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Bending The Golden Giant: Indonesia's Bargaining Power for Nationalized Control Over PT. Freeport Indonesia

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Abstract: *From 2009-2017, the renegotiation process between Indonesia and PT Freeport Indonesia (PTFI) has provided crucial insights into the International Political Economy's (IPE) understanding of the relationship between developing nations and Multi-National Corporations (MNCs). This paper delves deep into the evolving dynamics between Indonesia and Freeport McMoRan, spotlighting the concept of state capacity as a lens to decipher the nuances of bargaining power in the realm of natural resource extraction. Advocating an original perspective, our study charts a strategic path for developing nations to reassert control over their natural resources vis-à-vis MNCs. At its core, this research underscores the enduring sovereignty of states, albeit adapted to the demands of an increasingly globalized world. The outcomes bolster the argument that, even in a globalized context, states retain the capability to harness their sovereign standing, enabling them to negotiate effectively with MNCs.*
Keywords: *Indonesia; Freeport McMoRan; Bargaining Power; State Capacity; Renegotiation*

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Introduction

According to data from the Indonesian government and industry reports, Indonesia has considerably bolstered its stance against mining conglomerate Freeport McMoRan by acquiring the majority shares in PT Freeport Indonesia (PTFI), a subsidiary that controls some of the largest gold reserves globally. Following five decades of foreign control, this strategic move signals a return of significant resources to the Indonesian populace. President Joko Widodo officially announced on 21 December 2018 that the government had increased its share ownership in PTFI from 9.36% to a majority of 51.23%, a transaction worth a sizable US$3.85 billion (Sulaiman, 2018).

This substantial shift in ownership occurred after approximately two years of intense negotiations involving key stakeholders, including the Indonesian government, PT INALUM (Persero) Mining Industry Holding, Freeport McMoRan Inc. (FCX), and Rio Tinto. The formal transition of majority shares was facilitated by the issuance of the Production Operation Special Mining Business License (IUPK), effectively replacing the previous PTFI Contract of Work (KK), which was in effect since 1967 and renewed in 1991, with a term that extended until 2021 (Inalum.id, 2019). The fruition of this multi-year negotiation is viewed as a significant achievement for Indonesia, which had long hoped to reclaim its abundant natural resources in Papua.

Historically, resource control in developing nations by multinational corporations (MNCs) originating from developed economies has been a pervasive occurrence, dating back to colonial times. The extraction and exploitation of natural resources in these nations often bring forth non-state actors as influential forces in international politics, resulting in diverse socio-economic impacts. MNCs, inherently international companies with headquarters in one nation and operational branches in multiple countries, both developed and undeveloped, are seen as critical non-state actors in this global dynamic (Lairson and Skidmore, 2003: 81).

In this contemporary era of economic globalization, multinational corporations (MNCs) are increasingly positioned to consolidate their influence over global markets, especially those sectors critical to global supply chains, such as natural resource exploitation. This ongoing evolution of MNCs and their increasing role in the global political economy has piqued the interest of numerous international relations scholars. Two primary viewpoints have emerged in understanding the role of MNCs in today's globalized economic landscape.

The first perspective argues that MNCs' role in the global political economy has grown significantly, implying that traditional state power is becoming an outdated concept. Proponents of this view, which centers around the supremacy of market actors in globalization, consider MNCs as pivotal entities in the world economy. These scholars argue that MNCs represent the triumph of market power and economic rationality over the state's anachronistic nature (Ohmae, 1999; Robinson, 2004; Sklair, 2001; May, 2015; Babic et al., 2017). On the contrary, a state-centric viewpoint posits that the impact of globalization has been overstated and that the state still holds substantial influence where MNCs must operate within state

power (Vernon, 1981; Gilpin, 2001: 294; Kusumawardhana, 2016). Among the proponents of the market-centric view, Kenichi Ohmae is a leading advocate of the significant role of MNCs, arguing that they have grown into powerful independent entities that rival and potentially surpass the importance of the state (Gilpin, 2001: 295). He suggests that MNCs have transformed over time; in the past, they considered foreign operations as merely auxiliary to domestic production, where the state held significant control. However, with increased corporate integration and activity, MNCs have evolved into global corporations, operating independently from their country of origin and focusing their planning efforts on a global scale. Substantiating this perspective, Robert Reich (cited in Gilpin, 2001: 295) states, "In a world where components may be made in several countries, assembled in another, and sold in yet another, the nationality of a particular firm or good has become almost impossible to identify and has become irrelevant." This view underscores the increasing irrelevance of traditional state boundaries in the face of global corporate strategies and operations.

Aligned with the contemporary discourse on economic globalization, Yeates (2002: 70) argues that we now inhabit a global economy where uncontrollable transnational powers, particularly multinational corporations (MNCs), hold significant sway as crucial actors. These MNCs, along with their allies, are potent political forces. They have successfully propagated the narrative that global capitalism is the singular path to prosperity, a message that has resonated across the globe.

According to this narrative, prosperity is attained via international competition, which is primarily adjudicated through markets and free trade (Sklair, 2003: 155). With control over these arenas, corporations and their allies can exert influence on multiple scales—from the local and national to the regional and global. These agents of the global economy constitute a new transnational elite, controlling the decision-making system and rapidly monopolizing global power via political dominance. This group, characterized by a polyarchic democracy or corporatism, enables the organized interests of capital owners to secure privileged and institutionalized access to policy formulation processes (Robinson, 2003: 6-7).

Given this context, Camilleri and Falk (1992: 321) assert that globalization is progressively limiting the scope and role of state sovereignty. Non-state actors, including MNCs, leverage cross-border integrative interactions, made increasingly possible by globalization. Their role in resolving global issues is pivotal, particularly when considering that MNCs possess substantial capital capabilities, often matching or surpassing the capital capacity of states themselves (Vernon, 1981: 524). In this regard, comparing an MNC like Microsoft with less developed countries (LDCs), such as those in Africa, offers a stark illustration of these dynamics in the current global political economy.

From a state-centric perspective, multinational corporations (MNCs) are often viewed as products of the domestic economy. While it's true that goods produced abroad, particularly by U.S. companies, have seen a statistical increase, this does not equate to a diminished role of the state. These corporations' primary markets often remain domestic, and their home government's policies typically carry more

weight in corporate decision-making than those of the host country. Moreover, the internationalization of production tends to be regional rather than global, especially in Europe and North America. Policies enacted by regional organizations tend to reflect the political and economic interests of their dominant member countries (Gilpin, 2001: 297).

Raymond Vernon's work "Sovereignty at Bay Ten Years Later" (1981) revisits the state's role and sovereignty in the context of an increasingly borderless globalized era. According to Vernon (1981: 520), the rising prominence of MNCs doesn't necessarily render state sovereignty obsolete. The state, defined as the host country, still exerts significant influence, providing essential resources such as raw materials, capital, and labor, even to the most powerful non-state actors. Moreover, the state's role extends to policy-making for companies operating within its sovereign territory. Vernon (1981: 523) articulates this position through three propositions: (1) the government will enforce regulations related to MNCs, (2) the policies implemented will serve both national and global interests, and (3) these policies will function as a binding force for MNCs. As per Vernon's concept of "multiple jurisdictions," MNCs must exhibit flexibility in contract management, taking into account production adjustments and the domestic conditions of their host countries.

Vernon posits that states can consolidate their stance vis-à-vis MNCs by implementing robust national-level regulation. He notes that while state sovereignty and roles may appear weakened in the face of non-state actors' significant capabilities, particularly corporations, strategic actions like the nationalization of MNCs can reverse this trend (Vernon, 1981). However, this can be perceived as an opaque policy approach by state authorities, viewed as a storm over the global phenomenon of governments bolstering their protection against capital, technology, and market access (Vernon, 1981: 528). The need to reinforce control or position often arises when companies seek to circumvent national rules and jurisdictions for profit maximization, invariably leading to tension and conflict (Vernon, 1981: 526). To avert the obsolescence of sovereignty, states need to consider consolidating rules via international regimes to facilitate collective agreements that can ensure symmetric policies towards MNCs.

Building on Vernon's theory, our paper proposes a novel strategy for developing countries to reclaim natural resources from MNCs. We posit that understanding the bargaining power of sovereign states and controlling the majority shares of host companies through state-owned entities can effectively counter MNCs' dominance over natural resources. The case of Indonesia-Freeport serves as an illustrative example, reinforcing the proponents of state sovereignty's power when interacting with MNCs, particularly for developing countries. Indonesia's actions should be assessed from the perspective of bargaining power, aiming for modifications to mining regulations expected to be advantageous for the country.

The primary question this paper addresses is: How did the Indonesian government successfully negotiate with PT Freeport Indonesia to accept the proposed clause during the mining activity renegotiations from 2009 to 2017? To answer this, we will explore the relationship between the state and MNCs using the concepts of state capacity and

bargaining power, focusing on the negotiation between the government of Indonesia and PT Freeport Indonesia in the context of natural resource extraction. Consequently, this paper will emphasize the aspect of bargaining power as employed by the Indonesian government in their negotiation with PT Freeport Indonesia.

Method

This study utilized a qualitative case study approach, collecting both secondary and primary data. Secondary data was drawn from documents related to Indonesia's negotiations with Freeport, providing historical, economic, and political context. Primary data came from in-depth interviews with key stakeholders, offering direct insights into the negotiation process and results. The study found that Indonesia gained majority ownership of PT Freeport Indonesia from Freeport McMoRan, thanks to its strategic use of state bargaining power. This power was demonstrated by offering access to resources and labor, imposing a ban on concentrate exports, and insisting on renegotiation as the only option (Vernon, 1971; Kobrin, 1987). PT Freeport Indonesia's leverage was shown in its technological control, capital strength, government contributions, US lobbying to influence Indonesian policy, and preparedness to initiate international arbitration (Kobrin, 1987; Brewer, 1992). The study supports the idea that state sovereignty remains relevant in the globalization era and that states retain significant bargaining power against multinational corporations (Held & McGrew, 2002; Vernon, 1981).

Result and Discussion

Political Capacity and State Bargaining Power

Multinational corporations, or MNCs, occupy a critical position within the global economic infrastructure. The global economy is currently characterized by economic globalization, a transition triggered by shifts in the economic order such as the collapse of the Bretton Woods system with its fixed exchange rates and the control of oil production shifting away from Western nations (Lairson & Skidmore, 2018). Scholar Michael J. Carbaugh asserts that the trajectory of economic globalization has been unfolding over a lengthy period (Carbaugh, 2011). With these transformations, MNCs have evolved into instrumental agents of globalization. In his book, "The Eclectic Paradigm: A Framework for Synthesizing and Comparing Theories of International Business from Different Disciplines or Perspectives," John H. Dunning elucidates that the activities of MNCs extend beyond the confines of the production sector. They also exert a significant influence within the goods and services sectors, necessitating the involvement of MNCs in international commerce of goods and services (Dunning, 2000).

The role of MNCs in the global political economy is a topic of ongoing debate, with two primary viewpoints emerging. On one side, proponents assert that the role of MNCs is expanding rapidly, signifying the triumph of market power and economic rationality over the outdated constructs of state power in the face of the globalization of production (Ohmae, 1999; Robinson, 2004; Sklair, 2001; May, 2015; Babic et al., 2017). Conversely, adherents of the state-centric view argue that the effects of globalization have been overestimated, insisting that the state continues to wield substantial

power, with MNCs still subject to state authority (Gilpin, 2001: 294).

Kenichi Ohmae is a significant advocate for the prevailing role of MNCs. He argues that MNCs have evolved into powerful independent entities that rival, and sometimes exceed, the importance of the state (Gilpin, 2001: 295). Ohmae highlights the transformation of MNCs over time. In their early iterations, MNCs typically viewed foreign operations as supplementary, where the state indeed held primary control. However, with the escalation of corporate integration and activity, these transnational corporations evolved into truly global entities by the 1990s (Ohmae, 1990). They have become independent, transcending their countries of origin. For instance, present-day corporate planning is globally oriented rather than confined to national boundaries.

The term "bargaining power" signifies the degree of expertise or capacity an actor possesses to influence their counterpart by offering something beneficial to the latter's interests. When an actor wields sufficient bargaining power to cater to the interests of their counterpart, the latter may act in alignment with the former's wishes (Slantchev, 2005: 3). The strength or weakness of an actor's bargaining power can be evaluated from the agreed-upon contract. A contract that favors one actor more indicates stronger bargaining power for that party. The conceptualization of bargaining power within this study originates from the proposition of dependency theory, which postulates that:

The benefits of foreign investments are "poorly" (or "unfair" or "unequally"") distributed between the multinational and the host, or the country pays "too high" a price for what it gets, or the company siphons off an economic "surplus" that could otherwise be used to finance internal development (Slantchev, 2005: 80).

The above proposition states that the profits from the inflow of foreign investment are not evenly distributed where the host pays too high a price for FDI from the economic surplus that could otherwise be used for the development and internal financing of the host itself. Foreign direct investment occurs because the company has investments in the form of special techniques and expertise not owned by local entrepreneurs. These special techniques and expertise become obstacles for the host country, so indirectly, the host country must cooperate with MNC (Slantchev, 2005: 81).

The MNC and the host country's bargaining relationship is reflected by the interests of both parties' limitations of each other's resources and the interdependence of the two. MNC initially dominated the relationship, but its power was eroded as the position of the state strengthened. Then at other times, the MNC can again increase its bargaining power so that the relationship can change again if the state cannot maintain its leverage to dominate the relationship (Eden et al. 2005: 254).

Theoretically, we can understand the interrelation between MNCs and the state by the presence of representatives from MNCs in a country, which we know as Host Country (HS) companies operating in the specific business sector and having an integral relationship with MNC Home Country (HM) located in the country of origin. The relationship between MNC and HS can be described as cooperation and competition that co-occur and function in the increasingly interdependent relationship between HS and MNC, and we call this "coopetition." Coopetition, or co-

opetition (sometimes called coopertition or co-opertition), is a neologism coined to describe cooperative competition. The cooperation reflects the elements of mutual accommodation and collaboration, seeking mutual benefits and achieving goals from their interdependent activities or resources. The competition demonstrates a part of bargaining or control and conflict related to seeking profit at the expense of the other party's interest (Luo, 2004: 432). In the case of Indonesia and countries with historical backgrounds of colonialism, dependency theory can explain the causes of poverty and the influence of colonialism on the development process of a country to date. Based on this vantage point, we can understand the general nature of the state of dependence in the Third World throughout the history of the development of capitalism from the 16th century to the present. This theory explains that the dependency relationship created only benefits the industrialized countries (colonizers) and makes the colonized countries miserable (Suwarno and Alvin Y. So, 1994: 92).

Lado, Boyd, and Hanlon (1997), in Yami et al. (2010:44), describe coopetition as a relationship between two companies based on cooperation to develop new products and create value and then the competition to get a share of the market and redistribute profit that has been made. As Luo (2004: 431-432) mentioned above, the dynamics of the relationship between MNCs and the state are dynamic due to the simultaneous operation of MNC systems with a specific pattern that involves several actors; these actors include the MNC. The country of origin of the MNC is referred to as the home country (HC) and the country where the MNC operates, namely the host country (HS). However, the researcher will only look at the relationship between MNC and HS in this article.

The bargaining model in the relationship between MNC and Host Country assumes that in the relationship, there are negotiations based on the bargaining power of each party, which ultimately depends on the capacity or strength of each party. State capacity refers to 'the ability of the state to mobilize the community, economic support, and approval for the achievement of community goals' (Painter and Pierre, 2005: 2). The state is essential in regulating and preparing for bargaining with MNCs through domestic policymaking. These arrangements are generally regarding the percentage of ownership managed by the state and MNCs.

The concept of state capacity is a concept that is the core narrative of government (Matthews, 2012: 280). On the other hand, governance is defined as 'goal-directed,' controlling activity led by the state, 'with the need to set common goals and develop means to achieve these goals' (Peters and Pierre, 2006: 215). Thus, state capacity is a key attribute of state-centric governance models (Bakir, 2009). In terms of theoretical focus, this research focuses on this model 'because the state remains the main political actor in society and the dominant expression of collective interests' (Pierre and Peters 2000: 25).

In this study, to see the state capacity, the researcher will examine the structure of domestic institutions from the host country, as stated by Evans (1979), which also highlights the role of domestic actors in determining how investments are made and who benefits. The primary focus on the state and its institutions is based on the premise that the state and its institutions are the primary vehicles for

redistributing the profits derived from mining extraction. The institutional environment is crucial because it determines how negotiations occur.

Indonesia-Freeport: From Contract of Work to Renegotiation of Special Mining Business Licenses (IUPK)

The Contract of Work between Indonesia and PT. Freeport, McMorran, was signed in 1967 under Law No. 11 of 1967 for the last 30 years. It happened at the beginning of President Soeharto's regime (The new order); the contract of work was awarded to Freeport as the exclusive contractor for the Ertsberg mine on an area of 10 sq. km. In 1989, the Indonesian government issued an additional exploration permit for 61,000 hectares. Based on the Contract of Work II signed in 1991, the validity period of Freeport's contract will expire in 2021. In its course, the provisions of the Contract of Work have become things that must be reviewed jointly after the issuance of Law Number 4 of 2009 concerning Mineral and Coal Mining, which became the momentum for a fundamental change in the implementation of mineral and coal mining business in Indonesia.

Based on Article 169 of Law Number 4 of 2009, contracts of work and work agreements for coal mining concessions existed before the enactment of the “Minerba” Law, including contracts of work made between PT Freeport Indonesia and the Government of Indonesia in 1991 that remained in effect until the contract's expiration in 2021. Article 170 of the "Minerba" Law stipulates that the holder of a contract of work that has been in production must carry out domestic refining no later than five years from the enactment of the "Minerba" Law.

In 2014, many contract holders could not carry out domestic refining, including PT Freeport Indonesia. To overcome this problem, the government issued Government Regulation 1 of 2014 and its implementing regulations that allow holders of work contracts to export by paying export duties but remain committed to building a smelter to carry out domestic refining within three years. At the end of 2016, many contract holders, including PT, turned out. Freeport Indonesia has yet to build a smelter.

The Indonesian government breathed fresh air for the mining company from the United States, PT Freeport Indonesia. This copper and gold producer will get permission to manage the mine after the contract ends. An Indonesian friendly gesture happened after the Ministry of Energy and Mineral Resources and the company agreed to change the contract of work (KK) regime to a Special Mining Business License (IUPK). This step is considered to be beneficial for the country. The Head of the Public Communication Center of the Ministry of Energy and Mineral Resources, Dadan Kusdiana, stated that the extension of the business did not violate the applicable provisions. As is well known, Law No. 4 of 2009 concerning mineral and coal mining is no longer known as a contract regime but as a licensing regime. Therefore, when a company holding a Contract of Work and PKP2B expires, if it gets approval for an extension, it must change to an IUPK (Tambang Magazine, 2015).

Facing this condition, the government issued Government Regulation Number 1 of 2017, dated January 11, 2017 (PP No. 1 of 2017), which is the fourth amendment to Government Regulation Number 23 of 2010 concerning Implementation of Mineral and Coal Mining Business Activities, as well as

Regulation of the Minister of Energy and Resources Minerals (Permen ESDM) Number 5 of 2017 and Regulation of the Minister of Energy and Mineral Resources Number 6 of 2017 as derivatives. Article 17 of the Minister of Energy and Mineral Resources No. 5 of 2017 stipulates that the holder of the work contract can sell the processing results abroad in a certain amount for a maximum of five years, provided that the form of mining business changes into a Production Operation IUPK and pays export duties and fulfills the minimum processing limit. Based on this regulation, if PT Freeport Indonesia wants to sell its processing products abroad, it must apply for a change in status from a contract of work to a Special Mining Business Permit.

PT Freeport Indonesia initially refused to change the 1991 Contract of Work status to IUPK as ordered by Ministerial Regulation No. 5 of 2017 as a derivative of PP No. 1 of 2017 and Law No. 4 of 2009. IUPK is considered not to provide certainty and stability in the long term. PT Freeport Indonesia wants to maintain its rights as stated in the Contract of Work in this case, including taxes, royalties, and the terms of divestment of 51% shares as agreed. Furthermore, problems arise for both parties regarding the understanding of the agreement in the Contract of Work II, so the Indonesian government is felt to be a party that does not benefit if the contract of work is not transferred to an IUPK.

PT Freeport Indonesia has yet to agree on the transfer of the KK to the IUPK on the pretext of the IUPK because there is no legal certainty for PT Freeport, including article 131 of Law No. 4 of 2009, which states that the amount of tax and non-tax state revenue (PNBP) collected from IUPK holders is determined based on the provisions of the legislation. By law, it is seen that the IUPK is prevailing, which follows the applicable tax rules so that the changes follow the applicable tax regulations. While PT Freeport Indonesia wants tax-related arrangements as stipulated in the Contract of Work whose amount is stable, which means that since the agreement is agreed upon, the amount will not change until the contract period ends (nail down).

Regarding the obligation to carry out refining, refining minerals in this country is an obligation implied in the Contract of Work and Special Mining Business Permit (IUPK). Then related to the provisions of Articles 102 to 103 of Law, complete the construction of the smelter (management and refining infrastructure). In contrast, there is a time limit for the holder of the contract of work. Then it was emphasized that the time limit related to the construction of a smelter was stated in Article 170 of the "Minerba" Law, which is within five years since the law was enacted. Therefore, the government offered the IUPK to PT Freeport Indonesia, which is the only way for PT Freeport Indonesia to continue to export concentrate by converting KK to IUPK. Suppose the government gives an export permit but PT. Freeport still adheres to the CoW, and normatively there will be a violation of Law No. 4 of 2009. Both the government and PT Freeport Indonesia are bound by Law Number 4 of 2009.

The Bargaining Power for Bending the Golden Giant

In the realm of global economics and politics, the saga of PT Freeport Indonesia exemplifies the complexities of international negotiations and the evolving concept of state sovereignty. This analysis explores the Indonesian government's strategies to control its

natural resources, showcasing how these maneuvers redefine state power against global corporate influence.

The introduction of the "Minerba" Law, Law Number 4 of 2009, significantly altered Indonesia's approach to mineral and coal mining. Replacing the old framework under Law Number 11 of 1967, this law transitioned from the traditional Mining Authorization and Contract of Work model to a streamlined business license system, including various mining permits. This shift, aligning with Pancasila and the 1945 Constitution, signified Indonesia's evolving resource management strategy, integrating economic activities with national interests and values.

Addressing the challenges of the previous Working Contract system, the Minerba Law aimed to balance revenue sharing, strengthen government bargaining power, and introduce a more accountable regulatory framework. It also responded to corruption, environmental degradation, and public concerns, particularly in Papua. This law marked a shift towards a more equitable, transparent, and environmentally responsible mining sector, in line with Indonesia's democratic transformation and modernization efforts.

Before the Minerba Law, the Indonesia-Freeport partnership was governed by a Working Contract (KK) under Law No. 1/1967 and Law No. 11 of 1967, which encountered several problems: (1) Revenue sharing imbalances, with the initial agreement setting PT Freeport Indonesia's royalty payments at 1%, later increased to 3.75% for gold, silver, and copper in 2014 as per Government Regulation Number 9 of 2012 (Redi, 2016: 619); (2) A skewed bargaining dynamic favoring the company; (3) Corruption and power abuse in contract-making during President Soeharto's regime; (4) Political and regime changes in Indonesia's transition to democracy post-reformation; (5) Environmental issues from PT Freeport Indonesia's activities in Papua; and (6) Public opposition to PT Freeport Indonesia, accused of exploiting Papua's resources without adequately benefiting the local population (Cabinet Secretariat, 2015). These reasons are the driving force behind contract renegotiation, as mentioned by Ignasius Jonan, the Minister of Energy and Mineral Resources at that time, during our interview, although he only explained:

"The inter-dept team has the task of negotiating or explaining to Freeport about the implementation of existing laws and regulations, which is an instruction from the President to be able to uphold the sovereignty of the State in the use/utilisation of Natural Resources." (Ignasius Jonan, 2017).

These six problems occurred in the KK of PT Freeport Indonesia. PT Freeport Indonesia is a mining company whose majority shares are owned by Freeport-McMoRan Copper & Gold Inc. PT Freeport Indonesia has been exploring, mining, and processing ore containing copper, gold, and silver in two places in Papua, namely the Erstberg mine (since 1967) and the Grasberg mine (since 1988), in the Tembaga Pura area, Mimika Regency, Papua Province. Freeport's mining complex in Grasberg is one of the world's largest single producers of copper and gold. It contains the world's largest recoverable copper reserves and the world's largest single gold reserve (Redi, 2016: 619).

Since the establishment of PT Freeport Indonesia during the New Order period until 2009, its relationship with the

Government of Indonesia has been harmonious; this is evidenced by the escape of PT Freeport Indonesia from various legal snares due to the losses it causes. According to a report by the Indonesian Forum for the Environment in 2006, PT Freeport Indonesia dumped tailings into the river area. It damaged around 36,000 hectares of the Ajkwa river area along 60 kilometers to the sea (Maimunah, 2017: 13). *Tailings* are materials that are disposed of after going through a process of separating valuable materials from worthless materials from ore. Tailings, mining waste from ore processing, are no longer potentially utilized (Baco, 2017: 4).

The government issued the Decree of the Minister of the Environment Number 431 of 2008 in response to the violation, which allowed the company to dispose of tailings in total suspended (TSS) up to 45 times the acceptable quality standard threshold; this gave PT Freeport Indonesia the opportunity to escape from the legal trap for disposal. Even from 2001 to 2010, the harmonious relationship between the Government of Indonesia and PT Freeport Indonesia had made the foreign company spend Rp 711 billion to fund security regionally around the mine and nationally through the relevant apparatus, namely the police and the TNI. PT Freeport Indonesia seems to have the blessing of the Indonesian government for the violations it has committed (Maimunah, 2017: 13).

At the end of 2009, the relationship between the Government of Indonesia and PT Freeport faced a new problem: disagreements regarding the Contract of Work (COW) permit to manage PT Freeport Indonesia, and each party had its arguments regarding the law that should apply. PT Freeport did not accept the offer of a new scheme proposed by the Government of Indonesia to change the status of a Contract of Work (KK) to a Special Mining Business License (IUPK) for its subsidiary in Indonesia, PT Freeport Indonesia. So far, the cooperative relationship that has been established tends to provide both material and other losses in the field of environment and human rights (Maimunah, 2017: 13).

Changes in the substance of the concession from a Contract of Work to a special mining business permit (IUPK), which every company must carry out. Freeport Indonesia certainly requires a negotiation process considering the various interests. Starting from politicians who act on behalf of the president and vice president to ask for share shares to the desire to control the supply of electricity business to a mining giant located in Timika, Papua, are the complications faced in the renegotiation process for the extension of Freeport's contract of work. It is no secret that politicians and rulers during the five reigns that have taken place, from the Suharto era to the Susilo Bambang Yudhoyono era, have a great interest in the continued operations of PT Freeport Indonesia.

Intriguing facts emerged regarding the reply to the Minister of Energy and Mineral Resources letter at the time, namely Sudirman Said. In his letter, Sudirman Said admitted that no words or sentences stated that PT Freeport Indonesia had the extension right, as was the case in the mass media. The contents of the letter above were also copied to President Joko Widodo. Sudirman said the letter was written as part of the negotiation process with PT Freeport Indonesia and was an ordinary letter issued by a minister. The following is an excerpt of an interview with Sudirman Said:

"I understand that the letter must be understood as a negotiation process that was taking place at that time, and I translated it as a common letter." (Sudirman Said, 2017).

Two days later, on October 9, 2015, Freeport McMoran made a release on the website www.fcx.com. In the release, Freeport-McMoRan Inc. announced that PT Freeport Indonesia and the Government of Indonesia have agreed on the long-term operation and investment plan of PT Freeport Indonesia. Currently, the Government is developing economic stimulus measures, including revising mining regulations to increase economic growth and create jobs (Kontan, 2019).

PT Freeport Indonesia's significant investment and ongoing commitments have provided benefits to Indonesia, consideration for this agreement, including increased royalty, domestic processing and refining, divestment, and local content. The Government has assured PT Freeport Indonesia that the Government will approve the extension of operations after 2021, including the legal and fiscal certainty contained in the Contract of Work.

The Chairman of the Board of Freeport-McMoRan Inc. at the time, James R. Moffett, stated that PT Freeport Indonesia was very pleased with the guarantee of legal and fiscal certainty from the Government of Indonesia. He hopes to continue our long-term partnership and investment plans to advance the economy, create jobs, and boost the economy in Papua. Here is an excerpt of his statement:

"We are very pleased with the guarantee of legal and fiscal certainty from the Government of Indonesia. We look forward to continuing our long-term partnership and investment plans to advance the economy, create jobs, and boost the economy in Papua." (James R. Moffett, 2015).

Meanwhile, Ignatius Jonan, as the Minister of Energy and Mineral Resources (ESDM), clarified the statement of former ESDM Minister Sudirman Said. He stated that there was a secret meeting between President Joko Widodo and the boss of Freeport McMoran (FCX), James Moffet, in 2015, which discussed the contract extension. In his clarification, Ignasius Jonan admitted that he did not know anything about the meeting. However, he did not explicitly deny the existence of a contract extension letter requested by Freeport, as stated by Sudirman Said. However, he emphasized that even if the meeting took place, it would not affect the status and extension of PT Freeport Indonesia's contract, which had been changed to a Special Mining Business Permit (IUPK). Here is an excerpt of his statement:

"There is indeed a letter; I do not know (about the meeting), but if there is, it is not relevant." (Ignasius Jonan, 2019).

The reason is that Ignasius Jonan emphasized that when the President assigned him to complete negotiations with Freeport last October 2016, all negotiations started again from scratch. Jonan said to the negotiating team consisting of the Minister of Energy and Mineral Resources, Minister of SOEs Rini Soemarno, and Minister of Finance Sri Mulyani that President Jokowi had given firm directions. The directions are clear: first, 51%; second, must build a smelter; third, so IUPK; fourth, acceptance. Jonan emphasized that when he served as Minister, previous letters or decisions were no longer the basis for negotiations

with FCX. Jonan also admitted that FCX did not carry the letter with him during the talks he did. So, during Jonan's time, these negotiations started again from scratch, based on the President's direction with the four points above. Here is an excerpt of his statement:

"When I was assigned here, all were left behind; we started a new negotiation with those four conditions, which are important. Starting from the beginning again, the negotiations" (Ignasius Jonan, 2019).

In addition, Jonan also admitted that he did not know the President of Freeport McMoran Inc., James R. Moffet. Because, at the time, Jonan was serving as minister, the CEO of Freeport McMoran was already occupied by Richard Adkerson. Adkerson did ask twice to meet with the President. However, when Jonan delivered the message to the President, Jokowi rejected the meeting. Here is an excerpt of his statement:

" I don't know James Moffet. When I met in November, the CEO of Freeport McMoRan was already Richard Adkerson. The president doesn't want to meet; the president says the directions are clear." (Ignasius Jonan, 2019).

Analyzing the interaction of the State and multinational companies as market actors, the obsolescing bargain model is associated with the pattern of the negotiating relationship between the two parties. The way of negotiating relations between MNCs and the host country to defend their interests is very dynamic, so a shift in the bargaining power of each party can occur at any time. In the EPI mechanism, this theory can analyze the leverage of the parties involved in negotiations, negotiation activities, how to negotiate, and changes and adjustments in the negotiation arena.

The MNC and the host country's bargaining relationship reflects the interests of both parties in the limitations of each other's resources and the interdependence of the two. MNC initially dominated the relationship, but in the end, its power was eroded as the position of the State strengthened. Then, at other times, the MNC can increase its bargaining power so that the relationship can change again. It is possible if the State cannot maintain its leverage to dominate the relationship. The bargaining model in the relationship between MNC and Host Country assumes that in the relationship, there are negotiations based on the bargaining power of each party, which ultimately depends on the capacity or strength of each party.

As a Multinational Company, PT Freeport Indonesia has bargaining power in the form of helping the State in terms of technology, the ability to bring in capital, exports, world size/scale, and the potential to play with other countries. PT Freeport Indonesia (PTFI) currently applies two mining techniques: open-pit or open-pit mining in Grasberg and underground mining. PT Freeport Indonesia operating a mine at an altitude of 4,285 meters above sea level is certainly not easy; it is a surface mine with a large production capacity, so PT Freeport Indonesia uses mining equipment that is true of number one quality. The challenge is unique because PT Freeport Indonesia operates at extreme altitudes, and this requires good operator resilience. Indeed, fatigue issues, sleepiness, and changing natural conditions make this a challenge. However, this benefit is not only for Papua but also for Indonesian scholars. The following is an excerpt of an interview

with the Vice President of PT Inalum Persero Wahyu Sunyoto:

"If we look at the Grasberg mine, it is a huge surface mine with a large production capacity, so we use mining equipment that is indeed number one quality. The challenge is unique because we operate at extreme altitudes, which requires considerable operator toughness. Indeed, fatigue issues, sleepiness, and changing natural conditions make this a challenge. However, this benefit is not only for Papua but also for Indonesian scholars." (Sunyoto, 2019).

In addition, in downpit mines, 98 percent are run by Indonesian children. They also run the operation. The challenges faced are extreme terrain. Mine PT Freeport Indonesia is also a deep mine; currently, PT Freeport Indonesia is mining at a depth of 1.6 km. Mining at such a distance must be adequately done without any work accidents. The biggest challenge is the depth and the possibility of an explosion. With a high vertical load, the rock structure is compact (tight), and then the rock can be unbearable and explode on its own if we open a tunnel and there is a multiplication of stress. Here is an excerpt of the interview:

"Underground mining, 98 percent of which is run by Indonesian people. They also run the operation. The challenge we have is extreme terrain. Our mines also include deep mines; currently, we are mining at a depth of 1.6 km. Mining at such a distance must be done properly without any work accidents. If we look at it, the biggest challenge is the depth and the possibility of an explosion. With a high vertical load, the rock structure is compact (tight), then the rock can be unbearable and explode on its own if we open a tunnel and there is a multiplication of stress there." (Sunyoto, 2019).

Based on this context, the bargaining power of PT Freeport Indonesia has a vast capital capacity. PT Freeport Indonesia has been conducting mining activities in Papua since 1967, precisely at Mount Erstbeg, the land of Amungsa. Since its inception, this corporation has sparked many conflicts with residents in Amungsa Land. Not infrequently, these conflicts take the lives of local communities. Ironically, the government, which should be the mediator, has always taken a stand to defend PT Freeport Indonesia. However, this attitude also occurred in the post-reformation period, which is considered a turning point for democracy and human rights in Indonesia. During the New Order era, the conflict involved Freeport and the indigenous peoples who opposed its existence. Meanwhile, after the reformation, the conflicts brought up the issue of workers' welfare and illegal gold panning by the residents. These events show the government's alignment with foreign corporations with extensive capital (Sjahiroel, 2015).

This alignment occurs because Freeport and the Government have a mutually beneficial relationship. At an international conference held in Geneva in November 1967, Freeport actively lobbied on behalf of its new partner to gain the business trust of the new government. Freeport, which symbolized a new image, wanted to be promoted by Indonesia internationally. Under pressure from the United States, Indonesia received much assistance in technical expertise and foreign capital of $1,226 million in 1969. This flow of money was not only crucial in maintaining regime stability but in maintaining the stability of the regime. It

continued to assist Soeharto in retaining power for the next three decades (Leith, 2002: 72).

Although initially, MNCs had bargaining power in natural resource investment by monopolizing the capital, techniques, and technology needed to process natural resources. However, when an MNC has invested, it is not easy to leave or release its investment that has been invested in one country. As is known, industries related to natural resources require high technology and significant capital, so the investment seems to be a 'hostage' for the investors. However, over time the transfer of technology has occurred. Here, the position of MNC weakens because the technology owned by MNC is transferred to the host country. A strong host country position can be a tool to take advantage of the MNC, such as requesting a larger share of the MNC or renegotiating contracts or agreements. In other words, bargaining power shifts from the MNC to the host country.

MNCs cannot quickly transfer their fixed investments from the state, so existing investments are guaranteed. Host countries can exploit this power shift by renegotiating the original agreement and taking a larger share of the existing project's profits. MNC enjoys greater bargaining power than the host country in manufacturing investment in low-skilled labor so that MNC can choose which host country it considers the most profitable. So it can be seen that there is competition from host countries to attract investment in locational incentives—packages offered to MNCs to increase returns on specific investments or reduce investment costs or risks.

Based on this vantage point, PT Freeport Indonesia is weaker than the Government of Indonesia because PT Freeport Indonesia will not play with other countries or transfer its investment in Grasberg. Freeport-McMoRan Inc., as the parent company of PT Freeport Indonesia, understands the considerable risk of losing the Grasberg mine in Papua. As is known, Indonesia has the second largest gold mine in the world; besides that, investments related to natural resources require high technology and ample capital, so that investment itself becomes a 'hostage' for the investors themselves because they are not easily relocated from one country to another.

Meanwhile, the Government of Indonesia has bargaining power in the form of assisting MNCs by providing access to the domestic market (this is key if the market size is large and overgrowing), providing access to natural resources, providing access to local labor or other resources, providing incentives, and potentially playing with other MNCs. Access to natural resources is an essential key to the Indonesian Government's bargaining power, manifested in the Government's role as a regulator in regulating exploitation in the mining sector. The role of the Government is vital because the mining sector is a sector that is in demand by foreign investors. Meanwhile, Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) expressly states that "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." The constitutional formulation shows that the state has sovereignty over its natural resources, including mineral and coal wealth; therefore, foreign investment to manage these natural resources must be in line with the laws and regulations stipulated by the Government.

As a country with abundant natural resources in the form of mining, Indonesia has become a destination for investment in mining by many foreign companies. One of the most extensive mining projects in Indonesia is carried out by PT Freeport Indonesia in Papua, which has been operating since 1967 using a Contract of Work to conduct mining in Papua. For decades, PT Freeport Indonesia has operated in Indonesia. It is increasingly visible that the losses caused by this mining exploitation activity are compared to the benefits obtained by Indonesia, especially the Indonesian people living in Papua.

This loss is not only in terms of environmental damage, humanity, economy, and the distribution of mining products between PT. Freeport and the Government of Indonesia; it cannot be maximized for the welfare of the Indonesian people. In 1967, the Indonesian Government enacted Law No. 11/1967 concerning Basic Mining Provisions (UU No. 11/1967). At the same time, Law No. 11/1967 marked the open-door politics in the mining sector after enacting Law No. 1/1967 concerning Foreign Investment (UU No. 1/1967).

Along with the dynamics of post-reform thinking, Law No. 11 of 1967 is considered to be incompatible with the political economy that the government wants to run, especially in the mining sector, and by looking at these various losses, the government issued Law No. 4 of 2009 concerning Mineral and Coal Mining. The new law is a replacement for Law No. 11 of 1967.

Law Number 4 of 2009 concerning Mineral and Coal Mining marks a new era in the mining sector where new provisions indicate a paradigm shift in the management of mineral and coal resources. The paradigm shift is related to the relationship between the state and investors, especially foreign investment. Law Number 4 of 2009 concerning Mineral and Coal Mining mandates that in the management of mineral and coal mines, it is necessary to convert KK into IUPK. Even though Law No. 4 of 2009 already raised the government's position to a higher position than the contractors, in reality, the government did not immediately follow up on this opportunity to fix the substance of the contract of work and agreement. They existed coal mining concessions to comply with the law's orders.

The weakness of the Government's position means that factors in the laws and regulations do not cause it, but because the Government deliberately puts itself in a weak position and hesitates to carry out the orders of the law. The presence of Law No. 4 of 2009, which has provided space to improve mining contracts that have been running for 50 years (since the enactment of Law No. 11 of 1967), the Government should immediately take advantage of this momentum with the desire and good intentions to harmonize the agreement, including the contract of work with PT Freeport Indonesia, which is currently in the public spotlight, to prioritize the interests of the people, not just submit to foreign investors. Reviewing the contents of the contract of work is not easy; the problem is not only legal and justice factors, but the influence of political intrigues and the emergence of conflicts of interest within the Indonesian Government itself is also powerful.

The weakness of the Government's position was then addressed in the era of President Joko Widodo, who was consistent in handling the PT. Freeport Indonesia. In negotiating with PT Freeport Indonesia, Hadi M. Djuraid, through a press release on Thursday (6/4/2017)

afternoon, stated that the Ministry of Energy and Mineral Resources refers to and is guided by Law (UU) Number 4 of 2009 and Government Regulation Number 1 of 2017. On that basis, Hadi continued, the position and attitude of the Ministry of Energy and Mineral Resources are to use negotiations to ensure that Freeport Indonesia converts its Contract of Work (KK) into a Production Operation Special Mining Business License (IUPK), builds processing and refining facilities (smelters), and divests shares of up to 51%. Here is an excerpt of his statement:

"Those three points are non-negotiable. What can be negotiated is how to implement it. The change of KK to IUPK is a priority because it will be the basis for the next stage of negotiations. In addition, the IUPK allows Freeport Indonesia's operations in Timika, Papua, to return to normal so that there will be no prolonged economic and social excesses for the people of Timika in particular and Papua in general." Hadi M. Djuraid, 2017).

As is known, on January 11, 2017, President Joko Widodo signed Government Regulation (PP) Number 1 of 2017 concerning the 4th Amendment to Government Regulation Number 23 of 2010 concerning implementing Mineral and Coal Mining Business Activities (Minerba). This Government Regulation is a derivative of Law No. 4 of 2009 concerning Mineral and Coal Mining, which essentially encourages the creation of added value for metallic minerals through processing and refining, providing optimal benefits for the state, as well as providing legal certainty and business for mineral and coal mining business actors (Ministry of Energy and Mineral Resources, 2017).

The issuance of PP number 1 of 2017 above is accompanied by two Ministerial Regulations of ESDM: Ministerial Regulation number 5/2017 concerning Domestic Mineral Processing and Purification and Ministerial Regulation number 6/2017 concerning Mineral Export Requirements. Several vital points in PP 1/2017 are realistic because the application for an IUP/IUPK extension has now been changed to a maximum of 5 years from the previous two years. In addition, share divestment of up to 51% can be carried out in stages. The PP also regulates the benchmark price for mineral and coal sales. This value researcher is a form of state presence in controlling the sector and an effort to optimize state revenue (Ministry of Energy and Mineral Resources, 2017).

The most exciting point in PP 1/2017 is the abolition of the provision that KK holders are allowed to export a certain amount and time. Furthermore, according to ministerial regulation number 6/2017, mineral exports are only granted to IUPK holders. Thereby, PT Freeport Indonesia, the holder of a Contract of Work (CoW), is no longer allowed to export its concentrate unless they convert the COW into an IUPK. The steps above are the best way to end the pros and cons of extending the concentrate export permit by PT Freeport Indonesia (PTFI). The PP and the two ESDM Ministerial Regulations above also close the opportunity for collaboration between the government and the KK holders. PT Freeport Indonesia is now no longer able to take refuge in the name of KK. If the government's options are firm and fair, then PT Freeport Indonesia can choose and bear the consequences.

In the IUPK format, the State is the party granting the permit and can determine various requirements the

mining entrepreneur must meet. The position of the State is at the top, not parallel as in the KK format. With transparency on all licensing requirements, the potential for moral hazard can be minimized to the maximum. In the KK format, the position of the State represented by the government is very unfavorable because it stands on a par with the miners. The material in the CoW is reached through the agreement of both parties. This parallel position makes the State lose its independence. The KK format is also considered to have the potential to cause a moral hazard. In addition to the issue of changing KK to IUPK, the new policy released by the Minister of Energy and Mineral Resources to translate President Jokowi's vision clearly illustrates a commitment to continue mineral downstream and a solid determination to realize energy sovereignty. An illustration of the bargaining power of both parties can be seen in the image above.

The Grasberg area is within the sovereign territory of the Republic of Indonesia, which is the contract area of work of PT Freeport Indonesia and contains not only copper resources and reserves but also significant gold and silver. The total existing copper, gold, and silver content is 23.1 million tons (Cu), 1,883 tons (Au), and 9,800 tons (Ag) (Anton Perdana, 2015). This amount is proportionally quite large compared to all mineral wealth (endowment) spread across Indonesia: copper: 64,832,000 tons, gold: 7,311 tons, and silver: 19,448 tons (Prihatmoko, 2017).

The potential of these natural resources is a bargaining power owned by the Government that can be used to suppress Multinational Companies such as PT Freeport Indonesia. The ability to stop this will be realized with the consistency and firmness of the Government in making and implementing regulations on access to natural resources that represent the national interest of the State by the constitutional mandate.

Conclusion

Based on the analysis carried out in this article, we conclude the relationship between PT Freeport Indonesia and the Government of Indonesia can be described as coopetition, namely cooperation and competition that coincide and function in the relationship between the Indonesian Government and PT Freeport Indonesia, which is increasingly interdependent. The competition between Indonesia and Freeport is reflected in the strategic interdependence between PT Freeport Indonesia and the Government of Indonesia, which contains elements of bargaining and collaboration with competitive and collaborative goals, facing each other in sharing resources.

Meanwhile, competition is reflected through the tough bargaining for the interests of both parties, PT Freeport Indonesia and the Government of Indonesia. However, in the end, both parties can find a middle point for cooperation to occur for mutual benefit. Collaboration and competition coexist because PT Freeport Indonesia and the Government of Indonesia depend on each other's resources and support. Meanwhile, they face conflicts arising from multiple objectives and the absence of mechanisms that reduce the possibility of opportunism. Cooperation and competition are simultaneously present where PT Freeport Indonesia deals with the Government of Indonesia on multiple issues, areas, or projects simultaneously, with some problems, areas, or projects containing cooperative elements while others involve competition.

The results showed that both parties have bargaining power. The bargaining power of the Government of Indonesia can be seen from the obsolescing and political bargaining model, including (1) Providing access to natural resources and local labor, (2) Incentives in the form of banning the export of concentrates, and (3) The view that this renegotiation is absolute for the Government of Indonesia and there is no other policy alternative. While PT Freeport Indonesia, as a representative of Freeport McMoRan, has bargaining power, including (1) Mastery of technology, (2) Strength of Capital, (3) Contribution to the Government of Indonesia, and (4) access to lobbying for the United States Government to pressure the Government of Indonesia. (5) Have an alternative action by filing a lawsuit with international arbitration.

In this dynamic, several vital steps that strengthen the bargaining power of the Government of Indonesia are the success of making PT Freeport Indonesia follow the change of the Contract of Work to a Special Mining Business Permit (IUPK). The most important factor of state capacity is the quality of bureaucratic elites, especially state leaders, which is reflected in firmness, focus, authority, and consistency without conflicts of interest and elements of corruption. Theoretically and conceptually, this research reaffirms the opinion that the State retains its sovereignty, but the application of sovereignty in the era of globalization has become more lenient. This study also strengthens the idea that the State has a sovereign position and bargaining power when dealing with multinational companies in the era of globalization. At this point, Indonesia's awareness of playing its bargaining power has become an essential key to Indonesia's success in restoring control of PT Freeport Indonesia through control of majority share ownership.

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