

Governing The Mining Industry in Indonesia: a Return of Resources Nationalism?

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Abstract. Amidst the global pandemic, Indonesia Government launch law number 3/2020 about the changing mineral and mining regulation in Indonesia. Through this new regulation Indonesia Government approach become more nationalistic in terms government control over mining resources and ownership structure within industry. The aim of this research is to explain resources nationalism in mining policy Indonesia within the new regulation and to its implication towards Indonesia's energy security. This research was a qualitative descriptive study and using analysis content in data analysis. This research argues that resources nationalism in the new regulation implying government effort to secure and protect resources availability and self-sufficient.

Keywords: Energy Security, Mining Regulation, Resources Nationalism

1 Introduction

Amidst the global pandemic caused by SARS-CoV-2 (COVID-19) virus, Indonesia introduced new law about mineral and coal mining regulation namely Law No.3/2020 as the revision of Law No.4/2009 (the 2009 Mining Law). Previous study marked the 2009 Mining Law was one of the Indonesia government effort to assert more control over natural resources management within the border or it famously called "resources nationalism" [1][2]. The term of resources nationalism describe various way of government to attempt to extract more value from their natural resources endowment [3]. Moreover, Resources nationalism involve a broad range of political and economic action taken by government to regulate and control over the natural resources sector within their sovereign territory [4][5].

Resources nationalism has regained momentum in recent years notably resources-rich countries make effort to reinforce their ownership and maximize the social-economic benefit from strategic resources. Resurge of resources nationalism related to global commodity boom which Warburton [1] argue that boom provide government of resource-rich countries greater leverage in negotiation and more influence over international commodity market. Applying resources nationalism in mining mineral and coal sector is visible in Indonesia tracing during the global commodity boom roughly between 2003 and 2014. Indonesia as producer of mineral such as copper, nickel, bauxite and coal enjoyed significant profits from increasing global price during the boom and as important funding for economic and development in Indonesia [6]. Furthermore, Indonesia GDP get it peaks from natural resources rents in 2008 which contribute 11,92% to Indonesia GDP [7].

The Mining Law introduced in 2009 was the foundation to increase Indonesia's control over the extractive industries the distribution from resources rent [7]. Based on mineral and

coal mining law number 4 of 2009, among the requirements prohibition of exporting unprocessed ores, obligation to process and refine ores in Indonesia domestically, requirement to pay higher export tariffs for specific mineral commodities, as well as foreign shareholder within companies were required to divest up to 51 percent of shares to Indonesian entities within 10 years from the commencement of commercial operation [4]. After 11 years, Indonesia Government introduced new mining law no3 of 2020. Under Law No.30/2020 Joko Widodo (Jokowi) regime emphasize on government control on strategic resources especially mining and coal. This study will further analysing the changes in resources nationalism in mining sector exercised under the new mining law and the implication towards Indonesia energy security. This article proceeds in three steps. First in explained the global trend of resources nationalism and why resources in Indonesia become interesting subject. Second explaining the resources nationalism in mining sector in Indonesia thru exercising resources nationalism in new mining law no 3 of 2020. Lastly it provide implication towards Indonesia energy security.

2 Method

Methodologically, this article departs from qualitative research literature study of resources nationalism and economic nationalism generally. This study will be using the historical analysis in mining and coal sector as its important in identifying the roots of the contemporary resources nationalism in Indonesia mining sector. Seeks to track continuity and change under the new law and elaborate features of contemporary resources nationalism.

3 Result and Discussion

3.1 Global Trend in Resources Nationalism

Resources nationalism was not a new phenomena. The resurge of resources nationalism in line with market-cycle explanation earlier scholarship on energy sector and nationalization phenomena in Middle Eastern, Latin America countries during 1950s to the boom in 1970s and 1980s [8]. Recent analysis of international oil companies bargaining power argues that resources nationalism is respond toward product of high price, So when resources nationalism will resurge during the high price (boom) and will likely to disappear during the low price [9]. In this studies, resources nationalism is understood drawing from Wilson (2017) securitisation in resources. Government take different approach toward resources policy was a direct consequence of securitisation. The extraordinary measures that commonly result are economic nationalist resource policy regime [10]. Economic nationalism emphasises state activism and intervention in the economy. Awakening the sovereignty-consciousness in terms of securitisation, states become protective of their resources policy autonomy. It leads government to prioritize direct control over the operation of resources market through state ownership and activist policy interventions [10]. Many governments are heavily involved in resources sectors via state ownership, interventionist resource policies and special consumption and investment subsidies [10].Economic nationalist argues has industrialization will contribute to economic development, self-sufficiency and national security. Moreover, the trade policy under economic nationalist will bring about the development of national industry

in the framework of protectionist policies [11]. In the resources context, economic nationalist policies reflects government preferences for state-controlled rather than market based approach so the decision over production, investment and trade in mineral and energy shaped through strategic interventions by state actors [10]. Through the lens of political economy resources nationalism was the consequences for producing government as form of economic nationalism. Pryke (2017) argue that state implements crucial measure such as control of imports in order to help strengthen domestic monopolies, reinvestment directly to boost priority sectors, establishment of state-owned companies through nationalisation of foreign firm.

In order to explain the significance of the case Indonesia's rising resources nationalism, it is necessary to compare what happens in Indonesia and other countries, especially those endowed with natural resources wealth and the resurgence of resources nationalism. In this study resources nationalism in Brazil, Russian, India, China and South Africa (BRICS) illustrate the government of resources wealth country in maintaining resources nationalist policy in their countries. There are three keys policy that stand out from the BRICS country in managing their resources industries; first, the state ownership of resources industries was exercised through state-owned enterprises (SOEs). BRICS government broadly used SOEs in oil dan gal industries with either monopoly or major player like in Brazil, China, India and Russia. SOEs play dominate role in coal industries especially in India and China which both of states predominantly produce 92,55 million tonnes, around 55,2 % of world production in 2019 (BP Statistical Review, 2020). Among the BRICS only Russian and South African mining industries were privately owned [12]. Second, BRICS countries applied trade restriction in resources sector, control and regulate export purposed to prioritise local economy interest. Third, all BRICS governments enforces subsidies on domestic energy prices [10][12]. Resources Nationalism is a common displayed by resources rich country like BRICS while specific mix policies vary between countries but the pattern shows that governments maintain significant regulatory control in mining and energy industries via interventionist policy tools. In this article, resources nationalism in the new mining law will be observe from state ownership, trade restriction and subsidies

3.2 Explaining Resources Nationalism in Mining and coal Sector in Indonesia

Warburton [1] argue that resources nationalism in Indonesia is contingent not simply upon price mechanism or state-level institution but also the structure of ownership as well as organization of domestic and foreign ownership at sector level matters in order to realize their national policy goals. As market cycle argue that the resources rich country will likely to applied resources nationalism during the global commodity boom [9]. In Indonesia, resources nationalism persists beyond the resources boom. Historically, Indonesia as country with blessed of natural resources, the government tried to assertive control in managing the resources wealth within the boundaries. After the independence day, Indonesia Government tried to take over the national asset from the Dutch colonial as part of the effort to build up government legitimacy [13]. Resources Nationalism as an effort to assert the industries become important since the people still traumatized from the colonial ruler. Furthermore During the New Order Era, Indonesia Government became more liberalized in order to attract Foreign Direct Investment (FDI) and build the mining infrastructure in Indonesia [14]. Indonesia government introduced Coal of Work System (CoW) which allow foreign company to build business in Indonesia with enforcing special tax, duties, duration and royalties under the CoW scheme [13]. During this year Indonesia successfully gain rent from mining industries. In this era, the government approach was more lean toward liberalisation of

resources rather than resources nationalism. Yudhoyono's second term become more visible to apply resources nationalism in his second term in office (2009-2014). Firstly from the introduction on 2009 Law Mining moreover local firms and SOEs (State Owned Enterprises) were given greater opportunities and facilitate in widen their ownership and activities especially in mining related business [14][15]. Further Wicaksana [15] reflect that Jokowi government aim to uphold nationalism economic policies are some extents the continuation and enlargement from the previous government. The resources nationalism agenda was part of broader economic nationalism that implied during this regime

3.3 The Law Number 3/2020

In this section will discuss more about Resources Nationalism specifically on the New Mining Law in Indonesia, The Law Number 3/2020. As explained by Wilson [12] and Wilson [10] there are three key policies emphasized in Resources Nationalism the state ownership, control over trade and subsidies.

3.3.1 State ownership

The discourse of state ownership over natural resources such as mining sector resonates with the Indonesia 1945 Constitution article 33, Paragraph 2 of the Constitution stipulate the important sectors of production which affect the life of people should control by state. Furthermore, in article 3 it emphasizes that lands, waters and the natural wealth contained within them should controlled by state and used for the benefit of people. Based on this constitutional mandates, Indonesia government can and has to reinforce protection of country's vital national economic interest, the state's intervention to mobilise resources for economic development, and prioritisation of the public interest over the private or market interest [15]. This constitution become the base of state ownership articulation in domestic level in Indonesia. Throughout the history Indonesia's government favour to pursue taking over the natural resources sector management which was viewed as strategic sector as well as to showed legitimacy of the regime. Under the 2004 Mining Law the trace of government attempt to take over the mining industry ownership showed in article 112 which emphasized after the fifth year of production foreign mining that operate in Indonesia should divest their share to domestic entities. Furthermore, under government regulation (Peraturan Pemerintah) number 23/2010 it specified amount shared of divest 20 % after the fifth year of production. This amount was higher from CCoW (Coal Contract of Work) [14]. After that government implement government regulation number 24/2012 which regulate 51% divest shared by foreign companies after the tenth year of production and after the end of the contract, in the process of renegotiation the foreign company should include 51% divest shared in the new contract. But after two years, the government change the divestment share framework under government regulation number 77/2014 which it decide the divestment shared based on the companies type on mining activities [14].

Then under the Law number 3/2020, government asserting the obligation to divest 51% for foreign companies to domestic entities in article 112. Previously, the effort of taking greater control of state ownership can be observe in at government acquisition in the case of PT.Freeport Indonesia. On 21st December 2018, Indonesia government finalised the deal to take ownership the largest foreign mining company in the country PT. Freeport Indonesia which held several lucrative gold and copper mining licences for nearly five decades in Indonesia. Based on the agreement, PT. Freeport Indonesia officially authorised to Indonesia's SOEs, PT Indonesia Asahan Alumunium (Inalum) for 51.23 per cent share [7]. Before that, in 2016 Indonesia government assisted PT Medco Energi International to acquire 82 per cent of

Newmont's Batu Hijau mine as the second largest copper mine in Indonesia [16]. Unlike mineral sector, Warburton (2018) argue that the structure of ownership on coal sectors mostly dominate by domestic actors since most of the CCoW doing localisation share on ownership company [14][17]. From the new regulation it highlights the consistency discourse of the importance of state ownership of mining industries to secure the benefit arising from exploitation especially in mining resources within Indonesia territories for the people.

3.3.2 Trade restriction in resources sector, control and regulate export purposed to prioritise local economy interest.

The basic idea of regulation that promote internal country beneficiation of mining commodities prior to export was imposed in article 103 (1) of 2009 Mining law where obligates the holder of mining business licence (IUP) and special mining business licence (IUPK) carry out domestic processing and refining of mineral commodities [2]. Furthermore, in order to implement this article, the Minister of Energy and Mineral Resources (MoEMR) publish Regulation No 7 of 2012 about Local Processing and Refining of Minerals. This regulation underline requirement the mining licence holders to carry out domestic mineral processing and refining. Indonesia placed restriction on nickel ore export to European Union (EU) which was criticized. In November 2019, EU filed complaint to World Trade Organization (WTO) accuses Indonesia did not applied fair trade. Nickel ore become important commodity in stainless steel industries, develop modern batteries for electric vehicles. Indonesia Government argue that the banned was placed in order to develop full nickel supply chain within the country starting from extraction, processing into metals and chemical used all the way to building electric vehicles [18].

Moreover, under the new mining law no 3 of 2020, Indonesia government offer fiscal and non-fiscal incentive for the company which build integrated downstream processing in Indonesia. Based on article 47 (g), for IUP and IUPK for company whose build develop and utilizing integrated downstream in mining sector will get benefit of extended contract up to 10 years after full filling term and condition. Besides that, government push forward the downstream project especially building smelter for nickel, program of development of coal such as gasification of coal to Dimethyl Ether (DME) which used for substitution of liquefied petroleum gas (LPG), underground coal, coal slurry, making coke and briquettes and coal upgrading [19].

3.3.3 Subsidies in mining sector

Indonesia impose significant energy subsidies to reduce domestic price in order to control fuel price and secure the reserve for international consumption [15]. This subsidy policy give benefit for local industrial firm, small business and households which comprise large number of domestic energy consumption. The cheap price of energy matters especially for energy end user in order to boost production, increasing economy and energy consumption. In supply side, the cheap price of energy will be risky in the long term [20]. Under the new mining Law, no 3 of 2020, based on article 5 (2) Indonesia Government has the authority to set the production, sales and the price of mining commodities. Unlike the former law control over production and export of mining commodity, in these new law government seek to control the sales and price in order to satisfy domestic need. In line with this law, government effort to subsidies in mining can observe from coal sector maintain subsidies on coal for electricity with fixing the price on 70 dollar per ton with value of coal 6.000 kcal [21]. The purpose of fixed coal price was to reduce PLN financial burden which vulnerable toward fluctuation of coal price. While subsidies is good for maintaining the affordability of energy commodities,

but in the other hands it will burden state budget, lead toward overconsuming energy and hinder the development of renewable energy [22].

3.4 Implication towards Energy Security in Indonesia

The continuity and the changing in resource nationalism in mining sector have an impact on state view on energy security. Resources nationalism become important to when examining its impacts on energy industry (Issac & Adam, 2016). State intervention in energy industry directed linked on state capabilities to provide energy security for the people. Conceptually, perceived notions of energy security which understood as ensuring an available, reliable, affordable and sustainable supply energy to meet state's need so that energy security can mean different things for different actors (Issac & Adam, 2016). Energy security as well entangled with other energy policy problems such as providing access to modern energy and mitigating climate change [23]. The different in understanding of energy security explained variations of energy security priorities between countries.

From the new mining law, no 3 of 2020 it understands that Jokowi Government stressing over ownership of mining industries and utilizing natural endowment maximally for the benefit of people by improving the downstream sector and prioritize the availability of domestic demand. The changing paradigm in managing mining sector not only as economic commodity but as well as energy commodity urge the government to build domestic capabilities in mining industry in order to achieve self-sufficiency in energy. Moreover, control over ownership implied the effort of state on managing the industries independently. In term of energy security by having control over ownership enabling state to be present and prepared toward the shock that will happened in future as part of broader national security agenda [24]. Furthermore, by controlling the price and sales of mining commodities, the government tried to put energy price control in order to keep it affordable. In line with Ward (2009) argument related to resources nationalism and sustainable development. Resources nationalism for some extend offer positive contribution for state to pursuit sustainable development by tightening control of access to natural resources, making rational determinations about more value at natural resources asset kept in the ground rather than short term revenue. Producer state governments have potential to stir towards sustainable development, reuse or recycling mineral resources and encourage the development of renewable resources in order to help combating climate change [25].

4 Conclusion

In sum, the study shows that in the context of governing mining in Indonesia, resources nationalism under the new law is the continuities from previous administrative and become more pronounced. The government emphasize control over the ownership structure, production and price control under the new law. Meanwhile increasing the incentive for the company whose build downstream industries. This showed the government willingness to become self-sufficient for the entire value chain as well as achieving the energy security.

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