with nationalization after reform are as follows: The process of institutional transition took place sometime after Indonesia's independence peak in 1957. What was initiated by the people due to the failure of the Round Table Conference between Indonesia and the Netherlands related to the return of the territory of Irian Jaya in the Republic of Indonesia. And after nationalization the legal entity will become state-owned enterprises (Hambra, 2014). The said company becomes "a nation affair". In the implementation of nationalization by a country of property rights or objects related to a foreign company in a country that wants to take legal action nationalization must pay attention to the principle of "territoriality". This means that the object to be nationalized is within the territorial boundaries of the nation that carried out the nationalization.

The territorial principle has basically been carried out by Indonesia in nationalizing Dutch companies in Indonesia a long time ago. This can be found in the provisions of Article 1 in Act 86 of 1958, that Dutch-owned companies in the Republic of Indonesia that will be determined by Government Regulation are subject to nationalization and are declared to be the full and free property of the Republic of Indonesia. In 1959, there was Government Regulation No. 2 of 1959 concerning the principles of implementing Act 86 of 1958 concerning the Nationalization of Dutch Companies. The Government Regulation No. 2 of 1959 states that the companies owned by the Netherlands that can be subject to nationalization are:

1. A company which is wholly or partly owned by an individual Dutch citizen and domiciled in the territory of the Republic of Indonesia;
2. A company owned by a legal entity wholly or partly in the capital of the Company or its founding capital originates from an individual Dutch citizen and that legal entity is domiciled within the territory of the Republic of Indonesia.
3. A company which is located in the territory of the Republic of Indonesia and belongs to a legal entity that is domiciled within the territory of the Dutch kingdom. Meanwhile, companies that are subject to nationalization include all assets and reserves, rights and claims. However, it is not clear whether these rights must be located within the territory of the Republic of Indonesia (Article 2 of Government Regulation Number 2 of 1959)(Ginting, 2007).

The problems in investment and nationalization that occur are as follows: First, the case of post-reform nationalization, namely the Malaysian palm oil company in West Kalimantan where the company cleared the land until it passed its rights, the Malaysian government did not want to negotiate on the border points that are still being debated, the existence of the company palm oil is destroying land owned by residents Such conditions can be nationalized given that related to state sovereignty must be upheld, if the PMA violates the provisions that are required in the legislation(Joewono, 2011).Based on police monitoring, Aping Hamlet is directly adjacent to Sarawak, Malaysia. It's about two hours away by Aruk, which is the official entrance and exit of goods and services in Sambas Regency, with Sarawak. Next to the land owned by Bahtiar, in the area that entered Sarawak, there is an oil palm company that is making a ditch. However, he continued, the trench was made coincide with the state boundary markers between Indonesia and Malaysia.

Secondly, Since the issuance of the Law of the Republic of Indonesia, Act 1 of 1967 concerning Foreign Investment, several multinational companies such as Freeport Sulfur Co, International Tel & Tel (ITT), Unilever, Good Year, Dumex, Philips. Including PT Indonesia Asahan Aluminum (INALUM) a joint venture between the Indonesian government and NiponAsahan Aluminum Co., Ltd, based in Tokyo agreed to establish a company in Indonesia on January 6, 1976, PT Indonesia Asahan Aluminum (INALUM), a joint venture between the government Indonesia and Nippon Asahan Aluminum Co., Ltd, established in Jakarta. Inalum is a company that builds and operates the Asahan Project, in accordance with the Master Agreement. The comparison of shares between the Indonesian government and Nippon Asahan Aluminum Co., Ltd when the company was founded was 10% with 90%. In October 1978 the comparison became 25% with 75% and since June 1987 it became 41.13% with 58.87%. PT. Inalum built and operates a hydroelectric power station consisting of the Siguragura and Tangga power station, known as Asahan, located in Paritohan, Toba Samosir Regency, North Sumatra Province (Wuryandari, 2016).The construction of the entire hydropower plant took 5 years and was inaugurated by Vice President Umar Wirahadikusuma on June 7, 1983. The total capacity remained at 426 MW and the peak output was 513 MW. The electricity generated is used for the smelting plant in Kuala Tanjung. SOE Workers' Media Data shows that PT Inalum, an investor from Japan in Indonesia, is interesting to have Indonesia related to the lack of electricity supply in North Sumatra,

while PT Inalum has its own power plant with a capacity of 600 MW in the factory, with a cheap calculation that is 3 US cents per Kwh. If the electricity is sold to PT PLN, PT PLN only buys 6 US cents per Kwh. Previously the North Sumatra Provincial Government and 10 districts in it were ready to manage 58.8% of PT Inalum's shares. The reason is clearly wanting to enjoy the benefits of the area's natural resources for at least the next 30 years. PT Inalum is still constrained by differences in the value of valuations between the Government of Indonesia who submitted a book value of 424 million US dollars, while the Japanese pegged 626 million US dollars. So this case is interesting to study according to Law No. 25 of 2007, because PT Inalum has assets in the form of very large power plants and can meet the electricity supply in the North Sumatra and surrounding areas. Government policy in conducting nationalization of foreign companies is one of the government's efforts aimed at minimizing the occurrence of people's economic disparity. This policy was taken with the intention that investment destination countries can rebuild a country's economic structure.

Investment law in Indonesia, both Act 25 of 2007 concerning Investments currently in force and the laws that have been enacted in the past do not make the categorization of taking into nationalization and expropriation, or revocation of rights (onteigening) into global disenfranchisement and individual disenfranchisement. The law only recognizes the single term of "nationalization or expropriation of investor ownership rights", while Act 1 of 1967 concerning Foreign Investment (UUPMA) uses the term "nationalization / revocation of ownership rights to foreign capital companies or actions which reduces the right to control and / or manage the company concerned ".

Meanwhile, Act 25 of 2007 does not specifically determine the amount of compensation. Article 7 Paragraph (2) This Law only states that, in the event that the government takes an act of nationalization or expropriation of ownership rights, the government will provide compensation in the amount determined at market prices. The Minister of Industry at the time stated "So far, its operating area is located in North Sumatra, managed by the Indonesian government and a consortium of Japanese investors in Tokyo who are members of Nippon Asahan Aluminium (NAA).

Indonesia's ownership before the transfer of rights was 41.12 percent, and the rest belonged to NAA and on October 31, it changed its ownership to be state-owned, with the transfer of assets of PT Inalum to the Indonesian government and to pay compensation in accordance with the master agreement, where the mechanism of the agreement to transfer shares through a share transfer amounting to USD 558 million. The process that occurred at PT Inalum, initially there was a negotiation between the Indonesian side and the NAA Consortium, after an agreement was made the Government of the Republic of Indonesia granted permission to the House of Representatives in terms of the realization of the disbursement of funds to purchase shares of PT Inalum. Then, the solution is done through consensus agreement (Wuryandari, 1997).Eastern societies such as China and Japan traditionally did not like the court. The court considers the gap as a place for "bad" people, who do not obey the law. Traditionally,

Chinese and Japanese people are very reluctant to bring their civil disputes before the Court. To maintain harmony, civil disputes are resolved through mediation (China and Japan) and conciliation (Japan). For practical reasons, alternative dispute resolution such as arbitration, negotiation, mediation and conciliation is increasingly developing in the United States and in Japan. Practice negotiation, mediation, conciliation and arbitration also exist in Indonesia. Although not all have an important role in resolving disputes outside the court.

CONCLUSION

In a historical perspective, the nationalization of foreign companies in Indonesia has occurred. The nationalization was carried out on several companies in the Netherlands and the United States. The factors that drive the nationalization are politics and the economy. Nationalization has positive and negative impacts. The positive impact is to encourage economic sovereignty and economic independence. Meanwhile, the negative impact caused the isolation of the Indonesian economy from international relations. This condition affected the economic crisis that occurred in 1965.

The regulation of nationalization in positive law in Indonesia is contained in Article 7 of the Constitution No. 25/2007 concerning Investment. This provision replaces the Constitution Act 1 of 1967 concerning Foreign Investment. Both of these laws basically state that nationalization will not be carried out in Indonesia, unless there is a law that specifically states the nationalization and readiness of Indonesia to provide compensation in accordance with international market prices and the risk of being submitted to international arbitration. Strict requirements and the condition of the Indonesian economy that cannot be independent, then in the future the nationalization in Indonesia is very slim. Steps that can be taken to respond to the ideas of some people who want nationalization and to overcome foreign domination in Indonesia is to renegotiate cooperation contracts with foreign parties.

REFERENCES

Afriyadi, A.D.(2018)'51% Saham Freeport Dilunasi Inalum Hari Ini', https://finance.detik.com/energi/d-4353509/51-saham-freeport-dilunasi-inalum-hari-ini

———. (2018)'Sumber Duit Inalum Untuk Beli Saham Freeport Rp 54 T', https://finance.detik.com/energi/d-4353606/sumber-duit-inalum-untuk-beli-saham-freeport-rp-54-t

Ginting, B.(2007). Refleksi Historis Nasionalisasi Perusahaan Asing Di Indonesia: Suatu Tantangan Terhadap Kepastian Hukum Atas Kegiatan Investasi Di Indonesia', *Jurnal Equality*, 12(2): 101–11

Hambra, (2014). *Sejarah Nasionalisasi : Aset -Aset SOE*,

Harjono, DK (2011). Konsep Pembangunan Hukum Dan Perannya Terhadap

Sistem Ekonomi Pasar, *Jurnal Hukum IUS QUIA IUSTUM*, 18.4. 564–84 https://doi.org/10.20885/iustum.vol18.iss4.art5

Irianto, S. (2020). Orasi Ilmiah Dies Natalis FH UGM Ke-74 | 1'.

Joewono, BN (2011). Anggota DPRD Dukung Nasionalisasi Perusahaan Malaysia (Jakrata, 2011), https://regional.kompas.com/read/2011/11/08/21073584/Anggota!?page=all.

Khairandy, R (2003), *Itikad Baik Dalam Kebebasan Berkontrak*, perima (Jakarta: Universitas Indonesia- Pascasarjana, 2003)

Presiden Republik Indonesia (2007).*Undang-Undang Republik Indonesia Nomor 25 Tahun 2007 Tentang Penanaman Modal Lembaran Negara Republik Indonesia Tahun 2007 Lembaran Negara Tahun* 2007 Nomor 67,Tambahan Lembaran Negara Republik Indonesia Nomor 4724, 2007

Rahman, Y (2017). Menguji Kedaulatan Negara Terhadap Kesucian Kontrak Karya Freeport, in *Indonesia for Global Justice (IGJ)*, ed. by Rachmi Hertanti; Budi Afandi (Indonesia for Global Justice (IGJ), 2017), p. 10.

Rajagukguk, E (1997). Pembaharuan Hukum Yang Berkali. 33.

Rohendi, A. (2014). Prinsip Liberalisasi Perdagangan World Trade Organiza?On (WTO) Dalam Pembaharuan Hukum Investasi Di Indonesia (Undang-Undang Nomor 25 Tahun 2007).*Padjadjaran Jurnal Ilmu Hukum*, 1(2): 386–406

Setiawan, R. (2018). Pemerintah Caplok 51% Saham Freeport, Papua Dapat Apa, https://finance.detik.com/energi/d-4353715/pemerintah-caplok-51-saham-freeport-papua-dapat-apa

Syaifuddin, M (2011). Nasionalisasi Perusahaan Modal Asing: Ide Normatif Pengaturan Hukumnya Dalam UU No. 25 Tahun 2007 Dan Relevansinya Dengan Konsep Negara Hukum Kesejahteraan Pancasila Dalam UUD NRI Tahun 1945.*Jurnal Hukum & Pembangunan*, 41(4): 660. https://doi.org/10.21143/jhp.vol41.no4.261

Wuryandari, U.S.W. (2016). Nasionalisasi Pt Inalum Menurut Undang-Undang Penanaman Modal (Undang-Undang No. 25 Tahun 2007) : Pro Kontra Indonesia Dan Jepang', *Jurnal Riset Manajemen Dan Bisnis (JRMB) Fakultas Ekonomi UNIAT*, 1(1): 41–48 https://doi.org/10.36226/jrmb.v1i1.9

Zaidun, M (2008). Paradigma Baru Kebijakan Hukum Investasi Indonesia 1. https://gagasanhukum.wordpress.com/2008/07/28/paradigma-baru-

kebijakan-hukum-investasi-indonesia-bagi

———, (2008).Paradigma Baru Kebijakan Hukum Investasi Indonesia 2. https://gagasanhukum.wordpress.com/2008/07/21/paradigma-baru-kebijakan-hukum-investasi-indonesia-bagian-ii

———, (2008).Paradigma Baru Kebijakan Hukum Investasi Indonesia 3. https://gagasanhukum.wordpress.com/2008/08/04/paradigma-baru-kebijakan-hukum-investasi-indonesia-bagian-iii-habis/

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