

# The Hegemony of The Exxonmobil and Freeport Contract in Investing in Indonesia and Also The Abandonment of The Local People's Health Rights

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## Abstract

The type of contract carried out nowadays, which is the Product Sharing Contract (PSC) and contract of work in the natural resource sector results to product sharing, which is on one hand thought to not yet fulfill the principle of justice for the state. On the other hand, the government still needs funds from foreign investors to carry out economic development. The balancing position between the foreign investment and the domestic investment in the capital market investment in the oil, gas, and the gold-copper mining sector of Freeport in Papua and Exxonmobil in Indonesia shows a foreign domination. It means that there is a natural resource sector investment hegemony by foreign investors. The implication of this condition is the lightening burden of the state budget, the increase of workforce absorbment and the transfer of technology. It also causes opportunity cost. There is the environmental destruction, including the aspect of healthcare for the local people in the mining location as a compensation. For that, the government needs to review the contract regulation for these two natural resources and revise what is necessary.

**Keywords:** *hegemony, investment, contract of work, production, product sharing contract, health.*

## Introduction

Sources of oil and gas are potential reserves of energy wealth since Indonesia was still invaded by the Dutches until the government in the Reformation era. There have been explorations and exploitations by foreign contractors which are divided into blocks of oil and gas management, as stated by Arifin<sup>1</sup>. According Mubyarto<sup>2</sup> Until now, this cooperation contract is still maintained, even though it often causes problems. Now, the government still makes sure that the management of natural resources which require high capital, high technology, high skill, and of high risk, which are almost impossible to be done independently by domestic contractors, may still be done through a cooperation with foreign contractors, as stated by Suherman.<sup>3</sup>

According to Dimiyati<sup>4</sup>, the sociological impact which appears in the period of contract renegotiation is that the politicians, groups of society, and the people who live around the mine areas were preoccupied by the pro-cons of the parties who supported the extension and those who did not with their own argumentations. This is very reasonable, remembering that on the side of the contractor, with the contract extention, the capital gain of their investment will continue to be received, as said by Adolf<sup>5</sup>. Meanwhile, on the side of the local people, especially those who receive direct impacts from the mining project, will feel that the compensation received is not equal with the social, environmental, and health sacrifices they had to make, as opined by Asshiddiqie<sup>6</sup>. Thus, the welfare of the local people is relatively stagnant. There is no improvement. Worse, there are environmental deterioritations which are difficult to fix.

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In the economic point of view, the natural resource management cooperation contract with the foreign companies is the hope of the government. The government wishes this investment to be continued and to even be increased, considering that the foreign investment may

lighten the burden of the state budget for infrastructure development, said Ahmad<sup>7</sup>. It may also increase the work opportunity for the local workforce. ExxonMobil and Freeport are the largest foreign contractors in the natural resource management sector compared to other companies which invest in Indonesia. The two contribute quite a large portion of capital compared to that contributed by the domestic companies in the same sector.

The data from the Capital Investment Coordinating Board (*Badan Koordinasi Penanaman Modal/BKPM*) shows that on 2017, the total investment was Rp 692,8 trilyon. This number is divided into that from foreign investment, which was Rp 430,5 trilyon, and domestic investment which was Rp 262,3 trilyon. Thus, the ratio between foreign investment and domestic investment was 62,1:37,9. The sectors of water, oil, and gas (including that managed by ExxonMobil), and electricity contribute 11,8%, meanwhile mining (including that managed by Freeport) contribute 11,4% out of the total investment, as stated by Mubyarto<sup>8</sup>. From the 24 existing investment sectors, oil and gas, electricity, and water stands in the first rank of investment income, whereas mining stands in the second rank. This condition indicates the foreign domination in the investment in Indonesia.

## Method

This research is a juridical-normative study. It uses a literature review approach. As said by Rusli,<sup>9</sup> this research uses a qualitative analysis in analyzing the present problems.

### A. The Extension of Natural Resource Contract

The Constitution No. 25 of 2007 regarding Investment is one of the government's regulation in the investment sector, which aims to accelerate the development of the national economy. If it succeeds, it will create success for the state of Indonesia, which will then bring its people towards a higher and more widespread level of welfare. As good business actors, both foreign and domestic investors are encouraged by the government to realize that aim.

In the natural resource sector, the phenomena which happened was the fight for the power to manage it. This means that there was a competition between foreign and domestic business actors in investing in Indonesia. The sector of oil and gas and the sector of mining were two of the many natural resources which were fought for by the

investors. Even so, considering that to run the business of these two sectors need much capital, sophisticated technology, special skills, and contains high hazard, foreign companies still dominate this sector, as stated by Wahab<sup>10</sup>. ExxonMobil and Freeport are the two foreign contractors in the oil and gas and mining (gold-copper) sector, which have dominated those natural resources from a long time ago up to now, even though their presence in Indonesia still causes much problems in the implementation and in the substance of the contract. According to Redi<sup>11</sup>, to minimize the unwanted things and so that investment still goes on safely and so that it reaches the aim, the government regulates it through adequate regulations, which are the Constitution No. 22 of 2001 on Oil and Gas and the Constitution No. 4 of 2009 regarding Mineral and Coal Mining.

Even though all oil and gas management contracts are based on the Oil and Gas Law, and that the mining of gold and copper is already based on the Mining Law, there are still problems here and there which needs extra attention from the government. Problems appear when the contractors (both foreign and local) face an expiring contract, where they will undergo a renegotiation for contract extension. In this case, even though the renegotiation has been agreed upon by the contractors and the government, the substance and the implementation of the contract are not always in line with the hopes of the government regarding investment policies, which is the balance between foreign and domestic investors, as said by Hodd in Newcomb<sup>12</sup>.

### B. Legal Protection of the Indonesian Natural Resource Management

The management of natural resources in Indonesia is based on the legal protection in which its source is the 1945 Constitution. On Article 33 paragraph (2), it is stated that the important branches of production for the state and that which has the power over many people's interests are under the power of the government. Meanwhile, paragraph (3) states that the earth, water, and natural resources in it are under the power of the state, and must be used maximally for the welfare of the people. Meanwhile, the management of every kind of natural resource, including oil, gas, and gold-copper mining is regulated on some of its own Constitutions, which are derived from the 1945 Constitution.

The Indonesian oil and gas management was first based on the Constitution No. 44 of 1960 article 2 which

states that the oil and gas mining materials which are in Indonesia's legal mining territory are part of the national wealth which is under the power of the state. Then, in its development, it is now regulated on the Constitution No. 22 of 2001 regarding Oil and Gas. Meanwhile, for the gold-copper mining, it is regulated on the Constitution No. 4 of 2007 regarding Mineral and Gas, as stated by Redi<sup>11</sup>.

### **C. ExxonMobil and Freeport in the capital market**

In the beginning, the oil and gas contract in Indonesia was a contract of work. Then, since 1971, it implements the product sharing contract, as stated by Partowidagdo.<sup>13</sup> Then, after going through some changes in the contract model, the Constitution No. 22 of 2001 regarding Oil and Gas was issued as the legislation which regulates the oil and gas management. Since the issuing of that constitution, the management of oil and gas by foreign contractors are carried out through a contract of work with the product sharing contract (PSC) model.

ExxonMobil which has operated since 1899 is one of the tens of oil and gas contractors which invested their capital in Indonesia through the PSC system, said Mubyarto<sup>2</sup>. The latest data (2019) showed that there was the domination of foreign contractors in the management of oil and gas, with foreign contractors managing 70% of the sources of those sectors in Indonesia. With ExxonMobil's contract extension, its contributions towards the conductivity of capital investment in Indonesia is highly significant, even though there are still problems in its implementation and product-sharing, as stated by Partowidagdo<sup>13</sup>.

ExxonMobil's contract extension gives a huge contribution towards the foreign investment in Indonesia, even though it indicates that Indonesia's sovereignty in managing oil and gas is not possible yet. Apart from that, it is highly ironic that the oil and gas, which are natural sources which support the lives of many people are not treated as the state's strategic commodity anymore, as its management is regulated according to the wishes of the foreign contractors. The impacts of this condition are felt by people of Cepu, Bojanegara, who live around the oil and gas blocks managed by ExxonMobil. They feel that they are not yet living a prosper life. Their area experiences environmental destruction and the people's health rights are disturbed. These things should be covered by the ExxonMobil company for the people

surrounding the mines.

Freeport, a gold-copper mine foreign contractor, has carried out a contract extension the third time after fifty years of managing the oil and copper mines in Timika, Papua. Freeport was the first company to enter Indonesia some time after the G30S PKI phenomenon which forced President Soekarno to step down from presidency. The legal basis of the first-generation work contract at that time was the Constitution No 1 of 1967 regarding the Foreign Capital Investment with the period of 30 years since it first operated on 1973 until 1999, said Partowidagdo<sup>13</sup>. On 1991, the second-generation contract of work was issued for the period of thirty years (1991-2021). Then, after the contract period ran out, the contract status was changed into the Special Mining Business Permit (/IUPK) based on the Governmental Decree No. 1/2017 with the period of ten years, and may be extended for another ten. Freeport contributes 5% of the total investment in Indonesia.

The positive implication of the contract agreement, which has now changed into the Special Mining Business Permit, was the reemployment of around three thousand people, the majority of them from Biak, Jayapura, Sorong, Serui, which was formerly fired. Meanwhile, the negative implications include environmental deterioration, as stated by Mubyarto<sup>8</sup>. The Amungme tribe has also felt being out of place in their own land, as their positions were pushed by the presence of foreign mines. The health factor of the Amungme people has not improved either, as there is still a high rate of infant and maternal mortality. They are prone to diseases, and there is still a low rate of the Amungme people's survival said Syeirazi<sup>14</sup>.

The issuing of the constitution on Capital Market has brushed aside the beliefs that the foreign companies' presence in investing in Indonesia imply that: (1) there is the decrease of the savings rate or domestic investment by creating an unhealthy competition from exclusive contracts between the multinational companies and the Indonesian government; (2) reinvestment is not reached from the income obtained.

### **D. Irony of the Natural Resource Contracts in Indonesia**

The constitutional regulations in Indonesia are created in the form of constitutions which reflect on the 1945 Constitution. The main part of the constitutional regulations, which are the substance of this research are

the constitution on mineral and oil natural resources, the constitution on minerals and coal, and the constitution on investment, according Syirazi<sup>14</sup>

In the economic perspective, the writer is pessimistic that with the regulations on natural resource management contact extension which still do not support the interests of the people, the results of the oil and gas in the blocks and in the gold-copper mines in Papua will succeed in increasing the welfare of the local people<sup>11</sup>. Based on the existing data, the extension of the natural resource contract extension is identical with shifting 70% of its outcome to the foreigners, which means that only 30% of it may be enjoyed by the surrounding people, said Aviliani<sup>15</sup>. Worse, there is still the environmental factor, and the abandonment of the local people's health rights which are disturbed by the mining activities, and which do not receive any attention from Exxonmobil and Freeport, said Newcomb<sup>12</sup>.

The data from the Capital Investment Coordinating Board shows that during the period of 2017, the amount invested by foreign investors were Rp 430,5 trilyon, and that from domestic investors were Rp 262,3 trilyon. Thus, there is a ratio of 62,1: 37,9. This shows the domination of foreign investors in investing in Indonesia, said Partowidagdo<sup>13</sup>. The water, oil and gas, and electricity sectors contribute 11,8% of the total investment, whereas the mining sector contributes 11,4%. From the total of 24 investment sectors, the sectors of oil and gas, electricity, and water stands in the first rank, with mining following on the second rank of investment income. This means that ExxonMobil and Freeport, which are the largest American companies in these sectors dominate in the largest investment sectors in Indonesia, according to Syeirazi<sup>14</sup>. This condition is suspected to be an impact of the consequent implementation of the Constitution on Capital Market, in which one of its articles states that it does not differentiate foreign investors based on their country of origin. As an impact, if there is no control from the government, there will be a continual hegemony of foreign investors towards the domestic ones, which means that there will be an unhealthy imbalance between the two types of capital investment.

### Conclusion

From the data from the Capital Investment Coordinating Board, it is clear that the proportion of foreign investment is far higher than the domestic investment. This indicates that there is a hegemony in

the capital investment in Indonesia. In this case, the hegemony which happened is that foreign investment (ExxonMobil and Freeport) dominates the domestic investment.

The hegemony of foreign investment towards domestic investment results to both positive and negative implications. The negative implications include the loss of opportunity cost in the form of foreign currency, which should have been enjoyed by the Indonesians<sup>7</sup>. This is because it is brought to the investors' country of origin. This fund could have been used to increase the welfare of the local people in the aspects of health, education, and prosperity. Apart from that, there is environmental destruction and abandonment of the local people's health rights. This is due to the environmental deterioration by mining activities. This is difficult to avoid as the investors do not have a sense of belonging towards the land they manage. The positive implication is that it is profitable for the state budget. This is because the budget is in a balanced state. There are job opportunities for the local people, and transfer of technology to increase the skills of our human resources.

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