

**THE NATIONALIZATION OF PT. FREEPORT INDONESIA IN THE  
PERSPECTIVE OF THE ACT CAPITAL INVESTMENT AND CONCEPT  
OF OWNERSHIP OF IBN TAIMIYAH**

Thesis

By:  
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**NIM 12220154**



**ISLAMIC BUSINESS LAW DEPARTMENT  
SHARIA FACULTY  
MAULANA MALIK IBRAHIM  
STATE ISLAMIC UNIVERSITY MALANG  
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2016**

## STATEMENT OF THE AUTENTICITY

In the name of Allah (swt),

With consciousness and responsibility toward the development of science, the author declares that the thesis entitled:

**THE NATIONALIZATION OF PT. FREEPORT INDONESIA IN THE  
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OF OWNERSHIP OF IBN TAIMIYAH**

is truly the author's original work. It does not incorporate any material previously written or published by another person. If it is proven it be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action be deemed legally invalid.

Malang, 10<sup>th</sup> of June 2016

Author



Febrian Hilmi Firdaus  
NIM 12220154

## MOTTO

عن أنس بن مالك رضي الله عنه قال: قال رسول الله صَلَّى الله عليه وسلم: يَسِّرُوا وَلَا تُعَسِّرُوا وَبَشِّرُوا وَلَا تُنْفِرُوا . متفق عليه

Dari Anas bin Malik RA berkata, bahwa Rasulullah SAW bersabda: ‘Permudahlah, dan Jangan Kau Persulit. Dan Beri Kabar Gembiralah dan Jangan Kau Beri Kabar Susah’

## APPROVAL SHEET

After examining and verifying the thesis of Febrian Hilmi Firdaus, NIM 12220154, Islamic Business Law, Department of the Sharia Faculty of Maulana Malik Ibrahim State Islamic University of Malang entitled:

**THE NATIONALIZATION OF PT. FREEPORT INDONESIA IN THE  
PERSPECTIVE OF THE ACT CAPITAL INVESTMENT AND CONCEPT  
OF OWNERSHIP OF IBN TAIMIYAH**

The supervisor states that this thesis has met the scientific requirements to be proposed and to be tested by the Thesis Board of Examiners.

Malang, 10<sup>th</sup> of June 2016

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**THE NATIONALIZATION OF PT. FREEPORT INDONESIA IN THE  
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OF OWNERSHIP OF IBN TAIMIYAH**

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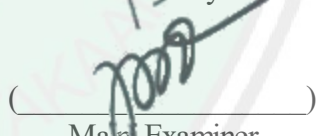
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## DEDICATION

My work of thesis this is my last examination to get my degree level of Sharia Law in Maulana Malik Ibrahim State Islamic University Malang, under the title:

### THE NATIONALIZATION OF PT. FREEPORT INDONESIA IN THE PERSPECTIVE OF THE ACT CAPITAL INVESTMENT AND CONCEPT OF OWNERSHIP OF IBN TAIMIYAH

Dedicated to:

*First.*

For my parents, Imam Sholik and Aini Suyukha for everything which has been giving for me and for much supporting to get my dreams comes true little by little.

*Second.*

For my young brother, Ahmad Nanshokhul Balaya for his hope for my quick return to home.

*Thrid.*

Everyone supporting me in my life and in my straight

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*Assalamu'alaikum wa Rahmatullah wa Barakatuh*

All the praise due to Allah, the Cherisher and Sustainer of all the worlds. There is neither might nor power but with Allah the Great, the Exalted. With only His Grace and Guidance, this thesis entitled “Nationalization of Freeport Indonesia Company in the Act of Capital Investment Perspective and Concept of Ownership of Ibn Taimiyah” could be completed, and also with His benevolence and love, peace and tranquility of the soul. Peace be upon the Prophet Muhammad (saw) who had brought us from darkness into the lightness, in the life. May we be together with those who believe and receive intercession from Him in the day of Judgment. Amin

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8. Staff of the Sharia Faculty of Maulana Malik Ibrahim State Islamic University of Malang. The author express gratitude for all their support and co-operation during the course of completing this thesis
9. My parents, Imam Sholik and Ainis Suyukha who has been giving me support of mental, spiritual, financial also. So that the author can be finishing the study on time and can be realizing this last task of thesis;
10. A lot of parties who has helping author directly or indirectly in the process of finish this thesis.

Hopefully the Almighty of Allah always give us mercies and blessing.  
Amin.

The author is aware fully that in this thesis is not perfect. Although author has been doing the best to arrange it. So that author suppose the addition and critical to support and become motivation for author to make the other works to be better. Finally the author rise the hand and pray that this thesis will be benefit for people

*Wassalamu'alaikum wa Rahmatullahi wa Barakatuh*

Malang, 10<sup>th</sup> of June 2016  
Author,

Febrian Hilmi Firdaus  
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## TRANSLITERATION GUIDE

### A. General

The transliteration guide which is used by the Shari'a Faculty of State Islamic University, Maulana Malik Ibrahim Malang, is the EYD plus. This usage is based on the Consensus Directive (SKB) from the Religious' Ministry, Education Ministry and Culture Ministry of the Republic of Indonesia, dated 22 January 1998, No. 158/1987 and 0543. b/U/1987, which is also found in the Arabic Transliteration Guide book, INIS Fellow 1992.

### B. Consonants

ا = a

ض = dl

ب = b

ط = th

ت = t

ظ = dh

ث = ts

ع = ' (comma facing upwards)

ج = j

غ = gh

ح = h )

ف = f

خ = kh

ق = q

د = d

ك = k

ذ = dz

ل = l

ر = r

م = m

ز = z

ن = n

س = s

و = w

ش = sy

ه = h

ص = sh

ي = y

The hamzah ( ء ) which is usually represented by and *alif*, when it is at the beginning of a word, henceforth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of a word, it is represented by a coma facing upwards ( ' ), as oppose to a comma ( , ) which replaces the “ع”.

### C. Long Vowel and Diftong

In every written Arabic text in the *latin* form, its vowels *fathahis* written with “a”, *kasrah* with “i”, and *dlommah* with “u”, whereas elongated vowels are written as such:

Elongated (a) vowel = â example قال becomes *qâla*

Elongated (i) vowel = î example قيل becomes *qîla*

Elongated (u) vowel = û example دون becomes *dûna*

Specially for the pronouncing of *ya' nisbat* (in association), it cannot represented by “i”, unless it is written as “iy” so as to represent the *ya' nisbat* at

the end. The same goes for sound of a diftong, *wawu* and *ya'* after fathah it is written as "*aw*" da "*ay*". Study the following examples:

Diftong (aw) = و example قول becomes *qawlun*

Diftong (ay) = ي example خير becomes *khayrun*

#### D. Ta' Marbûthah (ة)

*Ta' marbûthah* is transliterated as "t" if it is in the middle of word, but if it is *Ta' marbûthah* at the end, then it is transliterated as "h". For example:

الرسالة للمدرسة will be *al-risalat li al-mudarrisah*, or if it happens to be in the middle of a phrase which constitutes *mudlaf* and *mudlafilayh*, then the transliteration will be using "t" which is enjoined with the previous word, for example في رحمة الله becomes *fi rahmatillah*.

#### E. Definite Article

Arabic has only one article, "al" (ال) and it written in small letters, unless at the beginning of a word, while "al" in the phrase of *lafadh jalalah* (speaking of God) which is in the middle of a sentence and supported by and (*idhafah*), then it is not written. Study the following:

1. Al-Imâm al-Bukhâriy said ...
2. Al-Bukhâriy explains, in the prologue of his book ...
3. *Masyâ Allâhkânawamâ lam yasya' lam yakun.*
4. *Billâhi 'azzawajalla.*

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## ABSTRAK

Febrian Hilmi Firdaus, 12220154, *Nasionalisasi PT. Freeport Indonesia Dalam Tinjauan Undang Undang Penanaman Modal dan Konsep Kepemilikan Menurut Ibn Taimiyah*. Skripsi, Jurusan Hukum Bisnis Syariah, Fakultas Syariah, Universitas Islam Negeri (UIN) Maulana Malik Ibrahim Malang.  
Pembimbing: Iffaty Nasyiah, S.H.,M.H.

**Kata Kunci:** Nasionalisasi, Penanaman Modal, *Welfare State*, Kepemilikan,

Kekayaan alam negara Indonesia sangatlah banyak jumlahnya. Namun yang dimiliki bangsa Indonesia hanyalah sedikit, selebihnya dikuasai oleh warga negara asing seperti PT. Freeport Indonesia (PTFI). Kekayaan alam yang seharusnya diolah untuk sebesar-besarnya kemakmuran rakyat melalui konsep pengolahan ekonomi yang berdasarkan kekeluargaan, ternyata tidak begitu dijalankan dengan maksimal. Indonesia sebenarnya menganut konsep negara kesejahteraan (*Welfare State*) yang menganggap semua pelayanan negara adalah untuk kesejahteraan rakyatnya, dan sejahteranya suatu negara dapat dilihat dari cara negara itu melayani rakyatnya dalam beberapa aspek, salah satunya ekonomi. Namun peran pemerintah dalam melaksanakan konsep itu masih patut dipertanyakan. Salah satu sebabnya karena ketidakmampuan menasionalisasi PTFI ini padahal sebenarnya bisa. Dalam tinjauan hukum Islam nasionalisasi juga dapat dibenarkan menurut konsep kepemilikan Ibn Taimiyah.

Dalam penelitian ini ada tiga rumusan masalah yaitu: 1) Apa yang menjadi landasan yuridis-sosiologis pemerintah Indonesia untuk melakukan nasionalisasi PT. Freeport Indonesia? 2) Bagaimana peran pemerintah Indonesia untuk melakukan nasionalisasi PT. Freeport Indonesia dalam konsep *welfare state* (negara kesejahteraan)? 3) Bagaimana tinjauan hukum Islam terhadap kebijakan nasionalisasi PT. Freeport Indonesia menurut Ibn Taimiyah? Penelitian ini jenisnya yaitu penelitian hukum normatif dengan menggunakan pendekatan konseptual dan pendekatan undang-undang. Dalam penelitian ini sumber hukumnya hanya menggunakan sumber hukum sekunder, dimana terdiri dari bahan hukum primer, sekunder dan tersier.

Hasil penelitian ini menunjukkan bahwa Indonesia memiliki beberapa dasar yuridis maupun sosiologis dalam menasionalisasi PTFI, dan dalam perannya untuk mencapai *welfare state*, pemerintah masih belum maksimal karena kebijakannya yang kurang efektif. Sedangkan menurut konsep kepemilikan Ibn Taimiyah maka PTFI seharusnya menjadi kepemilikan umum dengan pengelolaan berada di pemerintah atau negara.

## ABSTRACT

Febrian Hilmi Firdaus, 12220154, *Nationalization of Freeport Indonesia Company in the Act of Capital Investment Perspective and Concept of Ownership of Ibn Taimiyah*. Thesis, Islamic Business Law Department, Sharia Faculty, Maulana Malik Ibrahim State Islamic University of Malang.

Supervisor: Iffaty Nasyiah, S.H.,M.H.

**Keywords:** Nationalization, Capital Investment, Welfare State, Ownership

The natural wealth of the Indonesia state is very much in the number. But which owned by Indonesia nation is just a little, the others mastered by foreign people such as Freeport Indonesia Company (PTFI). Natural wealth which should be managed for the most of people's prosperity through economic managing based on the family concept; instead it is not run maximally. Indonesia actually embraced the welfare state concept that considers all state services for prosperity of its people, and the welfare state could be seen from the way of country to serve people in some aspects, one of them is economic. Nevertheless the Government's role in implementing that concept seems still questionable. Because they are inability to nationalize PTFI however they can actually. In Islamic law perspective nationalization can be allowed base on owning concept of Ibn Taimiyah.

In this research there are three statement of problems: 1) What are the legal standing and social standing for Indonesia government to nationalize Freeport Indonesia Company? 2) How is the role of Indonesia government to nationalize Freeport Indonesia Company in effort toward welfare state? 3) How is the Islam Perspective concerning of nationalization policy of Freeport Indonesia Company according to Ibn Taimiyah? This kind of research using normative legal research with conceptual approach and statute approach. In the source of the law using secondary sources of law, which consists of primary legal materials, secondary, and tertiary.

The results of this research showed that Indonesia has a lot of legal standings to nationalize PTFI, and the government's role to achieve the welfare state, they have not been fully signed on the policy ineffective. While according to Ibn Taimiyyah that PTFI should be owned by people or become social property and managed by the state of government.

## ملخص البحث

فيبريان حلمي فردوس، 12220154، تأمين شركة فريبورت اندونيسيا (PTFI) عند منظور قانون استثمار رأس المال ومفهوم الملكية لابن تيمية. البحث الجامعي. البحث الجامعي، قسم الحكم الإقتصادي الإسلامي، كلية الشريعة، جامعة مولانا مالك إبراهيم مالانق، المشريف: عفتي ناشئة الماجستير. **كلمات البحث:** التأمين، استثمار رأس المال والرفاه الدولية، ملكية

الثروات الطبيعية للدولة الاندونيسية كثير في الرقم، لكن تملكها الدولة الاندونيسية قليل أما سائرهما قد تملكها شركة أجنبية مثل شركة فريبورت اندونيسيا (PTFI). كانت الثروات الطبيعية لأكثر ازدهار الناس عند مفهوم الإدارة اقتصادية والأسرتية لا يتم إقامتها إلى حد الأعلى. كان اندونيسيا قد تبني على مفهوم الرفاه الدلية في الواقع حيث تعتبر أن جميع الخدمات من الدولة إنما هو لرفاهية شعبها، كانت رفاهية الشعب يمكن نظرها إلى كيفية وطريقة تلك الدولة لخدمة شعبها في بعض المجالات منها المجال الإقتصادي. بينما دور الحكومة في تنفيذ هذا المفهوم لا يزال في موضع الشك، مثل عدم القدرة على تأمين PTFI مع أنها ممكن في الواقع. وأن مفهوم التأمين صح في الإسلامي كما قرر في مفهوم الملكية لابن تيمية.

أن مشكلة البحث في هذا البحث هي: (1) ما هي الصفة المقامات القانونية ولإجتماعية للحكومة الاندونيسية لتأمين شركة فريبورت اندونيسيا؟ (2) كيف دور الحكومة الاندونيسية لتأمين شركة فريبورت اندونيسيا بالنسبة إلى الرفاه الدولية؟ (3) كيف المنظور الإسلامي بشأن سياسة تأمين شركة فريبورت اندونيسيا وفقا لمفهوم ابن تيمية؟ كان نوع المستخدم في هذا البحث هو البحث القانوني المعياري مع النهج النظري والقانوني. وأما المصادر القانونية المستخدمة هي المصادر القانونية الثانوية التي يتكون من المواد القانونية الأولية والثانوية والثالثية.

وأظهرت نتائج هذا البحث أن الحكومة اندونيسيا لديها كثير من المقامات القانونية لتأمين PTFI ودورها في تحقيق الرفاه الدولية لم تكن في شكل كامل لأن السياسة غير فعالة. وبينما عند مفهوم الملكية لابن تيمية فيجب لPTFI أن تكون مملوكة من قبل الإجتماعية العامة وأما تداره من قبل الحكومة أو الدولة.





## CHAPTER 1

### INTRODUCTION

#### A. Background of Research

Foreign capital investment is an activity to invest capital in the region of Indonesia Republic by foreign investor as their effort itself either using foreign capital completely or joint venture with domestic investor.<sup>1</sup> Base on the definition clearly enough that foreign capital investment only investing capital as well as financial which can be allocated by foreign people. In addition investing itself is their endeavor. However it opposites with the truth where they are not only investing capital but also building foreign company in the region of Indonesia

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<sup>1</sup>Article 1 Ordinal Number 1 The Act Number 25 of 2007 About Capital Investment.

Republic. In the one way Indonesia government is powerless to set it up. In otherwise the government must fulfill those companies want to. PT. Freeport Indonesia (PTFI) is one of some foreign company where they have been establishing company in Timika Papua. The existence of Indonesia variable at the company name only sign that the company exist in Indonesia, it is not mean that the company belongs to Indonesia. PTFI is affiliate of Freeport-McMoran Company, United States of America (USA).

The Expectation of Indonesia people that the mining company will give prosperity and welfare can not come true in their real life although only in the local people around mining place. It happens because since the first Kontrak Karya (letter of agreement) undertaken, Indonesia Republic only receives very little royalty. At copper segment only 1.5-3.5% whereas both gold and silver segments only 1%. The value of royalty more little than other countries where it be able to reach 6% for copper and 5% for gold and silver.<sup>2</sup> Indonesia Corruption Watch (ICW) reports that PTFI still arrears to pay completely the royalty to Indonesia Republic reach \$USA 176.884 billion dollars in the period 2002-2010.<sup>3</sup>

PTFI breached Indonesia constitution at UUD 1945 Article 33 Paragraph (3) that land and water and nature wealth which contained inside is mastered by the state and used as much as for prosperity of people. According to Jimly Asshiddiqie, the interpretation of “mastered by the state” itself is “belong to the state” it is appropriate mean and point want to when these constitution written

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<sup>2</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Perusahaan Pertambangan di Indonesia*, (Malang: Setera Press, 2013), p. 7; Siti Maimunah, *Negara Tambang dan Masyarakat Perspektif HAM dalam Pengelolaan Pertambangan yang Berbasis Lingkungan & Kearifan Lokal*, (Malang: Intrans Publishing, 2012), p. 15.

<sup>3</sup>Siti Maimunah, *Negara Tambang dan Masyarakat*, p. 15.

down at the first time in 1945.<sup>4</sup> In the other hand mastered by the state means that the state given researchery to manage, control, oversee and take care a lot of management of minerals business for as much as prosperity of people. Furthermore mastery of the state is organized by government.<sup>5</sup> Thus it is properly then mastery and controlling of mining company be able to do by the generation of the own nation.

Base on the constitution government actually has power to force PTFI stop exploring with the regulation has regulated before. In this case PTFI must obey the government and then messege of Indonesia constitution saying also that Indonesia people has been obligating the state manages nature wealth to achieve prosperity of people, so it is Indonesia people's right to get the prosperity and welfare.<sup>6</sup> However it is never comes true.

Government's endeavor is only half tries sometime, it can be looked like Divestation gradually where it can not gives guarantee because both process and time needs long time even it be able to make PTFI extend their contract and then PTFI will dredge Indonesia'a nature wealth again in Timika.<sup>7</sup> The Renegotiation hoped to be a way that PTFI stop their exploration is blocked also because renegotiation is not discussing about nationalization process in the truth. But

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<sup>4</sup>Jimly Asshiddiqie, *Komentar atas Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, (Jakarta: Sinar Grafika, 2009), p. 142; Prof. Dr. Jimly Asshiddiqie, S.H comparing Article 33 Paragraph (3) these UUD 1945 with Article 143 Paragraph (2) Taiwan Constitution is belonging some same redactions from their constitution. The constitution said that *mineral ores embedded in the land and natural resources which can be economically utilized for public benefit shall belong to the State, even if ownership of the land may have been acquired by private individuals*. The term has been using is "*shall belong to the State.*"

<sup>5</sup>Salim HS, *Hukum Pertambangan di Indonesia*, (Jakarta: PT. Raja Grafindo Persada), p. 1.

<sup>6</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola*, p. 2.

<sup>7</sup>Muhammad Yazid, "Freeport Minta Kontrak Diperpanjang hingga 2031", <http://www.kompas.com/2014/12/29/freeport-minta-kontrak-diperpanjang-hingga-2031/>, accessed on April 5<sup>th</sup> 2015.

government speaks about field of exploration, contract extension, royalty acceptance, obligation of management and purification, obligation of devastation, property and service domestic utilizing.<sup>8</sup>

The next violation by PTFI is breach Article 169 Act Number 4 of 2009 About Minerals and Coals that contract will be kept respected till the end of the time as contract. However PTFI ask to re-contract their agreement again till 2021. Eventhough base on the Momerandum of Understanding (MoU) the contract will be exaushed in 2031.<sup>9</sup> Other violation is broken by PTFI that they never show transparency about the real profit gotten to Indonesia people.

Rights of the land of indigenous robbed also because the field of mining exploration entered to land of Amungme tribes, Timika, Papua. For Amungme itself the land same like their mother. Dugu's as holy place for their mother in summit of Etzberg destroyed.<sup>10</sup> It means that PTFI has been breached Article 15 letters (d) Act Number 25 of 2007 about Capital Investment. PTFI in status as foreign investors must respect some manners and cultures of local citizens not besides of. This violation actually has submitted to the court nevertheless these approvals refused and failed.<sup>11</sup>

This state is using welfare state become the ideology and one of state aim so that government ought to make Indonesia people and local citizens especially gets protaction as much as possible. In the welfare state concept, the state not only

<sup>8</sup>Siti Maimunah, *Negara Tambang dan Masyarakat*, p. 15.

<sup>9</sup>Muhammad Yazid, "Freeport Minta Kontrak Diperpanjang hingga 2031", <http://www.kompas.com/2014/12/29/freeport-minta-kontrak-diperpanjang-hingga-2031/>, accessed on April 5<sup>th</sup> 2015.

<sup>10</sup>Siti Maimunah, *Negara Tambang dan Masyarakat*, p. 12.

<sup>11</sup>Bonasir, "Amungme Tuntut Freeport Lagi", <http://www.bbc.com/indonesia/berita-indonesia/2010/03/100308-freeportamungme.shtml>, accessed on Januari 7<sup>th</sup> 2015.

as a power tool but also has a role to manage and provide good service for people prosperity.<sup>12</sup> It can be said that the main duty of the state is giving good service and good serve to people.<sup>13</sup> This concept is very clear that the wisdom culture of Amungme tribes is inevitability and must be kept and respected also it can not change with anything or moved to other concept which not using welfare state as a base.

Some reasons and bases appear to make PTFI belongs to Indonesia state so that government should be brave to nationalize PTFI base on the constitution at UUD 1945 Article 33 Paragraph 3 itself and realize main message contained of. It is more than enough to take over and stop PTFI contract. Besides some violations above the acceptance of royalties and taxes are not equal with Indonesia wealth has been exploring in many years. In the fact actually Indonesia has legal standing to realize this dream (nationalization) because Indonesia government ever nationalizes some foreign companies in decades before. This is indicate that Indonesia government can be makes the dream comes true. Consequently the duty of government to implement of constitution need to asked again.

Ownership concept of Ibn Taimiyah (Scholar of Islamic Economic) that Allah is absolute owner everything in the universe. He is creator of the world and a lot of creation including humans. As his said in the quran Surah Taha (20): 6:

لَهُ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ وَمَا بَيْنَهُمَا وَمَاتَحْتَ الثَّرَى

<sup>12</sup>Siti Maimunah, *Negara Tambang dan Masyarakat*, p. vi.

<sup>13</sup>Titik Triwulan Tutik, *Pengantar Hukum Tata Usaha Negara Indonesia*, (Jakarta: Prestasi Pustaka Publisher, 2010), p. 155.

*“Is only belonging of Allah a lot of contained in the sky and in the world, a lot of contained between both of them and a lot of contained under the ground “*

Owning of humans is given by Allah only a granting to human interests. Whereas according to Ibn Taimiyah the ownership devides to private ownership, social ownership, and state ownership. It means that clearly appropriate when the mining of gold, silver and copper are belonging of Indonesia people generally by mastery of Indonesia government for prosperity people. Mining in Timika is too much then having by person, thus can be considered that the wealth of mining belong to people. In line opinion Islam encourages to support government do nationalize from private ownership to social ownership by mastery of government when it will make more usefull for many people.<sup>14</sup>

Base on the consideration that it is a necessary to do legal research about the legal standing to nationalize foreign company in the region of Indonesia Republic to implement fully and consistently the substance of UUD 1945 and for prosperity people also. Surely that way is not break the rules and keep respect the procedures. Therefore researcher try to analyze this legal research under the title **“The Nationalization of PT. Freeport Indonesia in The Perspective of The Act Capital Investment and Concept of Ownership of Ibn Taimiyah”**. Researcher hopes that government can realize the ownership of a lot of Indonesia assets soon which is conquered by foreigner. So that way Indonesia people has dignity and stands alone. Hopefully also that government and people be able to takes a peace

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<sup>14</sup>Fathurrahman Djamil, *Hukum Ekonomi Islam Sejarah, Teori, dan Konsep*, (Jakarta: Sinar Grafika, 2013), p. 215; Euis Amalia, *Sejarah Pemikiran Ekonomi Islam dari Masa Klasik Hingga Kontemporer*, (Depok: Gramata Publishing, 2010), p. 218.

message of Islam in the real lives because is not contrary with human lifes then the messege implemented.

## **B. Statement of Problem**

Base on background, some aspects become statement of problems in this research are:

1. How does the legal standing and social standing for Indonesia government to nationalize PT. Freeport Indonesia?
2. How does the Indonesia government role to nationalize PT. Freeport Indonesia in effort toward welfare statee?
3. How does the ownership concept of Ibn Taymiyyah in Islam perspective to nationalize PT. Freeport Indonesia?

## **C. Objective of Research**

Base on research of problem, some aspects become objectives of this research are:

1. To know the legal standing and social standing for Indonesia government to nationalize PT. Freeport Indonesia
2. To understand the role of Indonesia government to nationalize PT. Freeport Indonesia in effort toward welfare state

3. To know the Islam Prespective concerning of nationalization policy of PT. Freeport Indonesia according to Ibn Taimiyah

#### **D. Significance of Research**

The result of this research hoped be able to give benefit to two aspects are in teoritic aspect and practice aspect.

1. The teoritic aspect means that to know in the procedures of nationalization a foreign company especially PT. Freeport Indonesia base on the rules existed where the rules is law should be respected and obeyed. So that the constitution it is be able to implement completely. Beside that to understand also about the role of Indonesia government in welfare state concept as an effort to achieve state aims with the nationalization of PT. Freeport Indonesia.
2. The practice aspect can be felt that the researcher in especially get an insight about law aspect contained in nationalization procedures, either on positive law or Islamic law. And then for people in generally can be awared that the nature wealth of Indonesia is very important so that has been kept trying to safe together between people and government for next generation and to realize Indonesia people dignity also.

## E. Research Method

### 1. Kind of Research

Normative legal research can be called doctrinal legal research. In this kind of legal research is conceived that legal is what has been writing in the constitution (law in book). In addition legal is conceived as purpose which used humans become base to do behave appropriately. Therefore the source of secondary law only consists of primary legal materials, secondary legal materials, and tertiary legal materials.<sup>15</sup> In the other source shown that normative legal research is a procedure of science research to find the truth base on sciences of logical continually, in the normative legal research forming with discipline of scientifically and some ways of normative legal knowledge. The object of the normative legal research itself is the legal itself.<sup>16</sup>

The normative legal research devides to some kinds are inventory of positive legal research, principles of legal research, clinical legal research, synchronicall of constitution legal research, comparassion legal research, and historical legal research.<sup>17</sup> From some kinds of normative legal research above, in this research including at synchronicall of constitution legal research category because in this case, this research can analyze both vertically issues and horizontally issues.

<sup>15</sup>Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: PT Raja Grafindo Persada, 2006), p. 118.

<sup>16</sup>Johny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, (Malang: Bayu Media Publishing, 2007), p. 57.

<sup>17</sup>Amiruddin dan Zainal Asikin, *Pengantar Metode*, p. 120.

As a result when discuss in vertically issues it means that examines the hierarchies. And then if analyze in horizontally issues it means that reviews about as far as how a constitution implemented in various sectors which has correlation with each elements related. Beside of gets detail data about certain constitution want in this research also can show fully up about the weakness of that constitution. Thus it be able to make suggestion to amandement constitution it is.<sup>18</sup>

Researcher's reason to use this kind of normative legal research because in the result of the research will not limited on the object of analyze, but will deeper to analyze the constitution. So that the researcher will be free to interpret low in book in the implementation. However keep objectively, rationally, and systematically. Beside that normative legal research more affordable in the fee, distance, and not need long time.

## 2. Approach of Research

Normative legal research uses conceptual approach and statue approach because examines Indonesia constitution about nationalization and reviews about ownership concept of Ibn Taimiyah.

Conceptual approach begins from doctrins and opinions in the legal science, researcher will find some ideas about legal definitions, legal concepts, legal principles and legal of norms related each other and also composed of hierarchi base on the issue faced. This system is called by systematic term.<sup>19</sup>

<sup>18</sup>Amiruddin dan Zainal Asikin, *Pengantar Metode*, p. 128.

<sup>19</sup>Johny Ibrahim, *Teori & Metodologi Penelitian*, p. 302.

Statute approach is reviewing a lot of constitution and rules related with the issue of legal research, and also the compilation of act to solve legal problems, so that can make increase of the useless of law. It can be called with all-inclusive approach.<sup>20</sup> Statute approach is examining constitution and regulation related with legal issues researched. This approach will open opportunity for researcher to find consistently and appropriately between constitution with other constitution related, or between constitution with other regulations related.<sup>21</sup>

### 3. Source of Law

This normative legal research uses secondary law source means that data is gotten by proper documents, constitutions, books related with the object of research, results of research by other researchers, theses, and dissertations.<sup>22</sup> In addition secondary law is called by library data.<sup>23</sup> Similliarly the source of secondary law form usually applies in normative legal research divides to three sources consist of primary legal material, secondary legal material, and tertiary legal material.

Primary legal material is legal materials binding of constitution relating with object of research. Besides of court provisions or judge decisions has been determining and binding each party. Secondary legal material is addition materials such as books and legal scientific articles relating with object of

<sup>20</sup>Johney Ibrahim, *Teori & Metodologi Penelitian*, p. 302.

<sup>21</sup>Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media Grup, 2005), p. 93.

<sup>22</sup>Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2011), p. 18.

<sup>23</sup>Julius C. Barito, *Analisis Yuridis Pelaksanaan Privatisasi Badan Usaha Milik Negara (BUMN) di Indonesia Studi Kasus PT. Krakatau Steel (Persero)*, (Jakarta: Universitas Indonesia, 2009), p. 88.

research surely. While the tertiary legal material form is guidance or explanation about primary legal material and secondary legal material which can find in legal dictionary, encyclopedia, magazine, newspaper, etc.<sup>24</sup>

According to Soerjono Soekanto said that the legal material consist of primary legal material which is binding of base norms or base purposes like Preamble of Undang-Undang Dasar (UUD) 1945 (Indonesia Principle); base constitution like Substantion of UUD 1945; provisions of MPR (Council of Region and Council of People); Regulation; Act; President settlement; Ministry settlement; Rule of Region; Customary law; Jurisprudence; Treaty; Law of Colonialism such as *Burgerlijk Wetboek* (Netherland Law) regulate about private law, good law, agreement law, etc. Therefore secondary legal material is giving an explanation about primary legal material, such as plans of regulation; results of research; works of legal scholar; etc. And then tertiary legal material itself is a material gave guidance of primary legal material and secondary legal material, like legal dictionary; encyclopedia, index of cumulative, etc.<sup>25</sup>

#### 4. Collection Method of Source of Law

Method of source law collection in this research devides to two methods, base on kind of research for secondary and tertiary legal materials incorporated into one kind. Whereas primary legal material uses verifying technique means that collecting legal materials which consist of all constitutions related, then selected deeper base on object of research. While

<sup>24</sup>Zainuddin Ali, *Metode Penelitian*, p. 106.

<sup>25</sup>Soerjono Soekantodan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan SIngkat*, (Jakarta: Raja Grafindo Persada, 2006) p. 13.

secondary and tertiary legal materials is using library technique. It is data gotten by library research base on books, proper documents, publication and result of research.<sup>26</sup>

#### 5. Processing of Source of Law

Base on the characteristic of this research which uses method of research with analyziz descriptive character, data analyziz has been using qualilative approach with the secondary data source. The descriptive includes substantion and structure of positive law. Analyziz descriptive is an activity of researcher to determine and find of substantions, mean of legal norm also to become legal standing to solve legal problems of object of research.<sup>27</sup> Hopefully that the problematics faced will be finished enough with the constitution existed.

#### 6. Previous Research

The research of Nationalization themes has been done by some researchers. However there are differences each research. In this research is different also with others because there are some fragments which make it deviating. The previous research before are.

*The First* is thesis written by Ujang Rumanto, Student University of Jember University in 2008. His thesis under the title “Nationalization of The Research Centre of Coffee and Cacao in Jember, 1957-1962”. Kind of this research is empirical researchal research with the historical approach because in the old time before, that research centre is relic of colonialism. The object of research is effort to nationalize the research centre in Jember. In this

<sup>26</sup>Zainuddin Ali, *Metode Penelitian Hukum*, p. 107.

<sup>27</sup>Zainuddin Ali, *Metode Penelitian Hukum*, p. 107.

research, writer analyzed about some reasons of government to take over or nationalize the research centre, and also appeared the impact after nationalized by government. Similarity point in Ujang's thesis with research thesis exactly is government efforts to handling foreign company of foreign people has been established in Indonesia region become belongs Indonesian people. And than hopefully it will make economic sector of Indonesia to be stronger.

The differences in this research with researcher thesis located in kind of research when researcher using normative legal research with the conceptual and statute approach so that will analyze about base of law to nationalize deeply, especially to nationalize Indonesia Freeport Company. Beside that the object of research also is different, because researcher analyze about mining sector in Timika, Papua. But in Ujang's research, his object of research is about gardening relic of colonialism in Jember.<sup>28</sup>

*The second* is thesis created by Anjar Rahmad Basuki student university of Sebelas Maret University, Surakarta. His thesis with the title "The Role of Finance Commission of Mangkunegaraan Belongs in Proccess to Nationalize Mangkunegaraan Assets in 1946-1952." This thesis established in 2010. Writer used statue approach and the kind of research is empirical research. In this thesis, writer explained that status of finance commission of Mangkunegaraan belongs in Surakarta Empire. It will make impact against nationalization proccess of economic assets of Mangkunegaraan belongs by government. The same part in this research with research of researcher is

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<sup>28</sup>U Rumanto, "Nasionalisasi Pusat Penelitian Kopi dan Kakau (Puslit Koka) Jember Tahun 1957-1962", [https://www.google.co.id/search/Nasionalisasi-Pusat-Penelitian-Kopi-dan-Kakau-\(-Puslit-Koka-\)-Jember-Tahun-1957-1962/2014/](https://www.google.co.id/search/Nasionalisasi-Pusat-Penelitian-Kopi-dan-Kakau-(-Puslit-Koka-)-Jember-Tahun-1957-1962/2014/), diakses pada tanggal 30 November 2015.

about process to nationalize by Indonesia government in order to take over belonging assets by Mangkunegaraan Empire, Surakarta. It has happened because there is an indication that a lot off assets worked by colonialism government before independence of Indonesia. Mainwhile the differences with researcher is about object of research that researcher analyze the position of nationalization in constitution of Indonesia to nationalize foreign company.<sup>29</sup>

*The third* is thesis under the title “Impact of Nationalization Dutch’s Company Against PT. Biofarma Development in 1950-1965” has been written by Ruki Cukil Nuryaddin, student university of Education University of Indonesia in 2011. This kind of thesis is empirical research because Nuryaddin did this research about impact of nationalization in a company. And than the approach of this research is case approach when after that company nationalized appeared some impacts.in this research also, Nuryaddin explained the condition before and after PT Biofarma nationalized. Nevertheless, in research of researcher discussing about law status than foreign company nationalized. The same aspect in Nuryaddin’s thesis is about object of research when the object for something has much and big advantages for many people, so that take over is needed.<sup>30</sup>

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<sup>29</sup>Fsdans Rupa, “Peran Komisi Dana Milik Mangkunegaran dalam Proses Nasionalisasi Aset-Aset Mangkunegaran Tahun 1946-1952”, <https://www.google.co.id/search/Peran-Komisi-Dana-Milik-Mangkunegaran-dalam-Proses-Nasionalisasi-Aset-Aset-Mangkunegaran-Tahun-1946-1952/>, diakses pada tanggal 30 November 2015.

<sup>30</sup>Tidak ada nama, “Dampak Nasionalisasi Perusahaan Milik Belanda terhadap Perkembangan PT. Bio Farma di Tahun 1950-1965”, <https://www.google.co.id/search/Dampak-Nasionalisasi-Perusahaan-Milik-Belanda-terhadap-Perkembangan-PT-Bio-Farma-di-Tahun-1950-1965/>, diakses pada tanggal 30 November 2015.

*The fourth* is thesis by Achmad Syai Lubis student university of Muhammadiyah University Yogyakarta in 2012 under the title “Policy of Nationalization of Oil Private Company in Venezuela at Hugo Chavez Government Era.” Lubis uses historical and chronological approach when he has been analyzed chronology and listing some foreign company to nationalized in Chavez government era. This thesis explained about foreign policy of Venezuela government. In their policy through their president, some private company should be nationalize because foreign people has private company that too much mining oil in Venezuela, that policy also become weapon of government to against Neoliberalism. The similarity between this thesis with research of researcher that the nationalization policy as an effort to release dependency of United States when they always applied in their system is liberalism economic, so that with nationalization policy a country will metamorphose become strong state. While the differences that in research of research focuses on constitution and legislation become the legal standing to nationalize foreign company. Beside that the object of research also different when Lubis analyze about oil in Venezuela. But in research of researcher is about mining aspect in Indonesia, especially in Papua.<sup>31</sup>

*The fifth* is science journal under the title “Nationalization and Compensation” in 2012. Author by Dr. Rustanto, SH., LL.M. lecture of Law Faculty of Christian Maranatha University Bandung. In this journal the author

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<sup>31</sup>Tidak ada nama, “Kebijakan Nasionalisasi Perusahaan Minyak Swasta Venezuela pada Masa Pemerintahan Hugo Chavez”, <https://www.google.co.id/search/Kebijakan-Nasionalisasi-Perusahaan-Minyak-Swasta-Venezuela-pada-Masa-Pemerintahan-Hugo-Chavez/>, diakses pada tanggal 30 November 2015.

explained some impacts that nationalization happen with the consideration of compensation. Same substantiation in this journal with thesis of research is about background of the nationalization to release from the dependency other or foreign people, and also become process to change economic system of colonialism which has been adopted become national system of Indonesia. And then the different aspect of analyzing that researcher in thesis analyze will explain more about constitution of Indonesia become base to nationalize and to know consistently government to carry on the constitution.<sup>32</sup>

*The sixth*, is science paper of I Ketutu Westra and friends. They are student university of Udayana University. They were arranging paper in 2013 under the title “Legal Protection for Investor against Take-Over of Foreign Investor of Company in Indonesia”. In this paper explained that the foreign company is company has been invested in Indonesia, so that government of Indonesia could be take over that company but with agreement. This paper has same aspect with researcher thesis is nationalization of foreign company by government of Indonesia can be apply base on constitution of Indonesia. Such as the Rule of Law Number 25 of 2007 About Capital Investment. While the different aspect is the compensation become consideration to protect foreign investment.<sup>33</sup>

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<sup>32</sup>Tidak ada nama, “Nasionalisasi dan Kompensasi”, <https://www.google.co.id/search/Nasionalisasi-dan-Kompensasi/>, diakses pada tanggal 30 November 2015.

<sup>33</sup>I Wisnu Pradiptha, “Legal Protection for Investor against Take-Over of Foreign Investor of Company in Indonesia”, <https://www.google.co.id/search/Perlindungan-Hukum-Bagi-Investor-terhadap-Pengambilalihan-Perusahaan-Penanaman-Modal-Asing-di-Indonesia/2013/>, accessed on November 30<sup>th</sup>, 2015.

More detail data, researcher will show the table as a way to know easier and to compare between previous research with research of researcher.

No	Writer	Title	Similarity	Differences
1	Ujang Rumanto (University of Jember) 2008	Nationalization of The Research Centre of Coffee and Cacao in Jember, 1957-1962 (Thesis)	Effort by government to nationalize foreign company has been powered and managed by foreign people in Indonesia region	Explained about reason of government to nationalize puslit coca, and also explained about the impact after nationalization Collecting data with interview way so that the research is empirical research. Mainwhile research of researcher is normative legal research The object of research is different, when Rumanto is about gardening in Jember city. But in researcher object is about mining aspect in Papua.
2	Anjar Rahmad Basuki (Sebelas Maret University of Surakarta) 2010	The Role of Finance Commission of Mangkunegaraan Belongs in Process to Nationalize Mangkunegaraan Assets in 1946-1952 (Thesis)	Take over process of assets/property Praja Mangkunegaraan belonging become Indonesia government belonging	Expalined about nationalization economic assets of Mangkunegaraan by centre government. And also show the status of Finance Commission of Mangkunegaraan Belonging.
3	Riki Cukil Nuryaddin (Education Indonesia University) 2011	Impact of Nationalization Dutch's Company Against PT. Biofarma Development in 1950-1965	Reasonable a company in before belongs by foreign people become belongs by Indonesia people; and other because the object	Explained about after and before impact of PT. Biofarma nationalized. In this case alson Nuryaddin relating this research with the medical and

		(Thesis)	very much and usefull for many people.	formation fragments, because these are the object of his research.
4	Achmad Syai Lubis (Muhammadiyah University Yogyakarta) 2012	Policy of Nationalization of Oil Private Company in Venezuela at Hugo Chavez Government Era (Thesis)	Nationalization of company and assets has powered by foreign people as policy to make national economic stroger	Explained about foreign policy affairs of Venezuela, exactly policy of President Hugo Chavez which has been nationalized some oil company of foreign investor in his country.
5	Rustanto (Christian Maranatha University Bandung) 2012	Nationalization and Compensation (Journal)	Nationalization as process to release the dependency of united states and foreign country; and to change economic system of colonialism to national economic system	Explained about impact than nationalization happen with compensation consideration.
6	I Ketut Westra, dkk. (Udayana University) 2013	Legal Protection for Investor against Take-Over of Foreign Investor of Company in Indonesia (Science Paper)	Take over process of foreign company which located in Indonesia region with the Indonesia constitution, such as th rule of law No. 25 of 2007 about Capital Investment	Explained that it could be true that government will nationalize foreign company. And explained also about the protection for foreign investor.

## 7. Discussion Structure

The purpose of systematic of discussion is to make easier for researcher in arranges report of research in order to more systematically and focuse only on one analyziz. So that the researcher shows the systematic of discussion become general comprehension in this research. Report of the normative legal research devides to four chapters.

*Chapter One:* Introduction. Consist of background of research, problem of research, purpose of research, benefit of research, method of research,

systematically of discussion. Method of research devides to kind of research, approach of research, source of law, collection method of source of law, processing of source of law, previous research, and systematically of discussion.

*Chapter Two:* Theoretical Framework devides to Profile of PT. Freeport Indonesia, History of PT. Freeport Indonesia in Indonesia, Mastery of State in Constitution, Welfare State Concept, Ibn Taimiyah Biography (1262-1328), Ownership Meaning in Islam, Ownership Category of Ibn Taimiyah, and Ownership Reason in Islam.

*Chapter Three:* Result and Analyze. Consist of result of research and comparing between theories and truth.

*Chapter Four:* Closing. Consist of conclusion and suggestion. In the last piece will contain about Bibliography, Enclosures, Biography of Researcher.

## CHAPTER II

### THEORITICAL FRAMEWORK

#### A. PT Freeport Indonesia Profile<sup>34</sup>

Indonesia Freeport Company (PTFI) is the affiliate company of McMoRan Freeport. PTFI activity is mining, processing, and exploring against ore fo copper, gold, and silver.operate in the high land of Timika District, Papua Province, Indonesia. They trading the consetrat contained copper, gold, and silver to the round of the world.

The region field of their mining in Grasberg is one of main produce the copper and gold the biggest in the world, and containing the secondary substitute

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<sup>34</sup>Unknown name, “sekilas tentang kami”, <http://www.PTFI.co.id/2013/id-about-overview/>, accessed on April 20<sup>th</sup>, 2015.

of copper the biggest in the world. Grasberg located in the centre of the mineral region which has much number of materials when the continued exploring will open some opportunity to get the secondary substitution for long time again.

Freeport McMoRan is main international mining company when the centre of the service located in Phoenix, Arizona, United States. They processing many big assets round the world for long time and spread in some geographic location in four islands. With the significant secondary substitution it is proof of the number of gold and molybdenum. Begin from the sonw mountain in Papua, Indonesia, until South-West of United States, fire mountain in Peru, traditional region produce the copper in Chile, and the new opportunity to conquer Kongo. The were in the firs grid to be produce of steels which need in the world.

Freeport McMoRan is the biggest public company in the mining sectors in the world, the main produce in the world of molybdenum (steels using for steel has big power, chemistry production, and oil production) and they are produce gold. The has been proofing to the world that they be able to produce copper, gold, and silver and also molybdenum with the high technology. Freeport established activity through affiliate company, such as Indonesia Freeport Company, Freeport McMoRan Corporation, and Atlantic Cooper.

## B. The Short History of PT Freeport Indonesia in Indonesia<sup>35</sup>

There is some unique history to tell the first time Freeport Indonesia Company in Indonesia. In 1904-1905 private institution from Dutch *Koninklijke Nederlandsche Aardrijkskundig Genootschap* (KNAG) like a geography institution of Dutch Empire, carry on the expedition to South-West Papua with the aim to visit Snow Mountain located there.

The first voice about the snow mountain appeared from a note of Captain Johan Cartinez. He sailed with his two big ships Aernem and Pera to South in 1623 in south waters Papua Lands. Suddenly he looked far snow shines and he noted in his diary on Februari 16<sup>th</sup> 1623 about the summit of mountain who part of summit there closed by snow. Cartinz's diary in first time do not ever believe and desired that he was dreaming.

Although the first expedition not found the snow mountain like who said before, but this is the first part of the story of Dutch will give much attention against Papua. The first map of Papua made in 1907-1915 from military expedition to there. Because this expeditions, make some people to be brave and keep spirit again to find that snow mountain in two times.

Some Dutch expeditions is success and one of them leaded by Dr. HA. Lorentz and Captain A. Frenzen Hendersche. It is famous expedition. A lot off thing and efforts doing to achieve the summit of Wihelmina (Sudirman Summit know or summit of snow mountain) with the height reach 4.750 meters. And than

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<sup>35</sup>Unknown name "Freeport Indonesia", [http://id.wikipedia.org/freeport\\_indonesia/](http://id.wikipedia.org/freeport_indonesia/), accessed on 20<sup>th</sup> April, 2015

because that story, Lorentz name remembered to be National Garden in Asmat tribe. The name is National Lorentz Garden.

In the middle of 1930, two youngest from Dutch, Colijn and Dozy. Both of them are officer of NNGPM who has plan to achieve the summit of Cartenz (Summit of snow mountain in other names) their adventure is to be the first step to opening of mining in Papua lands for fourthly years later.

In 1936, Jean Jacques Dozy find the backup of Etzberg or called by ore mountain, and than a lot off data about that carried by the to Dutch. After that Dozy met with Jan Van Grusjen, Managing Director of Oost Maatchappij Company, who has been exploited copper in East Kalimantan and South-East Sulawesi with Forbes Wilson. Forbes Wilson is a chief exploration in Freeport Sulfur Company to mine sulfur in the sea. And than Van Gruisen success to make sure Wilson to invest his capital for ore mountain expedition and also for take some examples of copper and need to analyze first.

In first time Soeharto's government era, government take a policy to realize some real steps for develop country and for build off national economic. Nevertheless national economic condition unstable after substitute president. Soeharto take some strategic steps so on to establish Rule of Law No. 1 of 1967 about Foreign Capital Investment.

The highest chief of Freeport in this era is Langbourne Williams, looked the opportunity to continue the Ertzbezg project. And than he met with Julius Tjahja when in Soekarno era he was lead the Toxaco company. After that Langbourne met with General Ibn Suwoto, who has been lead of Ministry of

Mining and Oil Indonesia. Main point of that meetings are to apply the proposal in order to Freeport could be continue again their exploration in Ertsberg project. Finally from that meetings, Freeport be able to explore in 1967. It is the first time of Work of Contract (Kontrak Karya) written down in Indonesia. Work of contract that is point of promotion carried by Julius Tjahja to introduce Indonesia to other country and to foreign investor. The first mission is going to Australia.

Before 1967, Timika region is forest. In the first time Freeport begin their operation, many people of Timika lives in moving ways (move from one place to an other place), and they are entering to region of around Freeport exploration. The growth of the people is increase. In 1970 government and Freeport cooperate to build that district, to build houses and roads arund airport of Timika.

In 1971 freeport build Timika Airport and the centre of supply, after that build off the main roads become main access toward location of mining place and also buil the roads in some villages in 1972. Soeharto given the name of the district is Tembagapura in 1973. Freeport decide the chief of Freeport representative in Indonesia and also will be the first director of Freeport from Indonesia. Freeport chose Ali Budiarjo because he has background ever served at Secretary of Security and the Director of National Building in 1950. Husband of Miriam Budiarjo this is ever become the representative of Indonesia in some agreements of indoneisa independence. Exactly to be a secretary of Linggarjati Agreement and member of committee in Renvile Agreement.

### C. Mastering of State Base on Indonesia Constitution

From the historical views, creating and arranging of UUD 1945, so that we will find Prof. r. Soepomo, he was one of the members of BPUPKI (Agency Investigator Independence efforts). BPUPKI themselves are further divided into three small Committee who have different tasks. The task of the formulation of the Basic Law of the Republic of Indonesia, carried out by the Committee I, chaired by Sukarno. Prof. Soepomo was a member of the Committee I.<sup>36</sup> Prof. Soepomo contended that the meaning of "mastered" it was set up and or hosted mainly to fix and put higher of production with the cooperative form as a manifestation of economic democracy.<sup>37</sup>

Beside of Prof. Soepomo, Muhammad Hatta assumed also that Indonesia nation is in poor level of economic sector, so that only can be build with the cooperative ways. Hatta's opinion said that national company is only in general service, such as electric power, water, and air, or some could be called by public utilities. It can be manage by government. According to Hatta also, government be able to mastery some aspect has many advantages for people and for many people affairs and also important, so that way should be mastered by government. He said that the means of the "Mastering" redaction is not automatically managing government directly, however government only controlling in order to launch an economic way. The opinion that Mohammad Hatta delivered on 12 July 1977 in

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<sup>36</sup>Wahid Siswoyo, *Langkah Awal Memahami Undang-Undang Dasar 1945*, (Malang: IKIP Malang, 1996), p. 16-24.

<sup>37</sup>Wahid Siswoyo, *Langkah Awal Memahami Undang-Undang Dasar 1945*, h. 170.

the time of Memorial Day Cooperatives.<sup>38</sup> Another case again with the opinion delivered by Prof. Jimly As-shiddiqie, S. H which interprets the words "mastered by the State" means owned by the State.<sup>39</sup>

Finally, can be concluded that means of "mastered by government" in redaction of Article 3th Verse (2) and (3) of UUD 1945 according to some scholars of law is difference, where is the thought that the State does not have to directly join the managing or organizing a branch of production, but it can be turned over to the cooperative, and there is also an opinion that the State should direct has a wealth of nature.

#### **D. Welfare State and Nationalization Concepts**

The term of welfare state is formed from two words. Welfare and state. Welfare mean is prosperous and than state mean is country or a tools from the people has power to manage relation between human in society and establish symptoms of powers in society.<sup>40</sup>

Midgley (1997) said that welfare state concept used to provide social services to people of country. This concept explained that it is a ideal to comparing the truth from the one country to the other country, to know

<sup>38</sup>Aminuddin Ilmar, *Hak Menguasai Negara dalam Privatisasi BUMN*, (Jakarta: Kencana, 2012), h. 52.

<sup>39</sup>Jimly Asshiddiqie, *Komentar atas Undang-Undang Dasar Negara Republik Indonesia*, h. 142.

<sup>40</sup>Afifah dan Ahmad Dahlan, *Konsep Negara Kesejahteraan*, (Yogyakarta: Grafindo Letera Media, 2006), p. 24.

development and the growth of people of country. So that the state can be indicate it is the welfare state or not from the providing of public services.<sup>41</sup>

Form of the welfare state is scoping a lot of aspect of lives and that policy program be able in social protection. It is a phenomenal program in the middle of the capitalism system when always try toward economic fighting with the individual satisfied. According to Edi Suharto, quote of Paul Spicker that welfare state concept is not only scoping the description of the managing for achieve the welfare or social service. But also about normative concept or ideal system approach to pressing that people should be get social service become their rights. Welfare state also is an ideology from the theory left wings view. Such as Marxism, Socialism, and Democratic Socialism. However the welfare state concept thus more develop in the democracy and capitalism countries. Not in the socialism country. Policy and welfare state has carried on by capitalism governments it to be ways of balancing against in the lives of capitalism country which using individualism method in their lives.<sup>42</sup>

Relation between the concept of a welfare State with nationalization is deeply connected, that the Government's efforts to achieve a State of well-being is based on the concept of the welfare state can be viewed from various aspects of life, such as the economy, health, education, nutrition and so forth, as a right which should be acceptable to every citizen.<sup>43</sup> From the economic aspect, it can be seen from every Government policy and actions in the economic sphere, where one of the economic actions that can be performed in order to materialize the

<sup>41</sup>Adi Fahrudin, *Pengantar Kesejahteraan Sosial*. (Bandung: PT. Rafika Aditama, 2012), p. 104.

<sup>42</sup>Umi Afifah dan Ahmad Dahlan, *Konsep Negara Kesejahteraan*, p. 43.

<sup>43</sup>Adi Fahrudin, *Pengantar Kesejahteraan Sosial*, p. 104.

objectives of Government in the economy that is based on the family in accordance with Article 33 of UUD 1945 which one can with its nationalization.

Nationalization himself explained the meaning of indirectly in Article 21 of The Act Number 1 of 1967 About Foreign Capital Investment that nationalization was the right course of action by the Government as a whole over foreign capital companies or any actions that reduce the right master and/or take care of the company concerned.<sup>44</sup> In General that is the basis of the main actions of nationalization is Article 33 Constitution and some other legal sources, such as ACT No. 5 of 1960 Concerning the basic regulation of the Agrarian issues as well as the theories of legal experts including the theory of State sovereignty.

#### **E. The Biography Concept of Ibn Taimiyah (1262-1328)**

The complete name of Ibn Taimiyah is Ahmad bin Abd al-Hamid bin Abd al-Salam bin Abd Allah bin al-Khidr bin Muhammad bin al-Khidir bin Ali bin Abd Allah bin Taimiyah al-Harain al-Damasyqi or Short name with Ibn Taimiyah. He was born at Harran on Januari 22<sup>nd</sup>, 1262 M.<sup>45</sup> in the other literatures written that the complete name he is Taqi al-Din Ahmad bin Abd al-Halim bin Abd Salim bin Taimiyah. And born in Harran on Januari 22<sup>nd</sup>, 1263 M (Rabiul Awwal 10<sup>th</sup>, 661 H).<sup>46</sup> he growth in Ulama' environment and fellowship of Hambali Madzab. Abdul Halim is their father and Fakhruddin his uncle, alson his grand father is

<sup>44</sup>Article 21th of the Act Number 1 of 1967 About Foreign Capital Investment

<sup>45</sup>Nur Chamid, *Jejak Langkah Sejarah Pemikiran Ekonomi Islam*, (Yogyakarta: Pustaka Pelajar, 2010), p. 229.

<sup>46</sup>Euis Amalia, *Sejarah Pemikiran Ekonomi Islam*, p. 206.

Majduddiin. They are great ulama' of Hambali Madzab. Knowledge tradition in his family, besides Taimiyah has great thinking and clever man make he to be a great mufassir (interpretation people of Quran), memorize and knowing about hadith, great in fiqh aspect (law of islam), mathematic, dan philosophy in young years. He well known a writer, orator, and also he is the clever leader of war. His teacher are Syamsudin al-Maqdisi, Ibn al-Yusr, al-Kamal bin Abd Majid, Yahya bin al-Shairafi, Ahmad bin Abu al-Khair, and so on.<sup>47</sup>

In his young level, he and his family refuge because occupation of Mongol, and he arrived in Damaskus with his parents in 1268 M, when he is seventeenth old.<sup>48</sup> In 1282 his father gone, and he substitutes position his father become Great Master of Hambali Laws for seventeen years. In his politic lives, Tamiyah ever entered in prison four times because his decision of law contradiction with government. In the prison he create some works, because inside there he always teach and write.<sup>49</sup>

There are many works of Taimiyah, he written down their thought of economic aspect such as his books are *Majmu' Fatawa Syaikh al-Islam*, *As-Siyasyah asy-Syar'iyah fi Islah ar-Ra'I wa ar-Ra'iyah*, and *Al-Hisbah fi al-Islam*. Beside that books, he created some books till three hundred volume. Some of famous book of him are *Iqtifa al-Sirat al-Mustaqim wa Mukhalaf as-Hab al-Jalum*, *Fatwa Ibn Taimiyah*, *Al-Sarim al-Maslul al-Syatim al-Rasul*, *Al-Sarim al-Maslul fi Bayan Wajibat al-Ummah Nahwa al-Rasul*, *Al-Jawab al-Sahih li Man Baddala Din al-Masih*, and others book in Islam law field. Material of other bok

<sup>47</sup>Euis Amalia, *Sejarah Pemikiran Ekonomi Islam*, p. 206.

<sup>48</sup>Euis Amalia, *Sejarah Pemikiran Ekonomi Islam*, p. 206.

<sup>49</sup>Euis Amalia, *Sejarah Pemikiran Ekonomi Islam*, p. 207.

discuss about sharp criticism for government. When he considered that government is not appropriate with the message of Quran and Hadith, he will criticism that government and that policy.

Ibn Taimiyah well known as founder, his thought to back to the pure of Islam in order to not combine with bid'ah (something new, and there is not in Muhammad era) things. Some the reformist movement of Ibn Taimiyah are. Firstly reforming to against implementation not Islam ways; secondly back to the direction of fundamental priority in Islam messages, and spirit to back to pure of Islam. And also opposites to the messages which not fundamental; and secondary need; third to do the best for good policy for people through intervention of government in economic aspect (controlling of power by government to manage the economic sector), support the fairly, and support the safety of public and also keep save from the side who will carry on their aim to get much profit for him selves.<sup>50</sup>

Ibn Taimiyah dead in Damaskus on Septeber 26t, 1328 M (Dzulqo'dah 20<sup>th</sup> 728 H) and he buried in Sufies cemetery.

## **F. Ownership Concept in Indonesia Law and Islam Law**

Property rights (*Eigendom*) is one type of material rights are provided in Book II *Burgerlijk Wetboek* (Civil Law Code Book). With the enactment of the Act Number 5 of 1960 About the Basic Regulation of the Agrarian Trees (UUPA),

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<sup>50</sup>Euis Amalia, *Sejarah Pemikiran Ekonomi Islam*, p. 207

property rights over deprived of book II BW and arranged in BAL. So how to obtain, transition, imposition, and lost property rights over land are different to what is provided for in Book II of the Civil Law Code Book.<sup>51</sup> Property rights is the right to enjoy the usefulness of a material freely, and to do that with free material against sovereignty entirely, as long as not contrary to the legislation in force and does not interfere with the rights of others, by not reducing the chances of repeal those rights for the benefit of the public based on the provisions of the Act with payment of indemnity.<sup>52</sup>

There are some restrictions over ownership rights, among which are: does not conflict with the laws and regulations in General, do not cause the disorder, the presence of possible revocation of rights, the law of neighbors, and the hacking of rights.<sup>53</sup> How to obtain the rights set forth in Article 584 of Civil Code Law Book consist of ownership, adhesions, expired time (*daluwarsa*), inheritance, and submission.<sup>54</sup>

In UUPA, land rights that belonged to individuals and legal entities of its nature is not absolute. Restricted in its use should not be contrary to the legislation and do not interfere with the rights of others. Defined in Article 5 of UUPA that all rights to the land had a social function. It means that a person's rights over land

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<sup>51</sup>Sri Soedewi Masjchoen Sofwan, *Hukum Perdata: Hukum Benda*, (Yogyakarta: Liberty, 2000), p. 41.

<sup>52</sup>Article 570<sup>th</sup> of Civil Code Law Book

<sup>53</sup>Sri Soedewi Masjchoen Sofwan, *Hukum Perdata*, h. 50.

<sup>54</sup>Article 584 of Civil Code Law Book

can be freed for the sake of public<sup>55</sup> interests and even for the sake of public interest the Government can revoke a person's land ownership.<sup>56</sup>

In Islam views, Allah is the real owner and absolutely owner a lot off things in his creations. However Allah give the power to the human to mastery and manage that creation become their rights because belonging that things. Human rights for owning goods is like exam. Because that all people has power to using and owning goods has been given by god. Quran said:

وَاعْلَمُوا أَنَّمَا أَمْوَالُكُمْ وَأَوْلَادُكُمْ فِتْنَةٌ وَأَنَّ اللَّهَ عِنْدَهُ أَجْرٌ عَظِيمٌ

Means:

*“you should to know that your children and your treasures are exam for you”*

*(Surah al-Anfal: 28)*

Every person, group, or state, has a rights for rights of belonging or rights of owning. This is base on the role of their own lives. The rights of owning of the three of the subject of live these is it could not be source of conflict. As represented of power of Allah in the world and representatives of people, each person can not envy with the government intervention who did in logically. Because it was need for the development Islam messages and it will make the together aim for welfare of public comes true.<sup>57</sup>

According to an-Nabbany (1990), owning is rights given by owner permission (Allah) to take the advantages of the things or goods. So that the owning of something only decide from the determine of Allah against that things and also the reasonable become owning of that things or goods. The point is about the advantages of the things is not from the things or goods, but given by god by

<sup>55</sup>President Decision Number 55<sup>th</sup> of 1993

<sup>56</sup>Article 18<sup>th</sup> UUPA

<sup>57</sup>Euis Amalia, *Sejarah Pemikiran Ekonomi Islam*, p. 217.

the things. owning is appeared from the Allah has given to someone or because Allah give the permission to someone to take the advantages of things by owning it. The impact appeared is belonging something goods become legally base on the rule of Islam.

So that, the understanding of owning is to realize the power of someone against wealth has been belonging before, with the certain mechanism. And than it will legally become owning by someone base on the Islamic law and be able to give to an other person.<sup>58</sup>

According to Ibn Taimiyah, the use of the owning rights is possible to do that it is not contra with Islam principle. The rights of the owning in Ibn Taimiyah's meaning is a power from the Islam concept to use an object. Nevertheless that power is completely full so that the owner of the goods be able to sell or give to an other people. But sometimes the power it not fully because the rights of owner it is limit.<sup>59</sup>

#### **G. Ownership Concept of Ibn Taimiyah**

According to Ibn Taimiyah, the owning in Islam divide to three categories. The first is individual or private; the second is social or collective; and the third is state. In Fathurrahman Djamil's book under the title *The History, Theory, and Concept of Economic Islam of Law* in 2011, explained that owning concept in Islam. But do not mention in madzab or ulama' perspective, only in general

<sup>58</sup>Fathurrahman Djamil, *Hukum Ekonomi Islam*, p. 193.

<sup>59</sup>Euis Amalia, *Sejarah Pemikiran Ekonomi Islam*, p. 217.

statement. But researcher assumed thatt was follow Ibn Taimiyah's opinion because it is identical with divide of Ibn Taimiyah.

### 1. Private Property

Individual property is decision of Islamic law to apply to goods or certain service. And it will be possible that to make useful from that goods. But it will get compensation when that goods is using other people, such as rent. It could be also because consumed from other people such as buy-sell from that goods. The other understanding from individual property is to realize the wealth of the treasure has belonging by someone with the certain mechanism so that make belonging become the rights of Islam way is given to other people. Every people be able to has wealth with the reason by certain owning.<sup>60</sup>

Islam decides the possibility for each people has wealth in individually. That possibility of individual property known in Quran Surah an-Nisa' (4): 32 and verse 2:

وَلَا تَتَمَنَّوْا مَا فَضَّلَ اللَّهُ بِهِ بَعْضَكُمْ عَلَى بَعْضٍ لِّلرِّجَالِ نَصِيبٌ مِّمَّا اكْتَسَبُوا  
وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا اكْتَسَبْنَ وَسَأَلُوا اللَّهَ مِنْ فَضْلِهِ إِنَّ اللَّهَ كَانَ بِكُلِّ شَيْءٍ  
عَلِيمًا

*“don't be envy with the goods has been given by Allah to others, because it will more many from other because their effort, and for women there is part in each their effort. Forgive yourself to Allah. And Allah almighty of god”*

<sup>60</sup>Fathurrahman Djamil, *Hukum Ekonomi Islam*, p. 196.

وَأَثَرُوا الْيَتَامَىٰ أَمْوَالَهُمْ وَلَا تَتَّبِعُوا الْخَبِيثَ بِالطَّيِّبِ وَلَا تَأْكُلُوا أَمْوَالَهُمْ

إِلَىٰ

أَمْوَالِكُمْ إِنَّهُ كَانَ حُوبًا كَبِيرًا

*“give goods for orphans when they has old because of theirs. Don’t be cheat with change the good goods for bad goods, don’t be combine yours and theirs. Because that is the big sin ”*

## 2. Social or Collective Property

Social property is the permission of *Syari’* (created of Islamic Law. Allah) for community or group to get he advantages from that goods. The goods or tools includes of the general owning is the good has determined of Allah and messenger of god that the goods is for a community when each people need it.<sup>61</sup> Such of leave, fire, and waters.<sup>62</sup>

## 3. State Property

The treasure of the state includes a lot off rights Muslim when the managing of the goods is authority of government. Government be able to give a part of the policy, managing of the government that means there is power belongs of state to manage. For example is *Fai’* treasure, *Jizyah*, *Kharaj*, and so on.<sup>63</sup> According to Ibn Taimiyah the main source of the income of the state from the *zakah* and *ghanimah* (the treasure of war).

Wealth of state actually is general wealth or social wealth. President only do

<sup>61</sup>Fathurrahman Djamil, *Hukum Ekonomi Islam*, p. 201.

<sup>62</sup>Euis Amalia, *Sejarah Pemikiran Ekonomi Islam*, p. 218.

<sup>63</sup>Fathurrahman Djamil, *Hukum Ekonomi Islam*, p. 208.

duty as the holder of the trusty. It is the state obligation to pay for the people of the country for their lives affairs.<sup>64</sup>

It is different with *kharaj* treasure, because only be paid to the farmer also and the others people can no be because not farmer. *Kharaj* it could be for shop of state without divide again to other person again.<sup>65</sup>

#### H. Ownership Reasonable in Islam Law

The mean of ownership reasoning in Islam is causes make someone has goods when in the time before that goods it is not belongs him.<sup>66</sup> The causes it could be:

1. Working
2. Transaction
3. Legacy
4. Nationalization of Assets
5. Given by country
6. Charity

<sup>64</sup>Euis Amalia, *Sejarah Pemikiran Ekonomi Islam*, p. 218.

<sup>65</sup>Fathurrahman Djamil, *Hukum Ekonomi Islam*, p. 202.

<sup>66</sup>Fathurrahman Djamil, *Hukum Ekonomi Islam*, p. 209.

### CHAPTER III

#### RESULT AND ANALYZE

#### A. The Standing of Law and Standing of Sociology of Indonesia Government to Nationalize Freeport Indonesia Company

Country Indonesia is a sovereign country. the sovereignty is in the hands of the people as the sound of the article 1 paragraph (2) of the Constitution that says so. Therefore it can be known that the people are the source of State power, as well as being the organizer of the State, and ultimately the State boils down to Providence for the benefit of all the people of Indonesia.<sup>67</sup> Organizing by the people to the State in this case was conducted by the people's Consultative

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<sup>67</sup>Jimly Asshiddiqie, *Komentar atas Undang-Undang Dasar Negara Republik Indonesia*, p. 10.

Assembly (MPR) as an institution was selected to represent the interests of the whole people of Indonesia in the Government. The Assembly consists of the House of representatives (DPR) and the regional representative Council (DPD) elected by the people through Elections (elections).

DPR has task to form the laws that required people to organize and protect his interests, then the Bill is discussed along with the President for approval and endorsement.<sup>68</sup> The legal norms that exist in the legislation that's what later became the legal basis for each of the citizens and the Government of Indonesia to initiate any activities related to the public and private law in Indonesia, because Indonesia subscribes to the doctrine of State law (*rechstaat*). Because Indonesia adhere to the ideology of State law (*rechstaat*), then the next researchers will expose some of the legal basis (Juridical) that can be used as a basis to do nationalization PTFI, among others, as follows:

1. Article 33th Verse (2) of UUD 1945

This article is the substance of chapter XIV regulating the Constitution Of the national economy and social welfare. As described previously, application of researcher in all activities in Indonesia is certainly arranged in a legal norm, not exception in the activity of the economy and people's welfare to be met by the Government as the sound of Article 33 paragraph (2) of the Constitution:

*"The branches of production that are essential for the country and that his life is ruled by the people of the country"*

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<sup>68</sup>Voice of Article 20<sup>th</sup> verse (1), (2), and (4) UUD 1945.

One branch of production which meets the classification according to researchers is the mining sector. Because pure mining itself is the source of the State's acceptance of the Acceptance is not the tax (PBP), which entered in the receipt of natural resources. Where Acceptance of natural resources consist of: a) the acceptance of petroleum; b) receipt of natural gas; c) acceptance of General mining; d) acceptance of forestry; e) acceptance of fisheries; and f) acceptance of mining the Earth's heat. In statistics showing that from 2011 to 2015, the acceptance of the country's mining sector is always on the increase. Although not an acceptance of a country that has the greatest value when compared with the country's acceptance of the sector more.<sup>69</sup>

So from the data shows quite the magnitude of the State's acceptance of the mining sector, then it can be concluded that mining is included in the branch of production which is important for the country and take control of his life. Indonesia's own country receive revenue from the mining sector that was pretty much it, based on the given royalty only. Copper was only 1.5-3.5%, while gold and silver royalty is only 1%.<sup>70</sup> Then it can be imagined if the Government of Indonesia be nationalized and made whole, PTFI belongs to Indonesia, the country certainly will be more acceptance from the mining sector that will come by the Government because of the acceptance is not based on royalties, but net profit obtained directly from mining.

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<sup>69</sup>Unknown name, <https://www.bps.go.id/linkTabelStatis/view/id/1179>. accessed on 16th of April 2016.

<sup>70</sup>Siti Maimunah, *Negara Tambang dan Masyarakat*, p. 15.

On the basis of giving the benefit of the community as big as Indonesia due to master his life crowd that's 6 decades ago, the Government of Indonesia also do nationalization of some foreign companies who are in the territory of the Republic of Indonesia, include Dutch-owned companies with the promulgation of LAW Number 86 in 1958 about the nationalization of the companies belonging to the Netherlands, and also there is a PP Number 34 in 1960 about the Nationalization of the company N.V.K.P. M in Indonesia.<sup>71</sup> But perhaps the difference between nationalization effort becomes the condition of 57 years ago to now one is compensation/indemnity. Hand in hand with the birth of Law number 1 Year 1967 Regarding Foreign capital investment is now being amended Law number 25 of 2007 On Foreign Investment. Then when done, the Government obligated the nationalization of paying out compensation to a foreign company or investor the amount agreed upon.<sup>72</sup> While in 1958, which determine the magnitude of the damages is purely determined by the Government.<sup>73</sup>

The difference in compensation in 1958 and now it's there since before the existence of the Article 22 of the Act Number 1 of 1967 appears, payment of indemnity/compensation not based on international law,<sup>74</sup> or not based on market prices,<sup>75</sup> but rather defined by a Special Committee formed by the Government of Indonesia.<sup>76</sup> Before the inception of the Act, means not known the term of the

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<sup>71</sup>The Act Number 86 of 1958 About Nationalize companies of Netherlands; President Decision Number 34 of 1960 About Nationalize VVK.P.M company in Indonesia.

<sup>72</sup>Article 7<sup>th</sup> Verse (2) the Act Number 25 of 2007 About Foreign Capital Investment

<sup>73</sup>In Article 2 Verse (1) the Act Number 86 of 1958 About Nationalize VVK.P.M company in Indonesia. Said that compensasion will be determined of certain committee of government.

<sup>74</sup>Article 21 the Act Number 1 of 1967 About Foreign Capital Investment.

<sup>75</sup>Article 7 Verse 2 the Act Number 1 of 1967 About Foreign Capital Investment.

<sup>76</sup>Article 2 Verse (1) the Act Number 86 of 1958 About Nationalize Companies of Netherlands.

contract Works in any pattern of cooperation in the field of mining by foreign investors, so the Government more freedom to control and regulate.

Other things into consideration that researchers assume that mining is a branch of production which is important for the country and mastered his life crowd is the amount of natural resources that exist in Timika was extremely large. The data shows that in the contract, PTFI got almost 3.4 billion us dollars, while the contract works II PTFI received 54 billion us dollars.<sup>77</sup> While on contract work I the Government of Indonesia was given only 400 million us dollars by PTFI.<sup>78</sup> In 2015 one of the print and electronic media Indonesia reported that PTFI located in Papua tops the list as the largest gold miner in the world with production of 1,440 million troy ounces of gold in 2011, while the backup process is still mined still 29.8 million troy ounces of gold and 2.35 billion tons of ore or ore material containing precious minerals.<sup>79</sup> Because it's so the magnitude of production and mining profits that PTFI, if it is extremely appropriate if duly PTFI taking in full by the Government of Indonesia with the considerations as sound Article 33 paragraph (2) of the Constitution, the point where the amount of a very important production and mastering his life many people of Indonesia.

Based on such things as well, researchers assumed that which determines a country's wealth should be nationalized or not rather than on how big or small the assets, but on aspects of interest for the people of Indonesia and the benefit

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<sup>77</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Pengusaha Pertambangan di Indonesia*, p. 10.

<sup>78</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Pengusaha Pertambangan di Indonesia*, h. 7.

<sup>79</sup>Deni Riaddy, "Ini 5 Tambang Emas Terbesar di Dunia," <http://www.kompas.com/ini-5-tambang-emas-terbesar-di-dunia/>, accessed on 3th of Desember 2015.

Nationalization of PTFI researchers ask due to the importance of the mining sector because it is very profitable State when it was owned directly by themselves. Then under article 1 paragraph (2) of Act No. 5 of 1960 Concerning the basic regulation of the Agrarian trees also mentions that in fact the whole earth, water and space, and contained therein in the territory of Indonesia is a gift of God and is the national wealth. So the real all natural wealth belongs to Indonesia, not looking at large or small, not even looking at important or the benefits of assets.

2. Article 33 Verse (3) of UUD 1945

When looking at a good Law Number 1 of 1967 or the Law number 25 of 2007 On Foreign Investment. It will look at Article 33 of this Constitution as the considerations and reasons upon the inception of the legislation of foreign capital investment. Meaning of article 33 Constitution is the reason the emergence of legislation of foreign capital investment and legislation such as Article 33 implementation so that the sound of the Constitution can be achieved, particularly in paragraph (3) of article 33 of the Constitution reads:

*"Earth and water and natural resources contained therein are controlled by the State and used to as much as possible for people's prosperity"*

However, according to the researchers, the sound of paragraph (3) they are not sacred anymore so it no longer made the major consideration as its very first under law No. 12 year 2011 About the formation of the Regulations, where the position of the Constitution is set as the top in the hierarchy of legislation of the Republic of Indonesia Unity State. Then any that occurred during the formation of

the laws and regulations are not changed during this time, then the Constitution can not be defeated by other rules below.<sup>80</sup>

Text in Article 33 paragraph (3), there are myriad interpretations of the meaning of "controlled by the State." But the opinion of Prof. Dr. Jimly Asshiddiqie, S. H is the most relevant assumptions researchers. According to him that meaning ruled by State means owned by the State, so a foreign subject cannot be the owner of the rights over the land. The countries on behalf of the sovereign people to master and has the land, the water, and the airspace of Indonesia entirely, and thus the country must not be understood only can act as a regulator only.<sup>81</sup> The reason researchers follow the opinion of this destination because Jimly Asshiddiqie rather than ruled by these countries is to most people's prosperity. It can be completely accomplished according to researchers only by wholly owned by the Government of Indonesia.

Presumably the need for researchers to explain first briefly about the history of the creation of this Constitution, that can weigh the meaning intended by the founding legislation. The formation of the Constitution of Indonesia's efforts to achieve independence in the period of Japan at the time. Since the beginning of Japan had given a promise of independence to Indonesia, although in reality the independence of Indonesia achieved by an accomplice of the nation of Indonesia itself. On 29 April 1945 by the edict of Gunseikan, Japan formed the

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<sup>80</sup>Hierarchy of Indonesia Forming Constitution of the Act Number 12 of 2011 are : 1)UUD 1945; 2)Decision of MPR; 3)the Act/Perppu; 4)PP/Presiden decision; 5)Rule of Provicience; 6)Rule of City.

<sup>81</sup>Jimly Asshiddiqie, *Komentar atas Undang-Undang Dasar Negara Republik Indonesia*, h. 141.

*Dokuritsu Jumbi Cosakai* or body Preparation efforts Investigators Independence Indonesia (BPUPKI), chaired by Dr Radjiman Wedyodiningrat KRT with 61 others. In its efforts to prepare for independence, it performs twice plenary session on May 29, 1945 – June 1, 1945 and plenary session II on July 10, 1945 – July 17, 1945. The Agency then divided again into three groups the Committee on 11 July 1945 the Committee consisting of the designers of the Constitution chaired by Sukarno; The Committee for the defence of the fatherland headed by Abikusno Tjokrosujoso; and the financial and Economic Committee, chaired by Drs. Moh. Hatta.<sup>82</sup>

On July 14, 1945 held plenary session to listen to the report of the Committee for the Basic Law drafters. Within just 3 days after the Division of the Committee, the Committee of BPUPKI small led Sukarno to complete the 3 script i.e. Draft Statement Indonesia became independent, the draft Preamble of the Constitution, and the draft of the Torso of the Constitution which consists of 42 Chapters. Similarly, on July 17, 1945, where the results of the design by the second and Third Committee have also been received by the Chairman of BPUPKI. So more or less only 50 days after the inauguration of BPUPKI on 28 May 1945 the founders of the nation completed the basics of State administration Indonesia.<sup>83</sup> That was the beginning of the history of the birth of the Constitution. So keep in mind the intended destination anyway the Shaper in article 33 paragraph (3).

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<sup>82</sup>Wahid Siswoyo, *Langkah Awal Memahami Undang-Undang Dasar 1945*, p. 16.

<sup>83</sup>Wahid Siswoyo, *Langkah Awal Memahami Undang-Undang Dasar 1945*, p. 26.

According to one member of the Group of the first Committee is in charge of designing the Constitution namely Prof. R. Soepomo, "mastered" it means arranging and or organized especially for the fix and make high production with the cooperative form as a manifestation of economic democracy.<sup>84</sup> Different interpretation with Prof. Jimly. Difference expansion of meaning by Prof. Jimly because Prof. Jimly interpret "overpowered" as owned. He is basing its interpretation because it is not much different between the Constitution with the Constitution of the Taiwan Article 143 that Prof. Jimly quotation.<sup>85</sup> The sound rather than the article itself matter like this:

*“Mineral ores embedded in the land and natural resources which can be economically utilized for public benefit shall belong to the State, even if ownership of the land may have been acquired by private individuals”*

In Taiwan there are Articles the words "shall belong to the State" which means it must be owned by the State. So according to Prof. Jimly no contradiction or difference of meaning between the Constitution and the Constitution of Taiwan, meaning that it is appropriate to spell out the word "controlled" is owned by the State, and it seems like it is the desire of the contents of Article 33 paragraph (3). Without limiting the interpretation of Prof. R. Soepomo, researchers still agree with the interpretation by Prof. Jimly that meaning of "mastered" in Article 33 paragraph (3) that the most suitable is owned by the State. So that PTFI which until now was a foreign company which manages and controls the natural

<sup>84</sup>Wahid Siswoyo, *Langkah Awal Memahami Undang-Undang Dasar 1945*, p. 170.

<sup>85</sup>Jimly Asshiddiqie, *Komentar atas Undang-Undang Dasar Negara Republik Indonesia*, p. 142.

resources that exist in Timika, uncontrollable full path of nationalization by the Government of Indonesia.

At the beginning of the formation of the Constitution, led by Sukarno, the researchers also assume that the meaning is owned by the State, according to Prof. Jimly is one of the extension of the meaning that is appropriate, in addition to another meaning, namely arranging and organizing according to Prof. R. Soepomo. It is because according to the researcher, in accordance with the efforts of Sukarno very protecting natural resources from the foreign investors Indonesia, Sukarno may not willingly give away national wealth to foreigners, without giving it a great advantage to the people of Indonesia, it can be seen in 1961, President Sukarno very vigorous conduct revision of oil and mining management contract in Indonesia. At least as much as 60% of the profits oil companies foreigners should belong to the people of Indonesia. Even Sukarno also sent Indonesia's best sons and daughters to take their knowledge abroad, by purpose as preparation for managing natural resources in Indonesia in the future.<sup>86</sup>

Furthermore, when examined further, the interpretation of the meaning of "controlled" by Prof. or Prof. Soepomo Jimly not too much different, as if according to Prof. Soepomo meaning "overpowered" was set up and or hosts. Then according to Prof. Jimly meaning "overpowered" is owned. Both have a mutual goal of hand in hand, that the prosperity of the community that became the

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<sup>86</sup>Unknown name, "Freeport dan Penanam Modal Asing yang Membunuh Indonesia", <http://membunuhindonesia.net/2015/09/freeport-dan-penanaman-modal-asing-yang-membunuh-indonesia/>, accessed on 17<sup>th</sup> of Februari 2016.

goal, not the interests of the individual. That is called democracy.<sup>87</sup> In addition, in his speech of Prof. R. Soepomo after catapult the idea about article 33 paragraph (3), where the contents of his speech as follows:

*"Now about the relationship between the State and the economy. In a country that is based on integralistik, which is based on unity, it is in the economic field will be used in the system of State socialism (socialism staats). Important companies will be taken care of by the State itself, but in fact the country will decide where and what and what company will be held by the Central Government or by local governments or to be submitted to a legal entity privé or to someone, it all depends rather than the interests of the State, the people's interest entirely. In the new country of Indonesia, by itself according to present circumstances, companies as traffic, alas, corporate jungle electriciteit should be taken care of by the State itself. As well as on the ground, in fact state that ruled the land entirely. Mines that are important for the country must be maintained by the countries themselves. See the nature of Indonesia society as agricultural communities, then its own agricultural land into field life of the peasantry and the State must keep agricultural land is still owned by the peasantry "<sup>88</sup>*

Prof. Soepomo stated clearly and unequivocally, that companies that are important will be taken care of by the State itself, and also he sets forth that the mines which are important for the country will be administered by the countries themselves.

The opinion of Prof. Soepomo about your set, if the linguistic basis scrutiny, said set in a large Dictionary Indonesian Language (KBBI) online,<sup>89</sup> the basic set comes from the word which means arranged good-good, then get the affix (me-). Then it became a verb, meaning to create or compose something be neat or both.

<sup>87</sup>Wahid Siswoyo, *Langkah Awal Memahami Undang-Undang Dasar 1945*, p. 167.

<sup>88</sup>Muhammad Bakri, *Hak Menguasai Tanah oleh Negara (Paradigma Baru untuk Reforma Agraria)*, (Malang, UB Press, 2011), p. 2

<sup>89</sup>[www.kbbi.web.id](http://www.kbbi.web.id), accessed on 17<sup>th</sup> of April 2016 (This online application is for SEARCHING KBBI Daring that made for easier searching, use and reading of the meaning of the word. The main database for SEARCHING KBBI online refers to KBBI Daring Edition III, so the content (the word and the meaning) is the Copyright Agency of the development and construction of the language, the Ministry of education and culture).

It can also mean to organize or take care of. While the word hosts means doing or carrying out orders, laws, plans and so forth. In a sense both of them also means to fulfil or convey the meaning, ideals, expectations, duties, liabilities and so forth. As for the meaning of the word owned according to Prof. Jimly, it is derived from the word for searching KBBI basic property which means ' belonging, entitlement, fortune. Then if owned, meaning he says belonged.

The meaning of "hosted" by Prof. Soepomo, according to researcher not too clashed with the meaning of "owned" by Prof. Jimly. Assuming these researchers based on that country as an organization representing the people of Indonesia have been getting pelimpahan the authority to govern the nation of Indonesia's rights over all natural resources for the prosperity of the people, so that all the natural resources that exist in the region of Indonesia is belonging to the nation of Indonesia together.<sup>90</sup> No matter that only by mastering the authority setting or in a manner, owned directly. The second basis according to the researchers, namely to support the statement of Prof. Boedi Harsono that in article 1 of Act No. 5 of 1960 Concerning the regulation of the basic Agrarian issues are presented on the rights of the nation of Indonesia. Where according to him, the rights of Nations contains two elements, elements belonging to/ownership and authority over the land along which belonged to.<sup>91</sup> It certainly fits when confronted with the interpretation of Prof. Soepomo and Prof. Jimly. where on the first item as interpreted by Prof. Jimly. Whereas, in the second item in line with what is meant by Prof. Soepomo.

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<sup>90</sup>Muhammad Bakri, *Hak Menguasai Tanah oleh Negara*, p. 18.

<sup>91</sup>Muhammad Bakri, *Hak Menguasai Tanah oleh Negara*, p. 18.

Basis of other researchers that there was no contradiction between a striking interpretation of Prof. Soepomo and Prof. Jimly, because according to researchers "hosted" nature to improve and increase production with the form of cooperatives, indirectly means that management must be from the people of Indonesia itself, with the system management and basic economy embraced country Indonesia. As a function of cooperatives is an economic struggle as tools for enhancing people's welfare; as a means of democracy act the national economy; as one of Indonesia's economy's veins; etc. While the base is family and work togetherness.<sup>92</sup> Then it should be that mining companies must be owned by the people of Indonesia, as if owned by foreign nationals, of course they tend to bring their own systems they want to apply for the benefit of their personal, will not follow the principle of cooperation. Especially mention PTFI. At the beginning of the negotiations, the Government of Indonesia had offered to PTFI about contract/scheme for the results (Production Sharing Contract) as applied in the oil and gas mining. But the PTFI contract model for reasons of rejecting it for the results is not appropriate to apply to copper mining.<sup>93</sup> Finally the Government of Indonesia does not have any other arguments, then the Government of Indonesia thus offers to PTFI to prepare the framework contract.<sup>94</sup>

Back again to the meaning of "controlled ". So organize the management of the cooperative referred to Prof. Soepomo, according to other researchers do not

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<sup>92</sup>Article 4<sup>th</sup> and 5<sup>th</sup> of the Act Number 12 of 1967 About Cooperative,when before changed with the Act Number 25 of 1992 About Cooperative.

<sup>93</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Pengusaha Pertambangan di Indonesia*, p. 5.

<sup>94</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Pengusaha Pertambangan di Indonesia*, p. 6.

intend so aligned with article 33 paragraph (1) which States that an economy is structured as a joint venture, based upon the principle of family. And in line with article 33 paragraph (4) that the national economy was held based on economic democracy with the principle of mutuality, fairness, efficiency, environmentally sustainable, independence, as well as by maintaining a UUPAance of economic progress and national unity.

How is itself a cooperative ownership and profit from wealth management Indonesia it can be enjoyed by the people of Indonesia over the common interest, not the only one. Because the quote from the co-operative understanding itself is a business entity that consists of a person or legal entity of cooperatives by underpinning its activities based on the principle of cooperation and at the same time as the movement of people's economy which is based on the principle of family.<sup>95</sup> Then in the application and implementation of Article 33 paragraph (3) of the Constitution are described in more detail with the promulgation of the Agrarian Statute Staple (UUPA) number 5 year 1960 (State Gazette Number 104 in 1960) and Act No. 11 of 1967 Concerning the staple Mining Act (State Gazette number 22 of 1967).

The right master from the country over natural resources that Indonesia is more on public law. Where public law itself is between State laws that govern (Government) tools and equipment with citizens or legal relationship between the Government with the citizens (individuals).<sup>96</sup> It is also the one that researchers consider that the rights to the master of the country of entry also in the realm of

<sup>95</sup>Article 1th verse (1) of the Act Number 25 of 1992 About cooperative.

<sup>96</sup>Zainal Asikin, *Pengantar Ilmu Hukum*, (Jakarta: PT. Raja Grafinso Persada, 2012), p. 78.

administrative law of the State (public law), where the administrative law is the juridical instruments for the ruler to actively engage with the community, and on the other hand also allows the community to affect the ruler in each award.<sup>97</sup> Included also in consideration to nationalize PTFI it hopes the relationship of the Government with the people, not the end, because the Government often ignore considerations of the people. The general principle of administrative law so that the country does not run in harmony.

By not eliminating consideration of the interpretation of a still less agreed, if the editorial meaning "overpowered" by the State it is "owned" by the country. Then the researchers will also expose other analysis. If the interpretation agreed it was indeed the meaning of "regulated" or basically it is true that the meaning of aimed is "regulated", it does not make the ownership of natural resources in Papua to become lost, and became a fully owned PTFI. Because the system of concessions on the reign of the Netherlands East Indies as itself has long been abandoned, where the concession system was the system that exists in public, where mining companies have not only supplied the power of mining, but also given the right master/rights have on the ground.<sup>98</sup>

But the real happening according to researchers is the only migration rights manage mining because it is given to the provisions of the contract works through the power of mining by the rights owners, i.e. the country Indonesia. But the essence of ownership remain property of full country Indonesia.

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<sup>97</sup>Umar Said Sugiarto, *Pengantar Hukum Indonesia*, (Jakarta: Sinar Grafika, 2013), p.263.

<sup>98</sup>Salim HS, *Pengertian dan Asas-asas Hukum Pertambangan*, p. 2.

Mastery of the State, can also be used in the sense that the juridical protected by law is the holder of the right to rule the land essentially physically owned.<sup>99</sup> Although there is a mastery of a juridical physically and on its implementation mastery of physical done, because such as lent or rented, that doesn't make the essential ownership over land becomes lost. Even the landowner is entitled to demand the return of land cession in question to him physically.<sup>100</sup> The real land owners, are able to apply the rules of good things which can be done as well as prohibitions.

The above things researchers suppose that such a house renting. The holder of the rights legally is the homeowner/landlord house renting. But because those rights given to renter, Then the mastery of the use of the House moved to renter. But will not necessarily be renter free use of the House. There are rules and restrictions that must be adhered to renter, which is certainly not harming homeowners. So if the owner of the House at any time want to take back the rights to the House because it is in a condition there are things even to the detriment of homeowners, then allowed those rights are taken back, since renter is supposed to have missed appointments (tort) against provisions that should be adhered to. It also occurred in Indonesia, whereby PTFI as the owner of house of renting and PTFI as renter. Because of PTFI has violated various rules set forth the owner rent house (Indonesia), Indonesia should have very demanding cession/nationalized entitled PTFI, without any compensation or indemnity.

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<sup>99</sup>Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya Jilid 1 Edisi Revisi 2005*, (Jakarta; Djambatan, 2005), h. 23.

<sup>100</sup>Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria*, p. 23.

The illustration above, according to the researchers can also be applied in the event of nationalization, whereby PTFI is such as country Indonesia as the homeowner/landlord rented, and PTFI as renter. Then because of PTFI cannot abide by the rules and restrictions of State of Indonesia that has been determined, by performing a variety of violations. Then it is permissible if the State Indonesia as a substantial landowner, take back its rights. This can be done with the nationalization. so based on the preceding considerations, according to researchers already should be no more doubt for the Government to take the path of real and determine a line with the interpretation of "controlled" by Prof. Jimly. By PTFI has the full nationalization of the road with PTFI.

### 3. The Act Number 5 of 1960 (UUPA)

This Act is a form of application and implementation of the Constitution with article 33 paragraph (3). All the provisions that govern the natural wealth in the form of Earth, water, space, land and other wealth contained therein as well as in the country of Indonesia. UUPA has 5 programs in its efforts to achieve the goal to realize a fair and prosperous society based on Pancasila. Among them are:

- a. Renewal of the agrarian law, through the unification of the law of national concept and the granting of guarantees of legal certainty;
- b. Removal of foreign rights and concessions-concessions in colonial land;
- c. Feudal gradually sucking finished;

- d. An overhaul of ownership and land ownership and legal relations concerned with concessions of land in realizing equitable prosperity and justice;<sup>101</sup>
- e. Preparation Planning and designation of Earth, water, and natural resources contained therein as well as its use in planned, in accordance with the power support and his ability.

With five such programs, then the materials contained in the UUPA also regulates all matters relating to the setting of the national wealth. In article 1 and article 2 UUPA this set about the explanation of article 33 paragraph (3) of the Constitution. But researchers will be given the article another in UUPA is the legal standing in order to realize *the ius constituendum*, laws which are expected to apply at the time to come.<sup>102</sup> Although with Nationalization laws instituted PTFI.<sup>103</sup> And in order to realize *the ius constitutum*, law applied now for a community at a time, in a specific place.<sup>104</sup> With the practice of the Constitution Article 33 paragraph (3) comprehensive and optimally shaped nationalization PTFI.

Among the articles in the UUPA who according to investigators can be used as legal basis to nationalize PTFI is article 6 which reads:

*"all land rights have social functions"*

Social functions is none other than the interests of the most people for the prosperity evenly. So any land rights there at someone, it is not justifiable.

<sup>101</sup>Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria*, p. 3.

<sup>102</sup>Zainal Asikin, *Pengantar Ilmu Hukum*, p. 76

<sup>103</sup>Article 7 verse (1) the Act Number 25 of 2007 About Foreign Capital Investment

<sup>104</sup>Zainal Asikin, *Pengantar Ilmu Hukum*, h. 76

Because the soil is that properly can be used instead to her own personal interest, let alone if it cause any harm society.<sup>105</sup> UUPA does not mean limiting land ownership by the people themselves. But just as the corridor so that ownership is evenly distributed and the principal goal of prosperity, justice, and happiness for the people in total. Of article 6 may be drawn red yarn. If the ownership by the people themselves are arranged, of course will be much more limited if it is a foreign citizen through his company as with PTFI.

More than that too, the meaning of the social function of itself, according to the researchers, namely the Socialist Society for the realization of Indonesia that is fair and prosperous society based on Pancasila.<sup>106</sup> At the same time as step supports the substance of article 5 UUPA, that agrarian laws relating to wealth is customary law, as long as not contrary to the interests of national socialism and Indonesia. Article 6 of this social function, researchers consider a synchronization with article 13 paragraph (2) of UUPA which reads:

*"the Government prevent the existence of efforts in the field of agrarian organizations and individuals which are the monopoly of private"*

It is understood, too, that PTFI is not a State-owned enterprises (BUMN), so the researchers can also sense of PTFI is said to have done the business monopoly with controlled mining company in Timika until approximately 49 years. In the article it is stipulated with the characteristics of a private organization, it does not mean when government agencies then are allowed to monopoly. But if indeed the

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<sup>105</sup>Wahid Siswoyo, *Langkah Awal Memahami Undang-Undang Dasar 1945*, p. 171.

<sup>106</sup>Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria*, h. 551.

Government agency conducting a monopoly, it would be implemented by legislation. For example, namely Act number 8 in 1971 About the mining company oil and Gas Negara (PERTAMINA). In the the purpose of the company explained that the purpose of the existence of BUMN, especially that Pertamina is to build and implement oil and gas concession in the sense of existence for the people and the prosperity of most of the country and create national resilience.<sup>107</sup>

The next article that can be used as a basis for nationalize with PTFI is according to researchers, namely Article 21 of UUPA which reads:

- 1) *"Only citizens of Indonesia who have ownership rights.*
- 2) *The Government established bodies of law can have property rights and terms.*
- 3) *Aliens who, after the enactment of this law, obtain property rights because of inheritance-intestate or mixing of property due to marriage, as well as citizens of Indonesia who have ownership rights and after the enactment of this Act loses nationality was obliged to relinquish rights to it within the period of one year since the rights acquired or lost the nationality of that. If after that time period past that property rights are not released, then delete those rights because the law and the land fell to the State, provided that the rights of the other party that bog it down still takes place.*
- 4) *For someone in addition to Indonesian citizenship had taken foreign citizenship then he cannot have land with property rights and apply for her determination in paragraph 3 of this article. "*

In article 21 verse (1) that describes the legal status of a soil. In this object the researchers examine, the intent can ground meant a ground relating to the utilization of land for mining interests. The status of the land himself was an assortment of, such as the status of property rights, land use rights efforts, building use rights, usage rights, and State land.<sup>108</sup>

<sup>107</sup>Article 5 Act Number 8 of 1967 About Mining of Oil and National Air.

<sup>108</sup>Salim HS, *Pengertian dan Asas-asas Hukum Pertambangan*, p. 25.

Under law number 11 of 1967 Concerning the provisions of principal Mining Article 15, the power of the mining (KP) as the top requirements for which a permit by the State to mine. Then the researchers interpreted that the State considers the land in Timika as State land, or the land belongs to the State. So to manage the land must apply to the national land Agency in advance to get the Building use rights (HGB) and the right To attempt (HGU).<sup>109</sup> Other officials of the authority is to provide the KP was the Minister, Governor, District Governor. The granting of such authority poured in decree granting power of mining.<sup>110</sup> Meanwhile, agency/individual who can be given the power of mining that is in accordance with that stated in article 5 of Law number 11 of 1967 Concerning the provisions of principal mining. For that, then that should be included in the PTFI article 5 the criteria first, and if you want to utilize the land for mining interests.

In article 5 of Law number 11 of 1967, between the mining business that can do or can be given KP is a government agency appointed by the Minister; State enterprises; the company area; companies with joint capital between countries and regions; the cooperative; Agency or private individuals who qualify are referred to in article 12 paragraph (1); companies with joint capital between countries and/or regions with cooperative and/or agency/private individuals meeting the requirements in article 12 paragraph (1); and mining people.<sup>111</sup> The requirements in article 12 paragraph (1) that can be given to the agency or private individual is a private legal entity established in accordance with the regulations of the Republic of Indonesia domiciled in Indonesia and aims to seek in the field of

<sup>109</sup>Salim HS, *Pengertian dan Asas-asas Hukum Pertambangan*, p. 26.

<sup>110</sup>Salim HS, *Pengertian dan Asas-asas Hukum Pertambangan*, p. 64.

<sup>111</sup>Article 5 the Act Number 11 of 1967 About Determining of Mining.

mining and its administrator have the nationality and resides in Indonesia Indonesia. The individual nationality and resides in Indonesia.<sup>112</sup> From the requirements of article 12 paragraph (1) of Act No. 11 of 1967 the show that its substance one substation with article 21 paragraph (1) merely stating that UUPA citizens that Indonesia can have property rights, since all its terms seeks ownership by reason of the nationality Indonesia.

According to researcher none PTFI as private meets the requirements in article 12 paragraph (1). Although the agency or private individual can conduct business in the mining region of Indonesia in accordance with article 5. However, the requirements of the agency or private individual must also meet the elements in article 12 paragraph (1). On the first element, PTFI often violate the rules of Indonesia. Researchers suppose one of them namely PTFI violated Law No. 4 of 2009 About Mineral and coal that is Article 103 where the holder of the Mining business license (IUP) and Special Licenses (IUPK) compulsory production operations performing processing and refining (smelter) results in mining in the country; It also violated Article 170 of which explains that holders of contracts of works that already produce obligatory purification as referred to Article 103 no later than 5 (five) years since this legislation enacted.<sup>113</sup> the second element. That PTFI is an affiliate or subsidiary of the company Freeport McMoRan which mine, process and conduct exploration of ore, and market concentrates containing copper, gold and silver throughout the world. where its position is in Phoenix, Arizona, United States. Freeport McMoran alone has other subsidiaries besides

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<sup>112</sup>Article 12 verse 1 the Act Number 11 of 1967 About Determining of Mining.

<sup>113</sup>Article 103 and 107 the Act Number 4 of 2009 About Mineral and Copper.

PTFI, Freeport-McMoRan i.e. Corporation and Atlantic Copper.<sup>114</sup> It is true that PTFI domiciled in Indonesia, because it is a national wealth mining PTFI are there in Indonesia. But the true ownership or company PTFI mine in Timika, researchers say it is actually mined by Freeport McMoRan, based in America, because that really changed regulator is centered in America there. While the PTFI in Indonesia, only run the instructions in line or run commands from the central company.

The third and fourth elements are its owner is a citizen of Indonesia and resides in Indonesia. Although PTFI company and limited company is a business activity that is basically a capital divided into shares.<sup>115</sup> However, in accordance with article 35 paragraph (2) of the Act also limited liability company, that is the largest share owner who took or guarantors of the company. Then the researchers can tell that the owner is the owner of PTFI's largest stock. PTFI is largest stock owner Carl Icahn. Born on February 16, 1936 in Queens, New York, United States. He was crowned as the 31st richest person according to Forbes magazine in the year 2015. With a fortune of US \$ 20.3 billion or if change to rupiahs reached Rp 282.4 trillion.<sup>116</sup> Until now, Carl never moved citizen status into a citizen of Indonesia, and still decided to stay in America, the country of his birth.

However, all requirements that cannot be met the PTFI snap can be erased because of the consistency of the Government in an effort to protect national

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<sup>114</sup>Unknown name, "sekilas tentang peneliti", <http://www.PTFI.co.id/2013/id-about-overview/>, accessed on 20<sup>th</sup> of April 2015

<sup>115</sup>Article 1 the Act Numer 40<sup>th</sup> of 2007 About Company

<sup>116</sup>Zulfi Suhendra, "Mengenal Orang Terkaya Dunia, Pemegang Saham Terbesar Freeport", <http://bisnis.liputan6.com/read/2388464/mengenal-orang-terkaya-dunia-pemegang-saham-terbesar-freeport/>, accessed on 20<sup>th</sup> of Desember 2015.

wealth back questionable. On January 12, 2009 the promulgation of Act No. 4 of 2009 About Mineral and coal by President Susilo Bambang Yudhoyono, which in article 173 of the Act indicated that since the legislation is valid, then the Mineral and Cooper in hand in anyway Act number 11 of 1967 Concerning the staple Mining provisions were repealed and declared no longer valid. With such changed terms of the receiver Power mining (KP).<sup>117</sup> In contrast to article 5 of the predecessor legislation, namely Act number 11 of 1967 Concerning the provisions of the mining issues that explain the details of the requirements of the KP recipients in a single act it is. Then on article 38 of Act No. 4 of 2004, Mining business license (IUP) or equal to the power of the mining (KP) can be assigned to a business entity; The cooperative; and individuals. Detail the terms arranged itself in the Government Regulation Number 23 in 2010 on the implementation of the activities of the mining of minerals and coal. The IUP receiver specifications described in article 6 PP Number 23 in 2010. Although later on February 21, 2012 there is additions to the requirements in article 6 through changes to PP Number 23 in 2010 the PP Number 24 in 2012.<sup>118</sup>

With the change of Law number 11 of 1967 became Act No. 4 of 2009, according to the researchers these things a little sidetracked or not in line with Section 21 subsection (1) of the aforementioned legislation, since UUPA thus

<sup>117</sup>Article 1 the Act Number 4 of 2009 About Mineral and cooper.

<sup>118</sup>According to article 6 paragraph (2) and (3) that the definition of the business entities including private business entities, namely BUMN, or BUMD. While individuals can be either an individual, firm, company or Corporation Comanditery. Then on February 21, 2012 enacted PP Number 24 in 2012 About changes to PP Number 23 in 2010, and added the criteria in article 6. where the private business entities include business entities within the framework of domestic investment and foreign investment. Next in order the PMA (Foreign Investment) IUP can only be given by the Minister.

loosening of the requirement for foreign private entities to invest capital in Indonesia, and has also removed the requirement of having to legal citizen Indonesia, when about to have or initiate the land in Indonesia.

To this end, researchers consider that PTFI cannot at all be eligible to earn status as a private body which can be granted the power of mining (KP) as described section 5 of Law number 11 of 1967, as well as Mining business license (IUP) as in section 38 of Act No. 4 of 2009 about Mineral and copper not detail, because the requirements in law, and only the Minister Mineral and copper can pass or not when foreign investor wants to infuse capital in Indonesia.<sup>119</sup> At the same time also when referring to act before, then obviously the PTFI cannot get away from these requirements.

#### 4. The Work of Contract (Kontrak Karya)

The notion of contract works explicitly described in article 8 of Law No. 1 Year 1967 before converted to Law number 25 of 2007 About Investing that is the pattern of cooperation in terms of foreign capital investment among foreign investor with the Government.<sup>120</sup> Contract work is the pattern of cooperation or contractual agreements between the Government of Indonesia's first with a foreign investor who written down on April 7, 1967 in Jakarta.<sup>121</sup> In General then this work contract is a contract according to which international Sudargo Gautama

<sup>119</sup>Article 6 Verse (3b) President Decision Number 24 of 2012 About Amandement the Act Number 23 of 2010 About Aplication of Mining of Mineral and copper.

<sup>120</sup>Article 8 Number 1 of 1967 About Foreign Capital Investment

<sup>121</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Pengusaha Pertambangan di Indonesia*, p. 5 & p. 43.

asserts that the contract is a contract that contained the elements of foreign elements or a "*foreign element*"<sup>122</sup>

After seeing explicitly contract work, according to researcher there are some elements of formal and material lacking in contract work. With some of the deficiencies in the elements, it is according to researchers can be used as the Foundation for being able to nationalize the PTFI, due to some defect in the contract work.

Formal disability researchers mean is the existence of a deficiency or discrepancy concerning the procedures for the establishment of an international contract, in particular the work contract between the Governments of Indonesia and a foreign private company namely PTFI. Subject of international law or contractual parties are the parties doing contracts. Where in this study it or be subject to the law is among the countries with foreign companies.<sup>123</sup> The status of the country in terms of international contracts was *jure gestinoesthe* State regarded as a subject of law international who commits an act of commercial or business, so countries considered leaving the right of immunity as a sovereign State (*jure imperii*). And the country is considered like any other international

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<sup>122</sup>Muhammad Syaifuddin, *Hukum Kontrak Memahami Kontrak dalam Perspektif Filsafat, Teori, Digmantik, dan Praktik Hukum (Segi Pengayaan Hukum Perikatan)*, (Bandung: CV. Mandiri Maju, 2012), p. 280.

<sup>123</sup>Muhammad Syaifuddin, *Hukum Kontrak Memahami Kontrak dalam Perspektif Filsafat, Teori*, p. 282. Legal subjects that can make international contract is divided into four different aspirants. Between domestic companies with foreign companies; among the countries with foreign companies; among countries with a State; antra and international organizations with domestic companies.

organization, so that its position is UUPA (*equality before the law*).<sup>124</sup> Indonesia country business actions evidenced by the existence of the contract works as an international business agreements in the field of mining with foreign private companies that binds the two.<sup>125</sup> But according to the researcher in the process of making the work contract (formal elements) there is some unmet asked as a source of law in international law.<sup>126</sup>

*The First* at the time of negotiation of the contract. As in General that profit sharing type of General mining in Indonesia using the scheme of *Production Sharing Contract* as the steps.<sup>127</sup> However, PTFI refused, and instead offer another contract that is not a habit that is used in Indonesia, and that makes sad again, the Government of Indonesia to accept it.<sup>128</sup> In principle, there are international contract principles are enacted and in force internationally anyway. Including the international contract law arrangements set forth in The UNIDROIT Principles of International Commercial Contracts 1994 (UPICCs 1994) which is a contract law principles which underlie international law of the international

<sup>124</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Pengusaha Pertambangan di Indonesia*, h. 5 & h. 51; Muhammad Syaifuddin, *Hukum Kontrak Memahami Kontrak dalam Perspektif Filsafat, Teori*, p. 283.

<sup>125</sup>Kontrak Karya generasi I yang ditandatangani pada tanggal 7 April 1967. Dikutip dalam bukunya Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Pengusaha Pertambangan di Indonesia*, p. 5 & p. 43

<sup>126</sup>Sources of law in international contracts in terms of international in the book of the law of contracts, compiled by Muhammad Arun is twofold; Convention on Contracts for the International Sales of Goods of 1980 (CISG 1980) and the UNIDROIT Principles of the International Commercial Contracts 1994 (UPICCs 1994). On the primary sources, most of them set about dispute resolution procedures in international contracts. But Indonesia is not yet committing themselves against the 1980 CISG. While the second, set of UUPAly On the International Alliance principles and technical terms in the contract international, as a legitimate international contracts.

<sup>127</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Pengusaha Pertambangan di Indonesia*, p. 5.

<sup>128</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Pengusaha Pertambangan di Indonesia*, p. 6.

contract.<sup>129</sup> One of the principle which is set in the UPICCs that is the basis of local customs. As the sound of the article 1.1 the following UPICCs:

*“The parties are bound by any usage to which they have agreed and by any parties which they have established between themselves.”<sup>130</sup>*

Any contractual agreements between Indonesia with other law subjects, always use the schema Production Sharing Contract in the sharing of benefits and it has become public knowledge by any investor who wants to infuse capital in Indonesia. PTFI's attitude to it because the less cooperative by rejecting the usual profit sharing schemes used in Indonesia, then according to the principle of international contracts of researchers in this section has been divorced and giving effect to the other party, namely Indonesia.

In addition, according to Erman Radjagukguk which CITES in Convention on International Sell legitimate Goods, of a contract is also left to the domestic law applicable in Indonesia, where a legitimately own a contract based on the Burgerlijk Wetboek Section 1320.<sup>131</sup>

*The Second*, the absence of basic good aim (good faith) by PTFI. Such matters according to researchers can be seen from the attitude of the PTFI in the stage of negotiations has already done the actions that go around with its own did not follow the scheme offered by the Government of Indonesia.<sup>132</sup> In addition, PTFI also not honest in explaining any profit in may by PTFI to the people of

<sup>129</sup>Muhammad Syaifuddin, *Hukum Kontrak Memahami Kontrak dalam Perspektif Filsafat, Teori*, p. 311.

<sup>130</sup>Article 1.8 of The UDITROIT Principles of International Commercial Contracts 1994.

<sup>131</sup>Muhammad Syaifuddin, *Hukum Kontrak Memahami Kontrak dalam Perspektif Filsafat, Teori*, p. 288.

<sup>132</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Pengusaha Pertambangan di Indonesia*, p. 5.

Indonesia,<sup>133</sup> and is also in breach of article 103 and 170 of the Act No. 3 of 2009 About Mineral and coal, that PTFI should perform activities of purification in Indonesia (smelter), so an increase in profits can be increased, as a result of the exported mining is no longer in the form of raw materials, but the half-baked material. Actions are indicative of PTFI than to try to get an advantage on it's own. But I'tikad good and being honest is an international obligation in the contract according to Article 1.1 IPICCs 1994:

*“Each party must act in accordance with good faith and fair dealing in international trade. The parties may not exlude or limit this duty”*<sup>134</sup>

Bad behavior this reinforced that PTFI is indeed the basis of the well aim and be honest not so known in *common law* legal systems such as the State of the United States. Where is the parent company of PTFI is located there.<sup>135</sup> So indeed deserved only when Bob Duke chosen by PTFI contract clause to create a masterpiece, all the clauses many profitable party of PTFI in Indonesia.<sup>136</sup> However, the existence of a principle of good aim has a goal in order to achieve a State Fair in international transactions, which are in fact in the contract the contract takes the form of international paper between Indonesia and PTFI is not achieved.

<sup>133</sup>Ruslan Tambak. “Perpanjang Kontrak Freeport, Jokowi Khianati Konstitusi Trisakti”. <http://politik.rmol.co/read/2015/01/26/188476/Perpanjang-Kontrak-Freeport,-Jokowi-Khianati-Konstitusi-dan-Trisakti>, accessed on 30<sup>th</sup> of Desember 2015.

<sup>134</sup>Article 1.7 The UDITROIT Principles of International Commercial Contracts 1994.

<sup>135</sup>Muhammad Syaifuddin, *Hukum Kontrak Memahami Kontrak dalam Perspektif Filsafat, Teori*, h. 317.

<sup>136</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Pengusaha Pertambangan di Indonesia*, p. 6.

The result of the absence of the principle of good and honest attitude aim by PTFI, then automatically also the basis of other including are not met, namely the principle of the ban on negotiating with the bad aim. This principle is set out in Article 2.15 UPICCs 1994. The content of the article, mention that any agreement had to be independent of the existence of the bad aim.<sup>137</sup> For that, because of this, much less PTFI observes principles, according to researcher can be basis for Indonesia to be able to do an international contract cancellation.

*The Third*, the contract works which forms the standard contract. Due to the nature rather than the contract is a contract which has been made by one party alone which is then given to the other party,<sup>138</sup> even in the absence of negotiations with the other party, it is according to researcher as an act that is distorted and the contradiction with the principle of freedom to make contracts. Whereas the freedom of contracts is the basic principle of a contract that cannot be defeated, because it is the right of the parties to choose the law and basic to use.<sup>139</sup> In its formation of the contract works, researchers assume due to the carelessness of the Government of Indonesia at that time less savvy about its own natural resources so future impacts now. Even the most likely Government also did not know that in 1936, Jean Jacques Dozy (Oil Netherlands Researchers) have found mountain of ore reserves in Papua, well before Indonesia's independence. Where they do

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<sup>137</sup>Muhammad Syaifuddin, *Hukum Kontrak Memahami Kontrak dalam Perspektif Filsafat, Teori*, p. 317.

<sup>138</sup>In the contract the parties make a raw, Treaty is a party that has a higher bargaining position and the substance of the contract will benefit those parties who made the contract. Muhammad Arun, *Hukum Kontrak Memahami Kontrak dalam Perspektif Filsafat, Teori*, p. 294 & p. 320.

<sup>139</sup>Ida Bagus Wyasa Putra, *Aspek-aspek Hukum Perdata Internasional dalam Transaksi Bisnis Internasional*, (Bandung: Refika Aditama, 2000), p. 63

research to explore New Guinea through the Freeport Sulphur Company. Headed by Forbes Wilson once knew such a huge reserve.<sup>140</sup>

Whereas Papua in 1904 had become the target of a private institutions of the *Netherlands Koninklijke Nederlandsche Aardrijkskundig Genootschap* (KNAG) i.e. the Royal Netherlands Geographical Institute which organizes expeditions to West Papua with the main purpose was to visit the mountains of snow, which was originally a story land coming from Captain Johan Cartenz.<sup>141</sup>

Back on raw, contract forms contract works contract intangibles standard (standard contract) collided with the principle of freedom of contract, as did the freedom of doing the contract means that the parties are free to determine the content of contracts contract, determine the form of contract, the binding rules as legislation, and more is not done.<sup>142</sup>

Other things that can make the work of a contract is invalid, because the correct fulfillment principles in forming an international contract, one of the principle that there should be according to UPICCs principle is a local custom of 1945, where in Indonesia can do a contract when it meets the criteria of article 1320 Burgerlijk Wetboek the criteria of one of the parties, i.e. have the prowess to make an Alliance. In the making of the contract of work, according to researcher Indonesia party said to be placed less qualified, as the minimum knowledge in the fields of mining, so that in the making of contracts of works, thus offering

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<sup>140</sup>Unknown name, "Freeport Indonesia", [http://id.wikipedia.org/freeport\\_indonesia/](http://id.wikipedia.org/freeport_indonesia/), accessed on 20<sup>th</sup> of April 2015.

<sup>141</sup>Unknown name, "Freeport Indonesia", [http://id.wikipedia.org/freeport\\_indonesia/](http://id.wikipedia.org/freeport_indonesia/), accessed on 20<sup>th</sup> of April 2015.

<sup>142</sup>Muhammad Syaifuddin, *Hukum Kontrak Memahami Kontrak dalam Perspektif Filsafat, Teori*, p. 315

Indonesia so that PTFI standard contract.<sup>143</sup> When in fact the ability and the knowledge of the parties contracting, very influential in the risk can arise from every clause has been signed in the contract,<sup>144</sup> due to an inability in observing the standard contract, PTFI proffered sustainable impacts until now.

Inadequacies of one of the parties is to be a sign that the parties to the contracts not in a UUPA position and can not guarantee it will happen next creates the mutual benefit, nor will manifest a justice. In fact, according to the researchers the work contract is just another Guile PTFI to legalize to dredge the riches in Papua, for the power of the state mandated Article 33 paragraph (3) of the Constitution in one interpretation as a regulator and controller (PDC) is not fulfilled, evidenced when the contract was made the work patterns of cooperation, which determine the area is mining its own PTFI parties, not the Government that set them up or offer the region.<sup>145</sup> PTFI has the impression of knowing in advance than Indonesia that in Papua, there is a rich source of natural wealth, indicating that it is indeed an evil plan that PTFI massif to the national wealth. In addition to these formal elements non full filed in contract works, there are also elements of the material should be used as evidence that the work, the contract is a contract of international disability law. Among them are:

*The First*, the contract works does not control the set up of the possibility of the discovery of ore that is very much in the mines, as a result, the Government

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<sup>143</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Pengusaha Pertambangan di Indonesia*, p. 54.

<sup>144</sup>Ida Bagus Wyasa Putra, *Aspek-aspek Hukum Perdata Internasional*, p. 64

<sup>145</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Pengusaha Pertambangan di Indonesia*, p. 53.

of Indonesia harmed because the obligations already given, but small mineral deposits that found turned out really great.<sup>146</sup>

*The Second*, the contract works do not include clause obligations regarding the development of the celebrated, as a result many companies who don't know or haven't done as it should be. Even in contract work of generation VII, no limitation exploration mining region.<sup>147</sup>

*The Third*, the contract States that the contract will not change with the new legislation on the grounds to ensure legal certainty.<sup>148</sup> This is certainly contrary to the basic principles of international explained contract by Erman Radjagukguk principle that there is a change in the contract that can be modified at any time due to certain reasons which cannot be predicted in advance.<sup>149</sup> Changes a international contract, even international treaties actually internationally is allowed, there is even Division, where small scale changes in the name or modification, amendment whereas the public usually changes when namely revision.<sup>150</sup>

Based on incompleteness in fulfilling elements of formal and material in an international contract, then the contract should be the work of turning the runway can be used to immediately nationalize the PTFI.

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<sup>146</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Pengusaha Pertambangan di Indonesia*, p. 55.

<sup>147</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Pengusaha Pertambangan di Indonesia*, p. 56.

<sup>148</sup>Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Pengusaha Pertambangan di Indonesia*, p. 61.

<sup>149</sup>Muhammad Syaifuddin, *Hukum Kontrak Memahami Kontrak dalam Perspektif Filsafat, Teori*, p. 290.

<sup>150</sup>Boer Mauna, *Hukum Internasional (Pengertian, Peranan dan Fungsi dalam Era Dinamika GloUUP4)*, (Bandung: PT. Alumni, 2003), p. 155.

## 5. The Sovereignty Theory

This country's sovereignty theory States that it is the supreme power in a State, whether these powers are absolute or unlimited. Even Jellink, one of the country's sovereignty theory reveals that out of State, however, that no one can set a law unless the State itself,<sup>151</sup> a country's sovereignty is an essential characteristic that should not be lost.<sup>152</sup> The presence of a State because of the law, and there is no one law which applies if it is not required by the State.<sup>153</sup> For that, if it meets the State sovereignty of international law governing inter-State relations, it will be contradictory. Because the State is the supreme power which do not recognize a higher power on it.<sup>154</sup>

In theory this term were called *staats souveriniteit* in another source also tells us that the state sovereign against any society that dwells within the jurisdiction of that country. that means state has supreme power to take any decision on the community residing in the territory of the country.<sup>155</sup>

Then the researchers concluded that the actual position of the national law of a country, it was considered to be the position higher than international law governing inter-State. And it is justified according to this theory.

The right of State sovereignty must be respected by other countries of its rights in international law, obligations respecting amongst one of them can be an obligation not to allow its citizens performing acts that violate the sovereignty of

<sup>151</sup>Soehino, *Ilmu Negara*, (Yogyakarta: Liberty, 2001), p. 149.

<sup>152</sup>Yudha Bhaktii Ardhiwisastra, *Imunitas Kedaulatan Negara di Forum Pengadilan Asing*, (Bandung: PT. Alumni, 1999). p. 27.

<sup>153</sup>Ni'matul Huda, *Ilmu Negara*, (Jakarta: PT Rajagrafindo Persada, 2010), p. 182.

<sup>154</sup>Ni'matul Huda, *Ilmu Negara*, p. 183.

<sup>155</sup>Muchtar Pakpahan, *Ilmu Negara dan Politik*, (Jakarta: PT Intitama Sejahtera, 2010), p. 73 & 74.

supremacy in the territory of other countries.<sup>156</sup> So, according to the researchers, the legal position was no exception in international contracts against existing national laws in Indonesia because it is the supremacy of sovereignty.

Then based on this theory, there is nothing to preclude national laws applying to Indonesia, even if it is contrary to international law. So when the Constitution versus with UPICCs 1994. Then position the more mainstream is the Constitution. Even international agencies like the United Nations cannot regulate or give instructions to Member Governments of the UN.<sup>157</sup> Surely this theory perfectly suited to realizing nationalization of PTFI stated that researchers.

In terms of PTFI, then it can be said that parties should be able to apply the theory of the sovereignty of these countries i.e. Indonesia, where mining region that has Indonesia, is that the region is manage expatriate/foreign citizens shaped PTFI. Researchers assumed that PTFI has affected the sovereignty, even threatening the sovereignty of the State of Indonesia through a Work Contract has been made unilaterally, so the Government should be able to be assertive covert incursions of sovereignty.

Opinion researchers is based by the concept of Jean Bodin, where sovereignty is the supreme power that nature is: a Single), that only the state who has sovereignty, so that in a country no longer power, b) genuine, that the sovereignty of it doesn't come from the other powers, not the power derivatives Immortal, c), d) can not be divided either partially or entirely to anyone.<sup>158</sup> So it is

<sup>156</sup>Ni'matul Huda, *Ilmu Negara*, p. 185.

<sup>157</sup>Muchtar Pakpahan, *Ilmu Negara dan Politik*, p. 75

<sup>158</sup>Hassan Haryono, *Ilmu Negara*, (Yogyakarta: Ombak, 2014), p. 69.

questionable if the Government succumbs to casually with PTFI Contract works made.

The concept of sovereignty between the State sovereignty are purely of an independent, sovereign State status in terms of commercial or business. In this case, the pure State sovereignty to do in science's attempt, pinned together with an independent country *de facto* and *de jure*. While sovereign States in terms of commercial, meaning her relationship choices as an alternative. When choosing to do business, then its sovereignty is not considered. If both the concept of sovereignty is identified, it will be happening with the theory of contradiction brought by Jean Bodin and Jellink as described previously, that State power is the power of the highest, so that concept seems to explain that the State as a regulator, not the object that can be set.

Presumably this little theory of State sovereignty in line with George a. Bergmann's explanation that the contract between the State and foreign private parties, then selected the national electoral law is the first party in an international contract with the other party (the second party). To include three basic reasons:

- a. Contracts made with companies in foreign countries, subject to national law;
- b. Legal disputes must be resolved by contract, its national courts;
- c. Countries having sovereignty over its natural wealth<sup>159</sup>

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<sup>159</sup>Muhammad Syaifuddin, *Hukum Kontrak Memahami Kontrak dalam Perspektif Filsafat, Teori*, p. 284.

Not only that, according to the Huala Adolf, the principles of international law was a fundamental principle of supremacy/sovereignty of the State, which requires national law cannot be disturb and strength it is absolute.<sup>160</sup>

With nationalization agenda based on the doctrine of State sovereignty, it turns out that in 1958 the Government of Indonesia has done already in the time of President Sukarno, with the promulgation of Law Number 86 in 1958 about the Nationalization of companies Netherlands. The base of the nationalization, namely Act number 13 in 1956 About cancellation of the Indonesia-Netherlands Relations based on the round table Conference Agreements, where the promulgation of such laws, Indonesia decided the cancellation of relations with the Netherlands.

The nationalization, it turns out that in 1959 opposition by *Verenigde Deli Maatchapijen*, a Netherlands company gardening filed a lawsuit against the Government of Indonesia related nationalization of the tobacco holdings that will be on the market in tobacco auction Bremen, Germany. They claim that tobacco was hers, and the nationalization process is invalid. In his defense of Sukarno declared that the Act of nationalizing it is a sovereign act of one country in order to change the structure of its economy, of colonial economic structure to the national economy. The Court of Bremen, in an award recognizes the defense of Sukarno, and win/Indonesia.<sup>161</sup>

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<sup>160</sup>Muhammad Syaifuddin, *Hukum Kontrak Memahami Kontrak dalam Perspektif Filsafat, Teori*, p. 287.

<sup>161</sup>Tarli Nugroho. "Politik Nasionalisasi dan Ekonomi Berdikari". <http://www.berdikarionline.com/politik-nasionalisasi-dan-ekonomi-berdikari/>. Accessed on 10<sup>th</sup> of April 2016; Bhaktii Ardhiwisastra, *Imunitas Kedaulatan Negara*. p. 290.

The same thing also happened in the country of Venezuela President Hugo Chavez at the time of the nationalization of foreign companies do a lot of that is in the country. And many other countries also do the same in order to develop and release its national economic system from a political economy that is suffering by the West.

Therefore, there is no harm to continue struggle for Sukarno in nationalized foreign companies which stand in the region of Indonesia like PTFI. Another view of the theory of State sovereignty itself, according to researchers is also not much different from the basis of a country's immunity, because historically turned out hand in hand, where the concepts of this country started from immunity concept of the sovereignty of the King in the 12th century in the feudal system in England that the King could not be blamed (the king can do no wrong). Then a century later gave birth to a mechanism to surround the King's private right of immunity from all prosecution.<sup>162</sup>

Juridical aspects of the fifth above is according to researchers who can be used as a foundation to further nationalize the PTFI, researchers will mention the Foundation of sociological aspects of the Government of Indonesia to nationalize PTFI, among others are:

- a. Place the Holy area enters the PTFI mining inhabited by indigenous Tribes, Amungme PTFI dismantling forced the land they inhabit, and destroy the dugu dugu-their ancestors on the mountaintop Ertzberg.<sup>163</sup>

<sup>162</sup>Bhaktii Ardhiwisastra, *Imunitas Kedaulatan Negara*. p. 122.

<sup>163</sup>Siti Maimunah, *Negara Tambang dan Masyarakat*, p. 15.

- b. Killing and forced disappearance of citizens around mining continue to rise, since 1975-1997 more than 1660 Papua killed citizens around the circumference of the mines, which do not respect human rights<sup>164</sup>
- c. Community Development (CD) and Cooperate Social Responsibility (CSR) given PTFI is simply the transferability of some violations committed PTFI, even many people who divided because of the CD and the CSR division.<sup>165</sup>

The third aspect of the above is just a small part of some of the violations in terms of socially committed by PTFI against citizens around the circumference of the mine. From some of the social aspects that can be used as an excuse to nationalize PTFI.

## **B. The Government's Role of Indonesia for Nationalization of the PT. Freeport Indonesia in the Welfare State Concept**

The term welfare State is the translation of the welfare state. In term, the welfare state is composed of two syllables, namely welfare and state. Simply put welfare can be meant by welfare, and state means a State or an agency (tool) from the community who have the power to regulate human relationships in society and published symptoms of power in society.<sup>166</sup>

<sup>164</sup>Siti Maimunah, *Negara Tambang dan Masyarakat*, p. 16.

<sup>165</sup>Siti Maimunah, *Negara Tambang dan Masyarakat*, p. 27 & p. 56.

<sup>166</sup>Umi Afifah dan Ahmad Dahlan, *Konsep Negara Kesejahteraan*, p. 24.

Midgley (1997) says that the concept of a welfare State or a welfare state is used to declare a State that his Government provides social services to the citizens of a vast country. This concept stating things that are ideal for comparison with the reality encountered in a particular country. So a country can be judged on how much social maid service provided to its citizens.<sup>167</sup> In Indonesia himself was the concept of a welfare State has become a goal of the establishment of Indonesia's own country.

The purpose of Indonesia as stated in the opening of the Constitution is to protect the Nations Indonesia and all the spilled blood of Indonesia and to promote the general welfare, the intellectual life of the nation, and carry out the order of the world which is based on freedom, eternal peace and social justice.<sup>168</sup> All purpose State that Indonesia is a country that can be given rights to all its citizens, as a sign that Indonesia is also not apart rather than understand welfare State (Welfare State)

The purpose of the State embedded in the Constitution certainly Opening can only be exercised by the Government, as the Organization of the powers of a people who is in charge of representing the aspirations of their needs to the State.<sup>169</sup> Through various product policies and legal products issued by the Government, it can be seen how far a country in implementing and organizing concept of the welfare state. According to Edi Suharto that quotes the opinion of Paul Spicker, that the concept of the welfare State not only includes a description of a way organize welfare (welfare) or social services (social service). But also a

<sup>167</sup>Adi Fahrudin, *Pengantar Kesejahteraan Sosial*, (Bandung: PT. Rafika Aditama, 2012), p. 104.

<sup>168</sup>Preamble of UUD 1945.

<sup>169</sup>Zainal Asikin, *Pengantar Ilmu Hukum*, p. 115.

normative concept of ideal approaches or systems which emphasizes that everyone must obtain social services as debt.<sup>170</sup>

One of the action from the Government to see whether the Government of Indonesia as long as it is sufficient in practice the concept of the welfare State or not, is viewable from one aspect of economic life developed by the Government of Indonesia. Although according to Wilensky (1975) States that the core of the welfare State was a minimum standard of some aspects of life such as income (economic), nutrition, health, housing, and education, which are protected by a Government as a right which should be given.<sup>171</sup> But it is enough if only tracing from the aspect of the economy alone, according to a review on the research of researchers.

The economic policy of the Government of Indonesia and the economic populist democracy that should not far from article 33 Of the Constitution regulates the social welfare in which it goes is:

*"Article 7*

*(1) the Government will not take any action or nationalization take-over investor ownership, except by law.*

*(2) in the event that the Government of performing actions take over owning rights or nationalization referred to subsection (1), the Government will provide compensation numbers are assigned based on the market price"*

So that, any policy and legislation produced Government, did not intersect with this Constitution, where the Constitution is the highest statutory position.<sup>172</sup>

Economic aspects of sharp then again against the foreign investment sector in the

<sup>170</sup>Umi Afifah dan Ahmad Dahlan, *Konsep Negara Kesejahteraan*, p. 43.

<sup>171</sup>Adi Fahrudin, *Pengantar Kesejahteraan Sosial*, p. 104.

<sup>172</sup>The Act Number 12 of 2011 About the Forming of the constitution

field of General mining regulated by Government in Act No. 25 of 2007 About Investing and Act No. 4 of 2009 About Mineral and coal.

Although the substances in the two statutes are in order to do the settings in the sustainability of foreign capital investment and mining. However these both should also be in line with the message of the Article 33 of that Constitution, not even accrossed, so that the main purpose of the State Indonesia in an attempt to run the welfare State concept is still in the way. These substances can be seen from the sound article 7 ACT 2007 number 25 reads:

*“Article 7*

*(1) the Government will not take any action or nationalization take-over investor ownership, except by law.*

*(2) in the event that the Government of performing actions take over owning rights or nationalization referred to subsection (1), the Government will provide compensation numbers were assigned on the basis of the market price.*

*”<sup>173</sup>*

Then consistency the Government in applying the law that he had made product, can also be used as an indicator about the seriousness of the Government in its goal of achieving the well-being of his subjects with the utilization of natural resources of the country to the maximum-the maximum. As the sound of the letter b of article 3 of ACT No. 4 of 2009 About Mineral and coal.

*“guarantee the benefits of mineral and coal mining in environmentally sustainable and life”<sup>174</sup>*

According to the researchers, at least two such article can be a sign of whether the country of Indonesia through its Government has run a country objectives in line with the concept of the welfare State or not.

<sup>173</sup>Article 7 Number 25 of 2007 About Capital Investment

<sup>174</sup>Article 3 letter b Number 4 of 2009 About Mineral and Copper

Indonesia should be confident with the Constitution without being affected by the condition of the economy as well as the UUPA economy in running the country's economic system, as in article 7 of LAW number 25 of 2007, as if not in line with Article 33 paragraph (2) and (3) of the Constitution that the branch of production which is important should be controlled by the State. So enough with the Constitution or national laws, this should be enough to nationalize the PTFI, without making his rule as well as calculate compensations in advance. Because of the distrust of self, so that countries do not simply submitted a role in this because it is not nationalization PTFI wholeheartedly implement the Constitution, with the destination country so then to prosper his people in accordance with the concept of the welfare state a bit is not achieved.

Although the concept of the welfare State, at least there are three views hold that; First, the concept of the welfare State is the estuary will be up on the country's Socialist system to create a just society. Second, the view of Marxist concept of the welfare state that the only way to reduce the country's capitalist system. And the third, holds that the concept of the welfare State is a unique social formation that is based on the principle of *neomerkantilism*, which in its implementation shows the social democratic compromise.<sup>175</sup> But the researchers chose the third views such as something that should be implemented and become a benchmark the Government of Indonesia. It is in line with the notion of Welfare state more broadly defined into economic and political perspective. Where in the perspective of the economy which is an economic system which combines

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<sup>175</sup>Adi Fahrudin, *Pengantar Kesejahteraan Sosial*, p. 105.

excellence-Excellence (*festures*) capitalism and socialism in the private ownership of the mastery model practiced by a State Government to create a legislation about the extensive programs concerning social welfare (welfare state), such as pension funds and public health services<sup>176</sup>

On article 3 letter b of Act No. 4 of 2009 About Mineral and coal, is actually the substance already in line with article 33 the Constitution 1945. But the need for Government's implementation is examined, whether a consistent Government run the sound or not, of any other policy. with the existence of a contract between the Indonesia works with PTFI in the mining of copper, gold, and silver. Raises the problem of the new in the field of the environment, which in the exercise of his business PTFI often violated by removing a variety of mining waste and leaving big holes in the land of Papua.<sup>177</sup>

For that reason, according to researchers in Indonesia Government role is run as an instrument of State power to achieve the goal of a prosperous country based on the concept of the welfare State, has yet to be implemented fully, because when viewed from the economic aspect in particular, every Government policy has not been a lot that shows national economic independence and the equal of welfare rights every citizen of Indonesia.

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<sup>176</sup>Umi Afifah and Ahmad Dahlan, *Konsep Negara Kesejahteraan*, p. 25.

<sup>177</sup>Siti Maimunah, *Negara Tambang dan Masyarakat*, p. 17.

### C. Islam Law Perspective Again Nationalization Policy of PT. Freeport Indonesia in Concept of Ownership of Ibn Taymiyyah

Born in 1262 and died in 1328 Ibn Taymiyyah left thinking in economics are applicable and can be applied at present, was raised in Madzab made him an Islamic economic thinkers and critical genius because skills also in the Sciences of tafsir, Hadith, Fiqh, mathematics and philosophy. One thought of Ibn Taymiyyah is about ownership.<sup>178</sup>

According to Ibn Taymiyyah ownership in Islam can be distinguished in three groups, namely: individual ownership (private property), ownership social or collective (collective/public property), State ownership (state property).<sup>179</sup> Individual ownership is a legal Ordinance *syara* ' which apply to the substance or merits of (service), which allows anyone who got it to take advantage of such items, as well as obtaining compensation if the goods taken its use by others such as rent, or because it is consumed to be nutritional as purchased from the item.<sup>180</sup>

Public ownership is permission by as-Syâri ' to a community to equally utilize objects. The objects that are included in the category of public ownership are the objects that has been revealed by Allah and Rasulullah saw that objects to a community where they each need each other.<sup>181</sup> Important examples of joint ownership or social grace is like water, grass, and fire.<sup>182</sup> While State ownership is

<sup>178</sup>Euis Amalia, *Sejarah Pemikiran Ekonomi Islam*, p. 206.

<sup>179</sup>Euis Amalia. *Sejarah Pemikiran Ekonomi Islam*, p. 218.

<sup>180</sup>Because of the settings or the ownership is divided into several sections, diantaranya as follows: work (charities/Kasab); Transaction (The Contract); Legacy (Takhalluf); Nationalization Of Assets; The Awarding Of The State; Granting Voluntary; Fathurrahman Djamil, *Hukum Ekonomi Islam*, p. 196.

<sup>181</sup>Fathurrahman Djamil, *Hukum Ekonomi Islam*, p. 201.

<sup>182</sup>Euis Amalia, *Sejarah Pemikiran Ekonomi Islam*, p. 218.

the right of all the House of a management authority become *muslimiin* State, where the State can give to some by the State, in accordance with its policies. The meaning of management by the State this is the existence of a power to state-owned to manage property, for example, the *fai* ', *Jizya*, *kharaj*, and so on.<sup>183</sup>

The third category of ownership by Ibn Taymiyah, then according to researcher PTFI entered in the second category, namely public ownership because the criteria of PTFI who rightfully owned by all the people especially the people of Indonesia, which is managed by the Government or the State. In addition, if indeed PTFI is privately owned, it was not in accordance with the requirements of the personal owning that it is not that it is using excessive and exceeds the limit.<sup>184</sup> Another reason underlying the PTFI is not private, because in terms of private ownership, the transaction also should not use illegal ways, such as forgery, fraud (I'tikad is not good), and the exploitation of other consumers that can cause any harm. According to Ibn Taymiyyah, a person who seeks only collecting treasures for himself, like such as Qarun.<sup>185</sup>

According to Ibn Taymiyyah, private ownership of land is justified if the land there is no clear owner. But unlike the PTFI, which ignored the land ownership over indigenous communities that exist in Timika.<sup>186</sup> Another thing again if you still impose the opinion that PTFI personal property of a person, it will also be broken concept of Ibn Taymiyyah States that individual ownership is a

<sup>183</sup>Fathurrahman Djamil, *Hukum Ekonomi Islam*, p. 208.

<sup>184</sup>Euis Amalia, *Sejarah Pemikiran Ekonomi Islam*, p. 218.

<sup>185</sup>Euis Amalia, *Sejarah Pemikiran Ekonomi Islam*, p. 218.

<sup>186</sup>Euis Amalia, *Sejarah Pemikiran Ekonomi Islam*, p. 216.

representation of God, so that ownership of individual objects is the owning representatives for a human being to another.<sup>187</sup>

Another basic justification researchers who keep public ownership as the PTFI presume that they are based on the concept of Ibn Taymiyyah is that according to Ibn Taymiyyah, water, grass and the source of the fire is just a example, many other objects have the same characteristics. The possession of objects that should be owned collectively since it was all God-given free of charge and with the collective ownership gave rise to human well-being.<sup>188</sup>

The objects that are included in public ownership, among others:<sup>189</sup>

- a. Objects which is a public facility, which otherwise is in a country or a community, then it will cause trouble and can give rise to disputes in the search for it.

Which is a public facility is anything that is considered as the affairs of man in General. The Prophet has explained in a Hadith how nature of such public facilities. The Prophet Muhammad saw said:

حَدَّثَنَا وَكِيعٌ حَدَّثَنَا ثَوْرُ الشَّامِيِّ عَنْ حَرِيزِ بْنِ عُثْمَانَ عَنْ أَبِي  
قَالَ رَسُولُ : خَرَّاشٍ عَنْ رَجُلٍ مِنْ أَصْحَابِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ  
اللَّهُ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمُسْلِمُونَ شُرَكَاءُ فِي ثَلَاثِ الْمَاءِ وَالْكَالِ وَالنَّارِ

Meaning:

“Waki delivered to us. Tsauro al-Syami delivered to us from Hariz bin Ustman from Abi Khirasy from a Man in Rasul Era said that Rasulullah SAW said: Moslem is business in three things. They are water, leaves and fire ” (Issued by Imam Ahmad and Abu Dawud)

<sup>187</sup>Fathurrahman Djamil, *Hukum Ekonomi Islam*, p. 196.

<sup>188</sup>Euis Amalia, *Sejarah Pemikiran Ekonomi Islam*, p. 218.

<sup>189</sup>Fathurrahman Djamil, *Hukum Ekonomi Islam*, p. 202.

In this case there is evidence that a man is indeed equally in need of water, pasture and fire, as well as there are restrictions for individuals to possess it. It needs to be asserted that the nature of the objects that become public facilities because of the large number and became the General needs of the community. When the number is limited, such as small wells in the Township and the like then it can be owned by individuals and in these conditions the water well belongs to the individual. Prophet had allowed the water in Ta'if and Khaybar to be owned by individuals of the population.

b. Material of very large number of mines

Quarry materials can be classified into two, namely materials mine slightly (limited) amount, which does not include large size according to the individual, and the mine very much (almost unlimited) amount. Mine are a little stuff (limited) amount including private property, as well as be owned personally, and against the mining law enacted materials *rikaz* (picking), which must be removed from it, namely the *khumus* for him one-fifth (20%).

As for mine very much (almost unlimited) amount, that's not possible is spent by individuals, then the public-owned quarry materials (public property) and should not be owned privately. Imam Al-tirmidhi narrated from the hadeeth of Ibn Abyadh Hamal, that he has asked the Prophet allowed to manage mine salts. Then the Prophet gave him. After he went, there was a man from the Assembly asked:

*"O Messenger of Allaah, did you, what do you give him? And behold, you have given something like running water. "The Prophet then said," Pull the mine from him " (written by Tirmidzi)*

Nowadays the salt with water flowing because the number is very large. This Hadith also tells us that prophet Muhammad gave salt mines to Abyadh bin Hamal indicating capacity has mine. However, when he learned that the mine is a mine that flows (the number is very large), then he deprived him of his deed and prohibit owned by private, because mine is a public property.

What is meant here is not the salt itself, but rather his rope. With evidence, that when the Prophet saw, i.e. mine is very large, then he stopped him, while he also knowing, that it is a salt mine and since the beginning he gave to Abyadh. So, for the removal of the salt mines of yesteryear is a very large number of mines.

- c. Objects that obstruct the constituent properties to be owned only by individuals privately

Which can also be categorized as public ownership are the objects that the nature of the constituent prevent just owned by the person. This is because the objects are objects that are covered by the benefit of the public. Included in this group are highways, rivers, mosques, and other public facilities. Of these objects in terms of its formation is a public facility that is almost the same as the first group.

However, things such as the type of the first. But things are different with the first group, in terms of its nature, that the object cannot be owned by individuals. The first group of items can be owned by individuals if the amount is small and does not become the source of a community's needs.

According to Ibn Taymiyyah, although public property and State-owned operations are performed by the State, but there is a difference between the two forms of property rights. the property includes common property is essentially a country should not be given to anyone, though the country can allow to people to take and make use of them. Unlike the property rights of the State, where the State has the right to give the property to a particular individual in accordance with the policy of the State. But unlike the *kharaj* treasures that can be given to the farmers only, whereas others are not. It is also allowed to be used for the purposes of *kharaj* treasure shopping country without distributed to one<sup>190</sup>

In the law of Islam, Allah is the owner of the real and absolute top of the universe. Only God who could bestow to man any rights to their owners.<sup>191</sup> According to terms, property can be defined as one that is blocking other *ikhtisas*, according to terms that justify the owner of that act against *ikhtisas* hers aim, unless there is a deterrent. The word impede in the above definition means something that prevents people who are not the owner of an item or apply/utilize and act without the prior approval of the

<sup>190</sup>Fathurrahman Djamil, *Hukum Ekonomi Islam*, p. 202.

<sup>191</sup>Euis Amalia, *Sejarah Pemikiran Ekonomi Islam*, p. 217.

owner. Instead, the sense of a barrier is anything that prevents the owner to act against his own possessions.<sup>192</sup> Property can be the right person when you perform a transaction, working, on inheritance, nationalization of assets, and Division or grants from the State, as well as voluntary granting of other people.<sup>193</sup>

A little different in the sense of belonging or ownership rights in the law of Indonesia which means the right to enjoy the usefulness of something material freely, and to do that with free material against sovereignty completely.<sup>194</sup>


From the Division of ownership according to Ibn Taymiyyah, it has been clear that PTFI's existing mines in Papua is the public ownership of the power management there should be on the Government/state.

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<sup>192</sup>Suhrawardi K. Lubis dan Farid Wajdi, *Hukum Ekonomi Islam*, (Jakarta: Sinar Grafika, 2012), p. 6

<sup>193</sup>Fathurrahman Djamil, *Hukum Ekonomi Islam*, p. 209 & p. 196.

<sup>194</sup>Article 570 Burgerlijk Wetboek



## CHAPTER 4

### CLOSING

#### A. Conclusion

From the explanation of the research before, so that the researcher get some conclusion that the legal standing of Indonesia government into nationalize Freeport Indonesia Company could be divide into two standings; Juridist and Socilogy when the legal standing base on Article 33 Verse 2 and 3 of UUD; tha Act of Lands of 1960 (UUPA); Works of Contract and The Sovereignty Theory. While in socioly aspect base on some violants of PTFI has been done to the suctom of people around mining place that PTFI always appearing some conflicts in Papua.

In the continue, that the government's role into nationalize of PTFI base on the welfare state concept is not run maximally, because the implementing by government is not fully base on the welfare state concept by their policy.

And the last, that in the Islam law perspective in especially according to Ibn Taimiyah, one of the economic scholars of Islam when the nationalization of a state could be allowed in Islam, because the object of the nationalization assets will give much benefit to people others more than just owning by a person only. And also that the mining field is too big to belonging by one people because it is the real social property and belonging by many people.

## **B. Suggestion**

State has belong several principal to nationalize PTFI, so that the government should to do their *political action* to increase and to achieve state purposes are prosperity of people through economic democracy and welfare state concept. Main while the policy of government be able to show that the state follow the welfare state concept properly, and of course it is synchron with Islam, according to ownership concept of Ibn Taimiyah.



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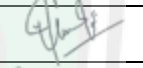




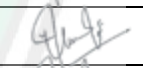



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Since in Junior High School, he never lost in organization activity when he was in junior high school we was joined in Student Organization (OSIS), and continue in senior high school when he to be fellowship of Student Organization and become Leader of Young Scout in his school. In the university he always join in some organization also, such as become Musyrif/ah reach three years and become principle of an unit to develop student in the centre of Islamic boarding school, namely El-Ma'rifah that focuses in three divisions are journalism, design and creating works. And in 2014/2015 he also become coordinator of an Islamic building, exactly Avicenna building in the centre of Islamic boarding school

In his lives, he always do his motto and his principle are *Khairunnas anfa'uhum Linnas* dan *Talk Less Do More*.