



Structuring of multi-national company (MNC) PT Freeport Indonesia to be a state-owned company

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Abstract

The Government of Indonesia's Strategic Policy for the arrangement of PT Freeport Indonesia is the implementation of Article 33 of the 1945 Constitution. There are four policies of Jokowi's government; change of Work Contract/Kontrak Karya (KK) status into Special Mining Business License/Izin Usaha Pertambangan Khusus (IUPK), the extension of Freeport contract until 2041, divest 51% share and smelter development. This study aims to analyze the government's governance of PT Freeport Indonesia's Multi-National Corporate (PMN) governance. Through the method of phenomenology, it is understandable that one of the difficulties of what the government faces is between the democratic will for economic sovereignty and the open market of global capitalist interests. Government assertiveness of Freeport enhances the bargaining position in negotiations and corporate governance. Experience has the potential to create administrative crises, leadership crises, political crises, and the crisis of legality. However, through the process of democracy has changed the political structure of government from Susilo Bambang Yudhoyono to Jokowi. The researcher concludes that social reality is the result of the interaction of various interests at a time. Indonesia's economic pattern from the perspective of the rule of law has the potential to deliver a crisis of legality. However, as a post-colonial Dutch state prioritizes the rechtsstaat side, legal certainty and new hope for the society for justice and togetherness are more concerned as a priority.

Keywords: defense diplomacy, legitimacy crisis, the rule of law and postnational constellation

1. Introduction

From a global perspective, the concept of 'prosperity' is linked to ecological sustainability, social inclusion, and quality of life. Prosperity in some countries sacrifices environmental safety ^[1]. It would be more ironic if environmental damage in a country but also not enjoyed the welfare. It is possible to occur when the exploitation of natural resources is not under the control of the government and irresponsible companies. Usually undertaken in developing countries with weak legal frameworks and regulatory infrastructure, causing pollution of water resources, destruction of fauna and flora, health hazards and deterioration of health, air and noise pollution, and destruction of traditional economic infrastructure ^[2]. The strategy of the multinational company (MNC), according to Yadong Lu (2006) in developing countries at least, takes into account three things; 1) politics, 2) corporate social responsibility, and 3) corruption. Structure Theory as the conceptual foundation Yadong Lu sees that the MNC is willing to cooperate with the local government in relation to the philanthropic contributions and accommodation resources positively, but being firm in relation to the ethics and credibility of the organization. Therefore, when the perceived corruption in the business segment increases, the tendency to be firm and cooperation with the government declines, and vice versa, the focus on ethics increases, and philanthropic contributions diminishes.

PT. Freeport Indonesia (Freeport) is one of the MNCs operating in Indonesia since 1967 in mining, especially gold and copper. The operations of PMN in Indonesia are related to the regulation of natural resource utilization. Utilization of production sources and controlling the livelihood of the people constitute the mandate of the 1945 Constitution

Article 33 ^[3]. Governance in accordance with the level of authority granted by the state governs the administration of government towards a just and prosperous Indonesia. However, the management of mining in Papua Province carried out by Freeport has created a sense of injustice and even environmental damage. On one hand Freeport has become the largest gold mine in the world, while the environment, public life and income of the country are concerned ^[4]. According to the Supreme Audit Agency (BPK), the state potential losses due to mining of Freeport, suffered a loss of Rp 185 trillion ^[5]. To overcome this problem, the government reviewed the regulations related to Freeport. The Government's decision to replace the Contract of Work expiring until 2019 becomes a Special Mining Business License (IUPK) ^[6] Until 2041, 51% share divestment, and smelter development is seen in the context of achieving prosperity for the people of Indonesia. Therefore, it is important to analyze the government's policy, is it relevant to overcome the problem of equality and togetherness in the current era of globalization.

Modern government policy analysis, according to Anthony Giddens, can be done from a cultural and epistemological perspective ^[7]. Through structural theory, he offers another way of understanding the four dimensions that determine the direction of modern government policy ^[8]. In the global interaction of the parties with different goals and approaches affect the change of the political system within a country. If there is a change in the political system, then the process of legality and the need for legitimacy as a result of changes in the political system is a crisis of legitimacy (Habermas, 1973). The crisis of legitimacy as a form of political contradiction in the phase of state-run capitalist society ^[9]. Thus, if the problem of political system changes that have

not guaranteed the fulfillment of the legitimate needs of the interests of the parties, then the cultural and epistemological reply of what government institutions can respond to the legitimate needs of the interests of the parties. This means that Giddens explains the cultural and epistemological structures of overcoming the legitimacy crisis occurring within a country due to changes in the political system.

Postcolonial countries like Indonesia that claim to be free from colonialism cannot say that we are completely free from foreigners, *let alone* related to the utilization of Natural Resources (SDA), although the state constitution since its establishment has never changed. The progress of the Indonesian nation should not rely on any country because we are a rich country that exceeds the needs but, in fact, remains to be categorized as developing countries. Indeed in the history of Indonesia, when compared with Malaysia and Singapore are different in colonial liberation strategy (white, 2017). Progress and prosperity of a nation are closely related to the success of the country in managing the economy, especially surplus in the trade. Sustainable management with 10% growth will be able to reduce poverty 20-130% (Adams, R, 2002). Therefore, it is important for the Government to manage the utilization of natural resources in accordance with the level of authority.

Structural Theory can understand the strategy of Jokowi's government in taking over the management of PT Freeport Indonesia. The government is not only a holder of the power structure but also as a mutually changing regime must also be able to become an agent of change. Beginning with Government Regulation No. 1 of 2017, IUPK can be renewed as early as two years before the contract termination, and then negotiations should be after 2019^[10]. The first debate, the government's decision whether the policy is free from the public will or still under government authority. Secondly, whether each regime change of political structure changes, structural changes invite changes in the administration of government policy, this can invite crisis, if not solved, invite economic and political crisis that resulted in a crisis of legitimacy of what is being made by the ruling government.

Government decisions must be constitutional. Otherwise, a legal crisis occurs. In the postnational constellation Habermas (1973), the legal crisis is illustrated in problem resolution; a Security, the rule of law, b. Effectiveness of state administration, and c territorial sovereignty. In reality, these three elements run simultaneously, for it reinforces one by ignoring the other, then an imbalance occurs. Implementation of Government Regulation will be a benchmark for the existence of the government in solving PT Freeport Indonesia legally, will impact on the effectiveness of state administration and threaten security and if not handled well, sovereignty over territorial will be eroded. Changes in the structure of the internal affairs will affect government legal decisions of state administration authorized by the government. If the decision is only intended for pure citizens, then the decree is effective immediately. However, when it comes to corporate citizenship, the decision needs to be communicated again, then Habermas said that is such a sign of a crisis of legitimacy, even if it is not mentioned that the decision is illegal^[11].

The global capitalist shifts the political system not only into the economic system but also into the socio-cultural system. While organizational rationality is spreading, cultural

traditions are undermined and weakened. The traditions are important for administrative legitimacy and cannot be regenerated. Furthermore, the manipulation of cultural administration problems has undesirable side effects. The conditions of the political system to be projected openly within the scope of the discursive will develop^[12]. By Nancy Fraser Crisis, The legitimacy that becomes debated is a. The political contradiction of capitalism, "without reference to a particular historical form, past history reflects the present moment, b. the expression of the political contradictions of capitalism in its present financial phase, and c. with Jürgen Habermas in Legitimacy Crisis, the crisis of legitimacy as a form of political contradiction in the phase of state-run capitalist society, in accordance with the will and the political situation in their respective countries^[13].

Fuller proposes eight principles of legality: 1) A law runs in general norms, 2) Its norms have been announced to the public whose involvement will make it more authoritatively accepted by reference to society, 3) Norms are prospective rather than retrospective, 4) The authoritative formulation of the norms can be understood (at least by the person with the ability of the law) rather than the opaque in comprehension, 5) His logical attachments are logically consistent with other norms, and the observance charged in one norm can share with others in their fulfillment. 6) These norms do not require things that are actually far from the ability of the person who is the subject of the norm. 7) The contents of these norms, although they have been changed many and very rarely in their whole form, but are generally unchanged for some periods of time are sufficient to maintain understanding, 8) Norms are generally applied in accordance with those specified by the author, so that the formulation of the norm (law in the books) is similar to the way that its creators have been implemented (law in practice). Fuller divides morality into the morality of duty and the morality of aspiration that makes it law^[14].

2. Method of Research

The philosophical world view of this research using phenomenology. The workings of phenomenology are relevant to seeing the subject of problems and events, both political, military, and economical. The government, as the main subject, seems to have no absolute power in determining decisions; the government offers solutions by considering and involving all stakeholders, especially the Freeport, Papuan People, and related experts. At least the government has sought a middle ground between the nationalization process and the globalization market.

While the strategy of this study with if seen using the theory of Structure Anthony Giddens, is an attempt to make a modernization in rearranging the rights of state and foreign ownership. Choosing an appropriate research strategy for empirical research implementation depends not only on the social theory employed, but also on the subject, the purpose of the research, and the research question being asked—construction of theories of Law, Politics of Economics, Defense and International Relations. In general, to achieve the purpose of this study, the researcher refers to 'procedure' research structures that have been formulated previously. The Giddens concept (1976, 1979, 1984) provides an 'analytical scalpel' in which we dissect the hidden workings of these practices. The overall objective is to offer 'bold interpretation' (Geertz, 1973) on analysis in the first step, to

analyze government policies related to PT Freeport Indonesia in order to implement the 1945 Constitution.

Criticism of the social reality of this model emerged from various circles because it is considered not objective and not reliable as a permanent solution. Nino Viartasiwi (2018) mentions that history is only used as a source of legitimacy and political instrument in sectarian conflict between the Government of Indonesia and nationalist West Papua. Perhaps it is the weak point of the theory of social reality when history is rationally constructed. On the contrary, there are many who worship because the principles and steps taken by social reality make the discourse more full, and the solution to all problems can be overcome, with solutions that are integral.

The Freeport (Indonesia management regulatory strategy in question is government policy in the focus of the Jokowi era. Because the Governance era is still running, it is limited since late 2014 until mid-2018. The coordinator (Leading Sector) that make changes in the Ministry of Energy and Mineral Resources (ESDM).

Understanding the government's purpose in the context of the continental legal system (*rechtsstaat*) can be understood by the government as a state instrument in realizing the state constitution. The Government follows the constitutional order; the Constitution is a law that applies as a command to the government. In contrast to the rule of law adopted by the United States of America as the home country of Multinational companies of PT Freeport Indonesia, putting the common law. Basically, equally, embrace the certainty of law, but different perceptions about the point of departure of norms that are grown-developed. Therefore, the conflict between Freeport and the Government of Indonesia can be seen from the two perceptions of the Law Philosophy. However, Indonesia as the subject of the sovereignty of law business in Indonesian territory, then the equality of the state with the latter company is irrelevant as long as it does not violate the general principles of the International Treaty.

3. Material

3.1 Significance of Implementation of Article 33 of the 1945 Constitution

The main mandate that the state charged to the government, among others, Article 33 of the 1945 Constitution reads; 1) The economy is structured as a joint effort based on the principle of togetherness; 2) Production branches that are important to the state and which affect the livelihood of the people are controlled by the state; 3) Earth, water and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people; 4) the Indonesian economy is organized on the basis of economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and unity of national economy; 5) Further provisions on the implementation of this article shall be governed by law.

One of the implementations of the Constitution after the 1998 Reform is the Law of the Republic of Indonesia Number 4 the Year 2009 on Mineral and Coal Mining (Minerba Law). Articles 2 and 3 are a constitutive basis for the state in managing natural resources. Through this Minerba Law, the Government is instructed to make Government Regulation, Jokowi Government's Era issued Government Regulation No. 1 of 2017 on Fourth Amendment of Government Regulation Number 23 the

Year 2010 on the Implementation of Mineral and Coal Mining Business Activities. This Government Regulation Can be a policy dividing line between Jokowi Government and the previous government; there are several findings:

- a. MNC PT Freeport Indonesia obtains Contract of Work. PT Freeport, by holding the contract legally, means that the state has granted control to a certain territory and within a certain time. The country gets Gold rewards of 1% percent and Copper 3.75%. Whereas the state with the benefits gets to bear the current and future environmental impact. Therefore, the Contract of Work does not reflect the essence of Article 33 of the 1945 Constitution.
- b. By giving the Contract of Work, it results in many contradictions with the law born later, and if it is maintained is the violation of the principle (*Lex Posteriori*). Various laws and regulations related to economic sectors in Indonesia should be based on Article 33 of the 1945 Constitution. However, in practice, various laws and regulations are more accommodative to the pressures of the political and economic interests of the supporters of the market economy. Certain political configurations will bear the character of certain legal products. Later law products in the field of natural resources, among others: Law no. 7 of 2004 on Water Resources Management, Law no. 22 of 2001 on Petroleum and Natural Gas, Law no. 20 The year 2002 on Electricity and so have different character and purpose.
- c. As this article deals with various interests, the strength of the state is tested, the state officials with the various strategies that stakeholders undertake to follow the corporate interests have become anecdotes in the community; "Papa ask for shares". It is as if there are parts for government officials in PT Freeport Indonesia shares. Perhaps the opportunity under the Jokowi government is not tempted by the offer.

The dominant structure is determined by the postnational constellation reflected in the dominance of Freeport dominated by western countries, especially the United States, Britain, and Australia (Rio Tinto Group), supported by the shadow of US military forces 1,250-2,500 marines based in Darwin. On the other side of domestic politics, there is a change of power from SBY to Jokowi. President SBY, who is known closer to the United States, is different from Jokowi, who is closer to China, or at least during Jokowi's government, Indonesia's loan from China is sharply increased. Changes in the domestic political structure affect the Freeport Mining administration management pattern. Although SBY and Jokowi both implement the significance of Article 33 of the 1945 Constitution in the control of natural resources, Jokowi with PP 1 the year 2017 and reinforced by Regulation of Minister of Energy and Mineral Resources No. 5 of 2017 do action different from the previous government. The legal formation model, when it comes to multinational corporations, then the government examines in advance with various points of view, including in the perspective of defense diplomacy. The interests of diplomacy may be at odds with the economic rights of the nation, even in some disruptive view of sovereignty, but the logical and open minds of the national muti companies can be responded, even if gradually

to be directed to the interests of the nation as a whole.

3.2 Global Domination Vs. National in Freeport Policy

The Indonesian Democratic Process has changed the political structure of Indonesia from President Susilo Bambang Yudhoyono close to the West to President Jokowi, who has a policy of "World Maritime Axis" in line with the policy of the Chinese Government. President Jokowi firmly says negotiations with PT Freeport can continue before the extension of the PT-FI contract at the Grasberg mine runs out in 2019 in the conditions are; 1) use of local goods and services (local content); 2) share divestment; 3) increasing royalties and; 4) the obligation to build a smelter and processing factory. The "Papa Ask for 11%" issue does not make the President quit the negotiations because, for the President, that judgment is related to the problem of the delinquency. Because this is the mandate of Law No. 4 of 2009 on Mineral and Coal Mining and Government Regulation No. 74 of 2014, negotiations related to the sustainability of PT FI's mining in Papua can only be done two years before the contract expires (2019).

The use of domestic products is a policy adopted by developing countries in general. Thus it is expected that there will be a significant increase in human resources. In addition, local companies must work hard to improve service and product quality, so that transfer of technology runs. The issue raised by PT Freeport Indonesia is equality in every company, as claimed in Article III, 4 GATT or Paragraph I A Annex TRIMs, so that PT Freeport Indonesia originally intended to submit Indonesia to the International Arbitration Board. The acquisition of PT Freeport Indonesia 51% is made in accordance with the principles of Good Corporate Governance (GCG). For the government to negotiate by involving the Regional Government of Papua, which will have 10% and PT Indonesia Asahan Aluminium (Inalum) manage 41%.

Freeport-McMoRan's (NYSE: FCX) policy five years ago decided to diversify into oil and gas in a move that he said would give big dividends on the road. Unfortunately, the decision did not go as expected, as commodity prices plummeted around the world. The downturn forced the company to sell some assets in recent years to stay afloat, including dismantling most of its energy assets at a lower purchase price. While the company has improved the financial situation dramatically, there is still work to be done. Overall, Freeport-McMoRan remains in transition. Despite releasing most of its oil and gas business, it now has to sell a majority stake in copper and gold crown mines in Indonesia as part of a new framework agreement to continue operating in the country. Thus, the direction of company policy will likely look different within the next five years [15].

The financial condition of Freeport-McMoRan's profit in 2016 amounted to the US \$ 3.29 billion or around Rp 44 trillion. That number jumped 24 percent compared to 2015 amounted to the US \$ 2.65 billion or around Rp 35.3 trillion. The total value of Freeport Indonesia's Grasberg mine assets is the US \$ 10.95 billion or equivalent to Rp 146 trillion. That number jumped 17 percent compared to 2015, which amounted to the US \$ 9.35 billion or equivalent to Rp 124 trillion. The deal to sell his shares will do two things to Freeport-McMoRan in the future. First, the company should receive significant cash finance upon completion of the sale, which is likely to be used by the company to strengthen its

balance sheet. It is said that Freeport's copper output and cash flow in the future will decline as it will only receive 49% of the entity's production compared to the previous 90%. Once the company completes this transition, the company will become a leaner copper producer, with what should be the best balance sheet. It gives the company options for excess cash flow, including investing to expand production at other mines to offset lost output at Grasberg, acquisition, stock repurchase, and return dividends.

Freeport's new outlook is seen after the price of gold along with North Korea, this Korean Nuclear Threat that has raised the price of gold and copper of its own advantages for Freeport. However, the controversy about Rio Tinto's corporate setbacks needs to be considered; Copper prices are at six-year lows, and oil is at ten-year lows. Gold has been winding lower than its highest four years ago. Even the price of byproducts is at multi-year lows. For the past two years, the miner has withdrawn all stops to fight for survival, and the price paid off. This agreement reached, hopefully, will end the painful story with Grasberg in the near future. The world's largest public copper company seems ready to sharpen its focus in the coming years.

Freeport McMoran (FCX) rally stock price in September 2017 has a significant volume gap and jump (blue arrow). The arrival of the United States Vice President and former President Barack Obama to Indonesia as a reaction of PT Freeport to the issuance of Government Regulation No. 1 of 2017 made the Government of Indonesia change the policy of export ban to export permit although, in relatively limited time, it does not affect Freeport stock price significantly. International Arbitration is a strategy to weaken the Government's desire to keep fighting for the rights of the state that must be obeyed by PT Freeport. The movement of NGOs to fight for human rights in the international media undermines the authority of the Government, thereby reducing international public confidence in government decisions.

4. Results: Legality and Democracy; Otsus Papua and Local Employment

The long history of Papua's incorporation into the Unitary State of the Republic of Indonesia is interesting to see from various perspectives. The condition of Papuan people who have a cultural background is relatively different from other parts of Indonesia. Looking at that weak point, many researchers and politicians analyze the differences but sometimes out of the context of unity within a country. Whereas Papua part of Indonesia International recognition based on UN Resolution No. 2504 dated 19 November 1969 through voting with 84 countries agreed, 30 absent, and no one refused. Because the UN conducts its own polls of Papuans and recognizes the token system that many people talk about lately, the United Nations means recognizing the unique democratic pattern of determining the public will of the community itself. Even more deeply in one Papuan Putra named Poreu Ohee participated in Oath's Youth 28 October 1928 [16]. Indeed, in the history of the pull of Dutch colonial policy in releasing the Dutch East Indies into the Unitary State of the Republic of Indonesia became a problem later. The implications of the Colonial attitude influenced the strategy of settling Masapah Papua by the warrior figures in the early days of Indonesian independence. Indonesia's relations with the Dutch affected Indonesia's internal conditions.

Soekarno's leadership to Soeharto during the transitional period has provided a milestone for Indonesia in Papua, namely the entry of Freeport-McMoRan Copper & Gold Inc. in Erstberg on the basis of Law Number 11 the Year 1967 Basic Provisions of Mining. On that basis, the Government of Indonesia with Freeport entered into Contract of Work (Kotrak Karya or KK). Through the review of some experts, after the reforms saw the imbalance of revenue sharing, there was even a tendency of manipulation in contracting and damaging the environment so that it needed to be converted into a Special Mining Business License/Izin Usaha Pertambangan Khusus (IUPK). The legal basis for the change of KK to IUPK has been made since the administration of SBY, but its implementation in accordance with the term of the Contract of Work is 2021, so the period of contract changes before 2021. Negotiations started in accordance with the end of the Contract of Work 2021 should after 2019, in this case there formally there is a mistake if the current Government has decided that the contract has been extended until 2031, *let alone* 2041. Administrative issues lead to the issue of legality. Changes in Government's Structure of Governance, there is a Government Legality Crisis that requires a more realistic legality of tenure. State closer to the people of Papua and mastery of resources getting bigger. If using Charles Baubion's framework in understanding the way government acts, Jokowi's government prefers the

novelty model compared to the previous administration, which is more traditional in many ways by command. While the era of Jokowi more emphasis on consultation and more flexible. The political contradiction of capitalism, "without reference to a particular historical form, the expression of the political contradictions of capitalism in its present financial phase Jürgen Habermas (Legitimacy Crisis 1973) The legitimacy crisis as a form of political contradiction in the state-run capitalist society phase. It must be understood by some that this pre requisition of mastery is not within the framework of nationalization nor is it in the framework of purely open business, but management in control which benefits the people with the country optimally without harming or feeling disadvantaged in the sense of violating international business law. Therefore, the first issue is the issue of the legality of terminating the Contract. The work becomes a Mining Business License (IUPK). Company, industry, and private company takeover with or without compensation. General reasons for nationalization include (1) prevention of unfair exploitation and massive layoffs, (2) revenue sharing fair of national resources, and (3) maintaining the means to generate wealth in public scrutiny. From the above description seen, there are four critical points that determine the change of control structure of PT Freeport Indonesia compared between Government Jokowi with the previous governments, especially the SBY Government. In summary, can be described in the table;

Table 1

Critical Points	SBY	Jokowi
1. Implementation Signification Article 33 UUD 1945	People's Sovereignty in the hands of the Government	
	Contract of Work in accordance with the Mining Law since 1967	Special Mining Business License (IUPK) in accordance with the 2009 Minerba Law
2. Global domination vs national in Freeport policy	Mastery of Share 9, 26% Dominant Global Market (Rio Tinto 40%)	Mastery of Share 51% held by BUMN and BUMD Papua
3. Diplomacy and Military	Domestic OPM Movement Increases, OPM Diplomacy Declines	OPM movement in the country decreased but the Regional Movement of the State of the Fasific Increased
	The number of US Marine 1,250 personnel in Darwin	The addition of 2,500 US Marine personnel in Darwin
4. Legality and Democracy	Special Autonomy as the foundation for Papua Development	Empowerment of the People in accordance with the environment of the Papuan Community

Table: Critical Point Structure of Government Policy SBY Vs. Jokowi.

5. Discussion

The suitability between various natural resource management laws with the Constitution of Article 33 of the 1945 Constitution is a condition of the validity of a Law. If it is not appropriate, in the legal system of Indonesia, then the public has the legal standing to conduct a judicial review to the Constitutional Court (MK). When it is detrimental to the citizens' constitutional rights, the articles are null and void. Based on the provisions of Article 24 of the 1945 Constitution, the Constitutional Court is one of the judicial authorities in addition to the Supreme Court and the subordinate courts thereunder. As a judicial authority, the Constitutional Court has the status, duties, functions, and authorities as determined by article 24 paragraph 2, article 24C, and further stipulated in Law No. 24 of 2003 on the Constitutional Court.

Experience teaches that more open corporate governance has the potential to cause administrative crises, leadership crises, political crises, and legality crises. However, through

the process of democracy has changed the political structure of SBY's administration to Jokowi. Global market attitudes related to changes in the legal structure of administrative law issued by the government when passing Law No. 4 of 2009 on Freeport's Minerals and Coal Mining shares plummeted to the lowest point, as these investors perceived the difficulties of the company, but when the law was passed and went on normally the shares of the company rise again and fall back when the government issues Government Regulation Number 1 of 2017 The Fourth Amendment to Government Regulation Number 23 the Year 2010 on the Implementation of Mineral and Coal Mining Business Activities, among others Contract of Work holders obligate to change into Special Mining Business License IUPK). Although the cause of falling stock prices is not only a matter of regulation but government policy, corporate action is crucial to the company's projection.

Habermas's thought has no naive expectation of the difficulty of popular shifting inclusive sentiments, belongings, and common interests. Nevertheless, the difficulty, he asserts, is itself an empirical material and not one of the principles, and thus will have a process of testing

in the political arena in a postnational constellation. No power or leadership can be monopolized and stuck in one hand. The ontology of universal truth demands abstract constitutional principles that can respond to freedom for all under the same rights^[17], the constitutional democratic principles of the nation-proclaiming themselves sober, but that is a measure of the existence and value of the state.

Postnationalism refers to criticism of the concept of the nation as the principle of organizing the center of modern political identity and government. According to post-nationalism, the nation's category is no longer sufficient to describe the basis of political identity or the government of the country alone. In a post-national context, it becomes necessary to move beyond the notion that a homogeneous national identity is a natural integrating factor of modern political society. Furthermore, post-nationalism questions the idea that the sovereignty of a nation-state is indispensable to the order of international affairs and the functioning of the domestic government of law.

Postnationalism or non-nationalism is a process or trend in which nation-state and national identity are no less important as a supranational entity in the global arena. Although post-nationalism is not entirely regarded as an antonym of nationalism, two related terms and assumptions are antitheses, as post-nationalism is an internationalistic process. There are several factors that contribute to aspects of post-nationalism, including economic, political, and cultural elements. To be understandable if the Government of Indonesia is dealing with the interests of PT Freeport Indonesia, who want to master as much as possible assets, ownership, and leadership, then America and allies must be understood behind it. Rio Tinto Group is a majority shareholder, a joint venture involving Americans, British, and Australians. In fact, negotiations within the international sphere are crucial to solving the problem; the fundamental differences in foreign and domestic policies are increasingly blurred^[18].

For that, it raises the question of whether Britain is protecting Benny Wenda, a leader of the Free Papua Organization (OPM), whether Australia provides facilities for US military bases closest to Papua. If so, then the mandate of the 1945 Constitution, embodied in the Minerba Law and Regulation No. 1 of 2017, became a question mark in its application. However, there will be a crisis of legitimacy as a form of political contradiction in the phase of state-run capitalist society^[19]. From the perspective of Indonesian law (*rechstaat*) can be called legal certainty, but from the perspective of the role of law or pure law (*Reine Rechtslehre*) raises many questions^[20]. The theory of legal reason^[21]. That Nancy Fraser called it a crisis of complexity of nationalistic capitalization, from political crisis to economic crisis and crisis of legality, from administrating to the crisis of legality^[22].

6. Conclusion

The Giddens Structuring Theory (1984) provides an objective framework for understanding the acquisition process of Multi-National Corporate management (MNC) PT. Freeport Indonesia. While the postnational constellation theory of Habermas gives the understanding of changes in the form of engagement between the Government of Indonesia and PT Freeport Indonesia, it means that the classic seems to overlap between the wishes of the government at some time with the negotiation of global

market conditions with foreign culture or policy. For that significance is not only based on the rule of law alone but for the sake of *rechtsstaat* so that government policy supports the legal certainty of Multi-National Corporate (MNC) itself. The Government's effort to manage the administration of gold mining in Grasberg Papua took a radical change in the era of Jokowi's government. Proven changes in internal political structure determine the structure of control of multinational corporations, especially in this research on PT Freeport Indonesia. The result of a change in mastery structure leads to a crisis of legality but there are four modified state modifications dimensions; domestic political changes, global business, diplomacy and military and soft power strategies of foreign countries so that the Indonesian Government's policy on Freeport Indonesia is seen in maintaining the sovereignty determined by the government's moral ability and dominance of Multinational Enterprises but inversely related to the military and soft power strategies of foreign countries. If the Government is strong and the company has a commitment, then foreign military and soft-power diplomacy weaken. Legality crisis occurs when the government ignores the principle of the rule of power, but if the regulation is based on the rule of law, then the government administration strengthens to prioritize the interests of the country, then the multinational corporation weakens. As a result, Military Diplomacy (TNI) should take into account the OPM Strategy, US Maritime & Regional Melanesian Spearhead Group (MSG). The Democracy Movement in the enforcement of the Special Autonomy of Papua with the main of local employment can be realized properly. Postnational contexts and human rights movements have implications for law, including administrative crisis, economic crisis, leadership crisis, and the crisis of legality. The postnational constellation ignores the principle of sovereignty and state law, which implies a multinational crisis of legality when negotiating within the framework of soft power. Postnational contemplation can reduce the favorable laws prevailing in a country.

Expression of Statement

There is no potential conflict of interest reported by the author.

Notes about contributor

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