



POLITICAL ECONOMY &
POLICY STUDIES

AKUISIS FREEPORT

ADAKAH POTENSI KERUGIAN NEGARA?

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Disampaikan pada Seminar Nasional “Freeport: Peluang dan Tantangan”

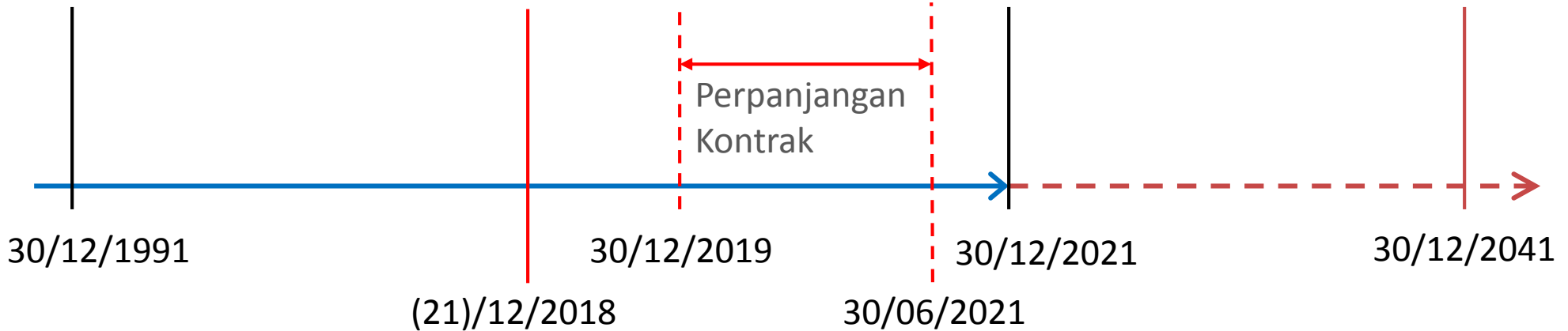
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Jakarta, Kamis, 7 Februari 2019

TIME LINES KONTRAK KARYA II



POLITICAL ECONOMY &
POLICY STUDIES



Kontrak Karya Berakhir

30/12/2021

Masa Perpanjangan Kontrak

Paling cepat: 30/12/2019; Paling lambat: 30/6/2021

Perpanjangan Kontrak PT-FI (menjadi IUPK): 21 Desember 2018 Transaksi dilunasi

3 tahun sebelum KK berakhir: **Apakah tidak melanggar Kontrak?**

PP No 23 Tahun 2010: Pasal 72

Perpanjangan Kontrak: antara 2 tahun hingga 6 bulan sebelum Kontrak berakhir

PP No 1 Tahun 2017 (11 Januari 2017): Pasal 72 di revisi menjadi

Perpanjangan Kontrak: antara 5 tahun hingga 1 tahun sebelum Kontrak berakhir

PP No 1 Tahun 2017: Perubahan Pasal 72 menjadi

Perpanjangan usaha pertambangan boleh mengajukan ijin paling cepat 5 (lima) tahun atau paling lambat 1 (satu) tahun sebelum masa berakhirnya kontrak.

- Sebelumnya: Paling cepat 2 tahun sebelum masa kontrak berakhir, paling lambat 6 bulan

Konsekuensi

Ijin usaha pertambangan PT-FI diperpanjang pada Desember 2018, seharusnya paling cepat 30 Desember 2019: setelah Pilpres

- **Apakah perubahan peraturan ini bisa merugikan negara?**
- **Apakah perubahan ini mempermudah PT-FI dan Rio Tinto dalam melakukan divestasi, dengan potensi merugikan negara?**

Apakah perubahan peraturan ini bisa masuk kategori menyalahi wewenang jabatan?

KONTRAK KARYA DAN PARTICIPATING INTEREST (PI)



1988: Penemuan Cadangan Grasberg
Memerlukan Investasi Besar

Kontrak Karya
Dapat diperpanjang 2 x 10 tahun

1995: Rio Tinto dan FCX Tanda Tangan LOI

Participating Interest (PI)

- 1998-2021: 40% Produksi > 118.000 ton / hari
- 2022-2041: 100% seluruh produksi

1996, Perjanjian PI Dialihkan ke PT-FI: Sah?

- Rio Tinto bayar USD 184 Juta: kepada siapa?
- Rio Tinto Menanggung 40% biaya operasional dan Investasi asset tertentu

KEPEMILIKAN SAHAM PT-FI: DIVESTASI MELALUI DILUSI



1973

Asing: 100%

Indonesia: 0%

1976

Asing: 91,5%

Indonesia: 8,5% ¹⁾

1991

Asing: 81,28%

Indonesia: 18,72% ²⁾

1992

Asing: 84,87% ³⁾

Indonesia: 15,13% ⁴⁾

1997

Asing: 84,87% ³⁾

Indonesia: 15,13% ⁵⁾

2002

Asing: 90,64% ⁶⁾

Indonesia: 9,36% ⁷⁾

1) Pemerintah Indonesia: 8,5%

2) Pemerintah Indonesia: 9,36%
Indocopper Investama (**Bakrie**): 9,36%

3) FCX: 81,28%
Indocopper Investama (**FCX**): 4,59% (**49% x 9,36%**)

4) Pemerintah Indonesia: 9,36%
Indocopper Investama (**Bakrie**): 4,77% (**51% x 9,36%**)

5) Pemerintah Indonesia: 9,36%
Indocopper Investama (**Nusamba**): 4,77% (**51% x 9,36%**)

6) FCX: 81,28%
Indocopper Investama (**FCX**): 9,36% (**100%**)

7) Pemerintah Indonesia: 9,36%

2018: AKUISISI SAHAM PT-FI OLEH INALUM – AT WHAT COST?



2018

Asing: 48,77%

Indonesia: 51,23

Akuisisi 45,62% saham PT-FI untuk menjadi 51,23%

- Akuisisi Participating Interest (40%) Rio Tinto: USD 3,5 miliar (40% saham PT-FI)
- Akuisisi Saham Indocopper Investama (FCX): USD 350 juta (5,62% saham PT-FI)

Dilusi

konversi 40% Participating Interest ex. Rio Tinto menjadi 40% saham PT-FI, **melalui penerbitan saham baru**

Indocopper Investama: Kepemilikan saham di PT-FI

Sebelum dilusi: 9,36%

Setelah dilusi: 5,62% (60% x 9,36%)

DIVESTASI KEPEMILIKAN ASING PT-FI: MELALUI PENERBITAN SAHAM BARU – DILUSI



Tahun	Pihak	# Saham	Persen	Modal Disetor (Rp)	Nilai Transaksi
1973	FCX	184,890	100%	36,793,110,000	nominal
1976	FCX	184,890	91.49%	36,793,110,000	
	PEMERINTAH	<u>17,200</u>	<u>8.51%</u>	<u>3,422,800,000</u>	nominal?
		<u>202,090</u>	<u>100.00%</u>	<u>40,215,910,000</u>	
1991	FCX	184,890	81.27%	36,793,110,000	
	PEMERINTAH	21,300	9.36%	4,238,700,000	nominal?
	INDOCOPPER	<u>21,300</u>	<u>9.36%</u>	<u>4,238,700,000</u>	USD 213 juta 1)
		<u>227,490</u>	<u>100.00%</u>	<u>45,270,510,000</u>	
2008	FCX	184,890	48.76%	36,793,110,000	
	PEMERINTAH	21,300	5.62%	4,238,700,000	
	INDOCOPPER	21,300	5.62%	4,238,700,000	
	INALUM / RT	<u>151,660</u>	<u>40.00%</u>	<u>30,180,340,000</u>	USD 3,5 miliar 2)
		<u>379,150</u>	<u>100.00%</u>	<u>75,450,850,000</u>	

Nilai nominal saham: Rp 199.000

DIVESTASI SAHAM ASING PT-FI MELALUI PENERBITAN SAHAM BARU: DILUSI



Tahun	Pihak	# Saham	Persen	Modal Disetor (Rp)	Nilai Transaksi
1973	FCX	184,890	100%	36,793,110,000	nominal
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	INALUM / RT	<u>151,660</u>	<u>40.00%</u>	<u>30,180,340,000</u>	USD 3,5 miliar 2)
		<u>379,150</u>	<u>100.00%</u>	<u>75,450,850,000</u>	

1) Transaksi: Cash USD 40 juta, utang FCX USD 173 juta

Harga akuisisi: USD 10.000 per saham (fair market value?): USD 213 juta / 21.300 saham
 Nilai Perusahaan PT-FI: **USD 2,27 miliar** (227.490 saham @ USD 10.000)

2) Transaksi: Cash USD 3,5 miliar antara INALUM dengan Rio Tinto

Nilai akuisisi: USD 23.078 per saham (fair market value?): USD 3.500 juta / 151.660 saham
 Nilai Perusahaan PT-FI: **USD 8,75 miliar** (379.150 saham @ USD 23.078)

Apakah konversi PI Menjadi Saham harus ada Modal Disetor: Rp 30,18 miliar?

INALUM yang setor?

TRANSAKSI SAHAM INDOCOPPER INVESTAMA



Tahun	Pihak	Kepemilikan	Saham di PT-FI		Transaksi (USD)	Per Saham (USD)
			%	# Saham		
1991	Bakrie	100.00%	9.36%	21,300	213,000,000	10,000
1992	Bakrie	51.00%	4.77%	10,863	212,000,000	20,312
	FCX	49.00%	4.59%	10,437		
	Total	100.00%	9.36%	21,300		
1997	Nusamba	51.00%	4.77%	10,863	315,000,000 1)	28,998
	FCX	49.00%	4.59%	10,437		
	Total	100.00%	9.36%	21,300		
2002	FCX	51.00%	4.77%	10,863	254,000,000 2)	23,382
	FCX	49.00%	4.59%	10,437		
	Total FCX	100.00%	9.36%	21,300		
2018	Pemerintah	100.00%	9.36%	21,300	350,000,000	16,432

1) Transaksi: Cash USD 61 juta, utang Bank USD 254 juta

FCX sebagai Penjamin

2) Nusamba Gagal Bayar

FCX ambil alih: melunasi utang Bank USD 254 juta

- a. As soon as practicable after the date of the signing of this Agreement, but in any event commencing no later than the **fifth** anniversary of the date of the signing of this Agreement and concluding no later than the **tenth** anniversary of the date of the signing of this Agreement, the Company will offer for sale in public offerings on the Jakarta Stock Exchange or otherwise to Indonesian Nationals, to the extent requested by the Government to meet the requirements of then existing laws and regulations and to the extent the financial market conditions in Indonesia at the time permit the shares to be sold in an orderly market at a fair price, sufficient shares to equal, after giving effect of such sale, directly or indirectly, **10% of the outstanding issued share capital of the Company.**

- b. During the first twelve-month period following the tenth anniversary of the date of the signing of this Agreement, and in each twelve-month period thereafter for a total of ten such periods, to the extent requested by the Government to meet the requirements of then existing Indonesian law and to the extent the financial market conditions in Indonesia at the time permit the shares to be sold in an orderly market at a fair price, **the Company will offer for sale in public offerings on the Jakarta Stock Exchange, or otherwise to Indonesian Nationals,** sufficient shares to equal, after giving effect to such sales, directly or indirectly, **2.5%** of the outstanding issued share capital of the Company, until such time as the aggregate number of shares sold pursuant to this paragraph 2 of this Article 24 shall be sufficient to equal, directly or indirectly, after giving effect to all such sales and any shares now or hereafter owned by the Government, **45%** of the outstanding issued share capital of the Company;

- b. provided that at least 20% of such outstanding issued share capital shall have been sold on the Jakarta Stock Exchange, and provided, further, that if at least 20% of such outstanding issued share capital is not so sold on the Jakarta Stock Exchange, the Company shall be required to sell or cause to be sold in public offerings on the Jakarta Stock Exchange, or otherwise to Indonesian Nationals, sufficient shares to equal a total of **51%** of the issued share capital of the Company not later than the twentieth anniversary of the date of the signing of this Agreement, to the extent requested by the Government to meet the requirements of then existing laws and regulations and to the extent the financial market conditions in Indonesia at the time permit the shares to be sold in an orderly market **at a fair price**.

- c. The Government and the Company agree that any sales of shares in excess of those required to be made in any period shall reduce the number of shares required to be offered in the next succeeding period or periods, and that any shares required to be offered in one period but not sold during such period shall be added to the number of shares so offered for sale in the next succeeding period or periods.
- d. If after the signing of this Agreement then effective laws and regulations or Government policies or actions impose less burdensome divestiture requirements than set forth herein, such less burdensome divestiture requirements shall be applicable to the parties to this Agreement.
- e. The shares to be sold will be either newly issued shares or shares held by foreign shareholders.
- f. The proceeds from sales pursuant to this paragraph will not be subject to tax in the hands of the Company or to its shareholders, provided such shareholders do not have a permanent establishment in Indonesia.
- g. Sales pursuant to this paragraph shall satisfy all requirements of Indonesian law with respect to the required sale of stock interests in the Company to Indonesian Nationals.

DIVESTASI ASING DAN PASAL 24 KONTRAK KARYA II



Perencanaan Divestasi dan Kepemilikan Indonesia Menurut Pasal 24 KK

1991	Kepemilikan Awal Pemerintah Indonesia	10.00%
2001	Tahun ke 5 hingga 10	10.00%
2002		2.50%
2003		2.50%
2004		2.50%
2005		2.50%
2006		2.50%
2007	Setiap Tahun divestasi 2.5%	2.50%
2008		2.50%
2009		2.50%
2010		2.50%
2011		<u>2.50%</u>

Total Kepemilikan Indonesia 45.00%

Divestasi melalui pasar modal setidaknya-tidaknya 20%: kepemilikan Indonesia cukup 45%. Kalau tidak, kepemilikan Indonesia harus setidaknya-tidaknya 51%

REALISASI KEPEMILIKAN INDONESIA di PT-FI

1991

Pemerintah Indonesia: 9,36%
Indocopper Investama: 9,36%

2001

Pemerintah Indonesia: 9,36%

2004

FCX menawarkan 10,64% saham PT-FI kepada pemerintah, tapi pemerintah menolak pada Juli 2005.

2016

FCX menawarkan 10,64% dengan harga USD 1,7 miliar, pemerintah tawar USD 630 juta.

PERKEMBANGAN “FAIR MARKET VALUE” SAHAM PT-FI



1991: Transaksi Bakrie dengan PT-FI – USD 10.000 per Saham

Nilai Perusahaan: USD 2,27 miliar

2016: Penawaran Divestasi FCX ke Pemerintah

Jumlah Total Saham PT-FI	227,490 saham
Penawaran FCX kepada Pemerintah 10,64%	24,205 saham
Nilai penawaran (USD)	1,700,000,000
Penawaran harga per Saham (USD)	70,234 per saham
Nilai perusahaan PT-FI (USD)	15,977,443,609 (100%)
Nilai perusahaan PT-FI - Dengan Dilusi (USD)	26,629,072,682 (100%)

2016: Counter Proposal Pemerintah kepada FCX

Jumlah Total Saham PT-FI	227,490 saham
Penawaran Pemerintah kepada FCX 10,64%	24,205 saham
Nilai penawaran (USD)	630,000,000
Penawaran harga per Saham (USD)	26,028 per saham
Nilai perusahaan PT-FI (USD)	5,921,052,632 (100%)
Nilai perusahaan PT-FI - Dengan Dilusi (USD)	9,868,421,053 (100%)

DUAL HARGA AKUISISI: WAJARKAH?

2018: Akuisisi Saham Indocopper (FCX)

Jumlah Total Saham PT-FI (setelah Dilusi)	379,150 saham
Jumlah Saham Indocopper	21,300 saham
Nilai transaksi (USD)	350,000,000
harga per Saham (USD)	16,432 per saham
Nilai perusahaan PT-FI: Setelah Dilusi (USD)	6,230,164,319 (100%)

2018: Akuisisi PI Rio Tinto dan Konversi Menjadi 40% saham PT-FI

Jumlah Total Saham PT-FI (Setelah Dilusi)	379,150 saham
Jumlah Konversi Saham 40%	151,660 saham
Nilai transaksi (USD)	3,500,000,000
harga per Saham (USD)	23,078 per saham
Nilai perusahaan PT-FI: Setelah Dilusi (USD)	8,750,000,000 (100%)

Akuisisi PI Rio Tinto vs Akuisisi saham Indocopper: USD 23.078 vs USD 16.432

40,45 persen lebih mahal dari saham Indocopper

Mengapa ada dua harga dan dua valuasi untuk saham yang sama dan waktu yang sama?

Siapa yang diuntungkan? Apakah Negara dirugikan?

1991: USD 10.000 per saham

Valuasi: USD 2,27 miliar

2016: Penawaran FCX USD 70.234 per saham

Valuasi PT-FI sebelum dilusi: USD 15,98 miliar

Valuasi PT-FI setelah dilusi: USD 26,63 miliar

2016: Penawaran Pemerintah USD 26.028 per saham

Valuasi PT-FI sebelum dilusi: USD 5,92 miliar

Valuasi PT-FI setelah dilusi: USD 9,87 miliar

2018: Pembelian Saham ex PI Rio Tinto (Setelah Dilusi)

Harga akuisisi: USD 23,078 per saham

Valuasi PT-FI: USD 8,75 miliar

2018: Pembelian Saham Indocopper Investama (Setelah Dilusi)

Harga akuisisi: USD 16,432 per saham

Valuasi : USD 6,23 miliar

In 1995, RTZ, currently Rio Tinto, and FCX signed a LOI

to form a joint venture (JV) related to the expansion of the Grasberg mine.

- the joint venture agreement was signed in 1996

Kalau JV ditanda tangani oleh FCX dan RTZ, maka

Saham Indonesia di PT-FI tidak boleh terdilusi

Kewajiban Rio Tinto di dalam JV

that RTZ would **finance** the mining expansion and future exploration projects in return for a 40 per cent dividend-paying stake.

- This implied that RTZ would receive 40 per cent of the revenues once the production increased from 80,000 tons a day to 118,000 tons a day: **1998 - 2021**
- **RTZ paid USD 184 million for the expansion**

Pembayaran USD 184 juta untuk “membeli” Hak Participating Interest?

“Membeli” dari siapa? FCX atau PT-FI? Kemana pembayaran dilakukan?

Investasi PI = USD 184 juta; sekarang dijual USD 3,5 miliar: 19,02 kali. Wajarkah?

Freeport's own description of the joint venture agreement presented to the Security and Exchange Commission (SEC) states that "RTZ and FCX will establish an Exploration Committee to approve exploration expenditures. **Jadi: FCX, bukan PT-FI?**

40% PI Rio Tinto dan Kewajiban Pendanaan EKSPLORASI DAN OPERASIONAL

RTZ will pay for all further exploration approved by the committee until RTZ has paid an aggregate of \$100 million." Both parties will share additional expenditures in proportion to their respective stakes.

Biaya Operasional / working capital: PINJAMAN dengan BUNGA

"For future expansion projects in Area A of PT-FI's COW, RTZ will provide up to a maximum of \$750 million for 100per cent of defined costs to develop such projects. RTZ will receive 100per cent of incremental cash flow attributed to the expansion projects until it has received an amount equal to the funds it has provided plus interest based on RTZ's cost of borrowing."

Participating Interest

Periode 1996 – 2021: 40% Laba untuk produksi diatas 118.000 ton per hari

Periode 2022 – 2041: 100% untuk seluruh volume produksi

Perjanjian untuk 2022 – 2041: Sah?

Apakah boleh bagi FCX atau PT-FI mengikat perjanjian dengan pihak ketiga untuk masa perjanjian yang melewati batas akhir Kontrak Karya (2021): dalam hal ini perjanjian dibuat hingga 2041?

- **Seharusnya Batal demi Hukum?**

Apa konsekuensi apabila KK tidak diperpanjang?

Apakah ada kerugian bagi Rio Tinto? Kalau ada, berapa ganti kerugian tersebut: Apakah senilai USD 3,5 miliar, sesuai nilai transaksi dengan INALUM, yang menggunakan perhitungan metode DCF (Discounted Cash Flow)?

- Kalau tidak ada kerugian: kenapa harga PI sangat fantastis besarnya?

HARGA TRANSAKSI PI RIO TINTO: WAJAR?



Perbandingan harga emas 1995 terhadap 2018: 3,4 Kali

- Harga rata-rata emas 1995: USD 380 per ounce
- Harga rata-rata emas 2018: USD 1.300 per ounce

Perbandingan harga tembaga 1995 terhadap 2018: 2,35 Kali

- Harga rata-rata tembaga 1995: USD 2.935 per metrik ton
- Harga rata-rata tembaga 2018: USD 6.900 per metrik ton

Perbandingan harga Participating Interest Rio Tinto 1995 terhadap 2018: 19,02 Kali

- Harga Emas 1995: USD 184 juta
- Harga Emas 2018: USD 2,3 miliar

<http://www.riotinto.com/copperanddiamonds/grasberg-4743.aspx>

Grasberg, located in the province of Papua in Indonesia, is one of the world's largest copper and gold mines in terms of ore reserves and production. It is owned and operated by Freeport Indonesia (PTFI), a subsidiary of US-based Freeport-McMoRan Copper & Gold Inc. (FCX). Rio Tinto has a joint venture with FCX for a 40 per cent share of production above specific levels until 2021, **and 40 per cent of all production after 2021.**

Padahal perjanjian Kontrak Karya berakhir pada 30 Desember 2021: Apakah boleh buat perjanjian setelah 2021, yang mengakibatkan saham pemerintah terdilusi?

Open Pit Mine habis: Share Indonesia dari tambang lama NIHIL; dari Tambang Baru: 60%.

The Grasberg underground block cave project will come online in 2017 when the current open pit mine is expected to be depleted. This will transition the mine from primarily an open pit to a fully-underground operation. It is expected to ramp up to full capacity by 2022, reaching 160,000 tonnes per day of ore. In addition, Grasberg has begun construction on the Deep Mill Level Zone block cave mine, which will produce an additional 80,000 tonnes of ore per day at full capacity, expected in 2021. Together, these two projects will supply ore to the mill at 240,000 tonnes per day by 2022.

- **Biaya Operasional dari Rio Tinto: PINJAMAN BERBUNGA**
- **Siapa yang menanggung biaya operasional (bagian Rio Tinto) Pasca Akuisisi PI?**

<https://www.sec.gov/Archives/edgar/data/831259/000083125901500005/k10.txt>

In 1996, we established joint ventures with Rio Tinto plc, an international mining company with headquarters in London, England.

One joint venture covers PT Freeport Indonesia's mining operations in Block A. This joint venture gives Rio Tinto, through 2021, a 40 percent interest in certain assets and in production above specified levels from operations in Block A and, after 2021, a 40 percent interest in all production in Block A.

Under our joint venture arrangements, Rio Tinto also has a 40 percent interest in future development and exploration projects under PT Freeport Indonesia's Contract of Work and Eastern Minerals' Contract of Work. In addition, Rio Tinto has the **option to participate** in 40 percent of any of our other future exploration projects in Irian Jaya (Papua).

- Berapa harga option tersebut? Apa kewajibannya?
- Option tersebut dijual ke INALUM dengan harga USD 3,5 miliar?

<https://www.sec.gov/Archives/edgar/data/831259/000083125901500005/k10.txt>

In early 1998, PT Freeport Indonesia completed construction on the fourth concentrator mill expansion.

Pursuant to the expansion joint venture agreement, in addition to funding its 40 percent share of all expansion costs including the fourth concentrator mill expansion, **Rio Tinto provided a \$450 million nonrecourse loan to PT Freeport Indonesia for PT Freeport Indonesia's share of the cost of the expansion. In less than two and one-half years, PT Freeport Indonesia repaid the \$450 million loan, plus interest, from its share of incremental cash flow attributable to the expansion.**

<https://www.cnbcindonesia.com/news/20180718113204-4-24115/polemik-rio-tinto-di-tambang-freeport-ini-sejarahny>

Budi menjelaskan hadirnya Rio Tinto sudah lama di Freeport, meski tim negosiasi baru mengetahuinya belakangan ini. "Mulainya tahun 1995, **Rio Tinto tanda tangan dengan Freeport McMoran (FCX)** untuk pembiayaan investasi di Grasberg, lalu kemudian isitilah mudahnya ini diijon oleh Freeport," kata Budi.

Tahun 1996, **perjanjian antara Freeport McMoran dan Rio Tinto itu diubah menjadi perjanjian lokal**. "Ini diminta oleh pemerintah Indonesia, yang saya lihat suratnya disetujui oleh Menteri ESDM dan Menteri Keuangan," jelasnya.

- **Pengalihan perjanjian ini mengakibatkan kerugian Negara sejumlah saham yang terdilusi: 3,744% setara USD 233,33 juta (menggunakan transaksi pembelian saham Indocopper) + Hak laba dividend selama ini.**

Di laporan keuangan PT-FI disebut **Rio Tinto menyuntik investasi US\$ 75 juta** untuk menggarap tambang Grasberg. **Untuk investasi itu, Rio Tinto kemudian mendapat hak partisipasi 40%.**

Hingga 2017, total investasi yang telah dikucurkan Rio Tinto mencapai US\$ 166 juta.

- **Hanya USD 75 juta dan USD 166 juta mendapat PI 40% senilai USD 3,5 miliar?**
- **Menurut Sumber lain, RTZ bayar USD 184 juta: kemana uangnya?**

INALUM TERKAIT AKUISISI SAHAM FREEPORT MENJADI 51,23 PERSEN



<https://www.cnbcindonesia.com/news/20180718113204-4-24115/polemik-rio-tinto-di-tambang-freeport-ini-sejarahny>

1. Langkah **pertama** adalah **RI harus membeli hak partisipasi PT Rio Tinto Indonesia (RTI) sebesar 40%** yang ada di tambang Grasberg milik PTFI. Pembelian **saham** dilakukan secara tunai oleh pemerintah kepada Rio Tinto. **Artinya: Rio Tinto menerima USD 3,5 miliar dan tidak mempunyai kewajiban apapun untuk biaya operasional PT-FI hingga 2041?**
 - **Padahal, PI mempunyai kewajiban untuk biaya operasional secara proporsional?**
2. Setelah Inalum membeli hak partisipasi Rio Tinto, nantinya dikonversi menjadi saham di PT Freeport Indonesia. Agar besaran sahamnya terukur, PT Freeport Indonesia akan melakukan rights issue. **Penerbitan saham baru: DILUSI**
3. Inalum membeli saham Freeport McMoran sebesar 5,4% supaya menjadi 51%. Transaksi ini dilakukan dengan cash atau pembayaran tunai. Di sinilah RI bakal membeli saham Indocopper yang ada di Freeport dengan harga US\$ 350 juta.

Council on Ethics
Government Pension Fund – Global
Annual Report 2008

Rio Tinto, an international mining group, is Freeport McMoRan Copper & Gold Inc.'s joint venture partner in the Grasberg mine in Indonesia.

On 15 February 2006, the Council on Ethics submitted a recommendation to the Ministry of Finance proposing the **exclusion of Freeport** from the Government Pension Fund's investment universe.

At Grasberg, Freeport mines copper using a natural river system for tailings disposal. Moreover, there is a great risk that acid rock drainage from the company's waste rock and tailings dumps will cause lasting ground and water contamination. The Council found that continued ownership in Freeport would imply an unacceptable risk of the Fund contributing to severe environmental damage.

Sekarang Pemerintah RI sebagai pemegang saham mayoritas: Apa kata Dunia?

Upon **termination** of this Agreement pursuant to this Article 22 or termination of this Agreement by reason of the expiration of the term of this Agreement, **all Contract Properties, movable and immovable, of the Company within the Project Areas and Mining shall be offered for sale to the Government at cost or market value, whichever is the lower, but in no event lower than the depreciated book value.**

The **Government shall have an option**, valid for **thirty days** from the date of such offer, to buy, within ninety days after acceptance by the Government of such offer, all such property at the agreed value payable in United States Dollars and through a bank to be agreed upon by both Parties.

If the Government does not accept such offer within the said thirty day period, **the Company may sell, remove or otherwise dispose of any or all of such property during a period of twelve months** after the expiration of such offer. The Government will use its best efforts to facilitate the disposition by the Company of any of such Contract Properties that the Company desires to dispose of.

Any of such Contract Properties not so sold, removed or otherwise disposed of shall become the property of the Government without any compensation to the Company.

Pemerintah gugat Newmont ke Arbitrase Internasional 29 Juli 2008 terkait divestasi saham:

Pemegang saham mayoritas PT. Newmont Nusa Tenggara (NNT) telah melakukan wanprestasi terhadap kontrak karya (contract of work) yang mewajibkan divestasi kepada Pemerintah RI:

- 3% (tiga persen) pada tahun 2006
- 7% (tujuh persen) pada tahun 2007, dan
- 7% (tujuh persen) pada tahun 2008

Sesuai dengan ketentuan Pasal 1267 KUHPerdara, Pemerintah RI menuntut agar kontrak karya tersebut diakhiri sehingga pengoperasian tambang sepenuhnya dikuasai kembali oleh Pemerintah RI.

Tuntutan Divestasi: Indonesia Menang

Newmont harus melepas 17 persen sahamnya: 180 hari sejak putusan keluar 31/3/2009

- Divestasi 51% hingga 2010

NNT, Amman Mineral Nusa Tenggara (AMNT): 100% dimiliki Indonesia

Pemegang saham: Medco 82,2%; PT Fukuaku 17,8%

Nilai Divestasi kepada Swasta Nasional harus beda dengan Nilai Divestasi kepada Pemerintah

UUD Pasal 33 ayat (3): Bumi dan air dan kekayaan alam yang terkandung didalamnya dikuasai oleh negara dan dipergunakan untuk sebesar-besar kemakmuran rakyat

Penawaran Saham ke Swasta bisa dengan pendekatan Fair Market Value

Discounted Cash Flow (DCF)

Penawaran Saham ke Negara: harus dengan pendekatan Net Worth book value

1. Pemerintah adalah pemilik bumi dan kekayaan alam yang terkandung didalamnya
2. Ketika pemerintah memberi ijin usaha penambangan atau kontrak karya, tidak memperhitungkan nilai komersial kandungan deposit material: hanya royalti, etc.
3. Yang dimaksud Negara adalah: Langsung Pemerintah RI: bukan BUMN

Penawaran Saham ke Negara dengan cara Fair Market Value

Secara eksplisit mengatakan kandungan didalam bumi milik kontraktor atau pemegang ijin usaha

- Melanggar UUD Pasal 33 ayat (3)

PERHITUNGAN DISCOUNTED CASH FLOW (DCF): NO GAIN

Metode perhitungan DCF: Pada dasarnya tidak memberi tingkat keuntungan (berarti)

DCF adalah perhitungan Present Value dari arus kas (cash flow) operasional: $DCF = PV$

- Kalau nilai akuisisi (Investasi) = PV (Arus Kas Operasional): $NPV = 0$

$$NPV = PV - I$$

NPV = Net Present Value

PV = Present Value

I = Investasi

Keputusan Investasi: $NPV > 0$

At closing, Rio Tinto will receive \$3.5 billion, and FCX will receive \$350 million, in cash proceeds.

*Following completion of the transaction, FCX expects its share of future cash flows of the expanded PT-FI asset base, combined with the cash proceeds received in the transaction, **to be comparable** to its existing share of future cash flows under the current Joint Venture arrangements. FCX will continue to manage the operations of PT-FI.*

FCX: Total penerimaan future CF setelah divestasi + nilai akuisisi (USD 350 juta) = Futue CF tanpa divestasi

Artinya, secara substansi pendapatan FCX tidak berkurang: tidak dirugikan

- Artinya, Pemerintah tidak diuntungkan: NO GAIN

1 **Ada upaya serius memperpanjang Kontrak Karya / IUP(K) sebelum waktunya**

Melalui Penerbitan PP No 1 2017 yang merubah Pasal 72 terkait Perpanjangan Kontrak / Ijin: Patut dipertanyakan dan dicurigai untuk memudahkan pemberian perpanjangan

2 **Perpanjangan Kontrak Harus Berbarengan dengan Akuisisi Saham PT-FI menjadi > 51%**

- Nilai Akuisisi untuk PI Rio Tinto lebih mahal 40,45 persen dibandingkan nilai akuisisi saham FCX: setara USD 1,01 miliar; **Bagaimana kewajiban PI membiayai operasional PT-FI**
- Nilai akuisisi berdasarkan DCF: berpotensi melanggar UUD Pasal 33 ayat (3)
- Nilai akuisisi berdasarkan DCF: tidak menguntungkan sama sekali

3 **Kesimpulan dari butir 1 dan 2**

Negara tidak berdaulat

4 **Motif Penerbitan PP No 1 2017**

Patut Dicurigai berbaur nilai komersial akuisisi saham USD 3,85 miliar

5 **Arbitrase Internasional Menegakkan Kedaulatan Negara Menghadapi Kontraktor Nakal**

Ada pembentukan opini Indonesia akan kalah kalau dibawa ke Arbitrase Internasional

- Kasus NNT membuktikan Indonesia yang menggugat ke Arbitrase Internasional dan Menang: Kedaulatan Bangsa ditegakkan

Rekomendasi: Investigasi Lebih Lanjut Apakah Ada Kerugian Negara



POLITICAL ECONOMY &
POLICY STUDIES

Thank You