THE NATIONALIZATION OF THE DUTCH OWNED PLANTATIONS IN NORTH SUMATRA: TO WHOM THE COMMUNAL LAND BELONG?

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The Nationalization of the Dutch Owned Plantations in North Sumatra: 
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Edy Ikhsan

Abstract

This article has been developed through an analysis of primary and secondary sources concerning the nationalization’s policy of the Dutch enterprises in Indonesia as had been conducted by Soekarno’s regime back in 1958. The impact of this said policy has been so much felt very strongly to these days, most especially on the ex-concessionary lands of the Dutch enterprises in North Sumatera. The flaws made by the Indonesian government in interpreting the terminology of Concession to the Cultivation Rights on Lands, in the said nationalization policy, have created various endless conflicts among central and regional governments, state-owned enterprises, the Sultanates (mainly the Deli and the Serdang), private-owned companies, the military and other interest groups. At certain ends, these critical disputes have left some saddening and murky situations whereas the ancestral lands belonging to Melayu people, which were put in concession by the Sultanate to the Dutch-owned enterprises, were gradually missing in terms of identity and without any compensation to this ethnic group.

Keywords: nationalization, concession rights, communal land, deli, east coast of sumatra.

Abstrak
Artikel ini dikembangkan melalui analisis sumber primer dan sekunder terkait kebijakan nasionalisasi perusahaan-perusahaan Belanda di Indonesia yang dilakukan oleh pemerintahan Soekarno pada tahun 1958. Dampak dari kebijakan ini masih terasa sampai hari ini, khususnya di eks tanah-tanah konsesi perusahaan perkebunan Belanda di Sumatera Utara. Kesalahan pemerintah Indonesia di dalam menafsirkan (mengkonversi) terminologi konsesi menjadi hak guna usaha dalam kebijakan nasionalisasi tersebut menimbulkan konflik yang berkepanjangan diantara pemerintah (daerah dan pusat), perkebunan negara, Institusi Kesultanan (khususnya Deli dan Serdang), perusahaan swasta, TNI dan kelompok-kelompok kepentingan lainnya. Ujung dari kemelut ini menyisakan keadaan menyedihkan dimana tanah-tanah adat orang Melayu yang dahulu dikonsesikan oleh Kesultanan kepada Perusahaan Belanda, berangsur-angsur hilang tanpa memberikan kompensasi apapun terhadap kelompok etnis ini.

Kata Kunci: nasionalisasi, hak-hak konsesi, tanah komunal, deli, sumatera timur.

I. Introduction

The Nationalization of Dutch owned plantation in 1958 was of a national, Indonesian political move. Such a move was obviously taken under the pressing circumstances of internal, unstable and political turbulence during which such a tension with the Dutch government was occurring at its climax. “Based on the moral strength of nationalism and guided by a government under the more or less direct personal blessing of Presiden Soekarno as the real element of political power, the nationalization turned out to be a

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political victory in the contest with the Dutch victory. Furthermore it made an effective groundwork for the start of implementation of the concept of guided economy”\(^2\)

Criticism, protest and opposition against the nationalization had not sparked only from within the home but also from out of country. From within the home countries, such a move was seen as a political maneuver of Soekarno’s government emerging from the state of helplessness with regard to improving the economy of Indonesia. Whilst, from out of country, primarily from the Dutch Government and its entrepreneurs, they had bluntly staged protests accusing the nationalization held by the Soekarno’s government as had been apparently falling by the way side of legal procedures, more predominantly inconsistent with the principles of international laws. Some numbers of countries supported the Dutch government for the protest. Somehow, over the all legal processes to be taken, the Dutch’s claims had come to no result. “Politically the prospect of nationalization might be said to be real contribution to stabilization.”\(^3\)

One of the most paramount reasons of the nationalization was part of a struggle to free the Western Irian to be off the Dutch’s reign. With the 7 (seven) articles delineated within the Law on the Nationalization of the Dutch Plantation (the shortest law), to be officially adopted on 31st December 1958, and was implemented relatively as of 3rd December 1957, that the said law was engineered to free this vast nation from the foreign economic domination. In a later stance of the ruling government, it was revealed that the nationalization would eventually stem from two interrelated objectives, namely the state’s economy as well as of the state’s security. With the first objective, the state would have an opportunity to improve the people’s economy by expropriating the Dutch’s plantation and this as well provided the opportunity to consolidate the existing nationwide assets. Meanwhile, with the second objective, the nationalization was apparently aimed at fostering the security and defense of the state from outside or foreign intervention.\(^4\)

The apprehension of the Dutch over the rights to properties owned by its private enterprises in Indonesia in the post of Indonesia independence was apparently seen very clearly from how they try to reconstruct the structure of protection toward its Dutch owned enterprises that was obviously reflected within Linggarjati Accord to be duly signed on 25th March 1947. Within Article 14 of the said Accord, it was noticeably stipulated: “The Government of Republic Indonesia acknowledges the rights of non-Indonesia residents that shall claim their rights that was frozen to be restored and their properties to be returned – that was under their ownership – de facto. A joint committee shall be made available to administer such a restoration or compensation.”

However, van de Kerkhof quoted, ideas of the Article 14 was simply an illusion and could not be plainly undertaken with regard to providing protection over the Dutch owned enterprises in Indonesia. “The opposition of the Indonesian nasionalists and militant labour unions, illegal occupations of estate lands (“squatting”) and the unwillingness of Dutch authorities to withdraw their troops made implementation of article 14 a slow and frustrating process.” Four months after the Linggarjati Accord duly agreed, the Dutch launched its first aggression (July 1947) under a codeword “operation product”, with main objective to safeguard many of its enterprises and potential oil wells in Java and Sumatera. The said

\(^2\) Achmad Sanusi, The Dynamics of The Nationalization of Dutch-Owned Enterprises in Indonesia: A Political, Legal, Economic Development and Administrative Analysis. (Ph.D thesis: Indiana University. 1963), p. 121.

\(^3\) Ibid. p. 123.

\(^4\) Ibid. p. 27.
operation succeeded to “liberate” about 1000 areas of plantations and factories, somehow many of the said enterprises had been entirely defunct and out of order.\(^5\)

The chaos upon failures in some deliberations between Indonesia and the Dutch, mainly on respective sovereignty of each country in the area of ex- West Indies, had blatantly reached its culmination with regard to the matters related to West Irian and failures to implement the Meja Bundar Accord. By the end of 1957, Soekarno took a stern stance to take over all Dutch owned enterprises in Indonesia as a form of reciprocal Law toward the Dutch’s stance over the most eastern part of Indonesia. In later stages, through Law No. 13 of 1956, Indonesia definitely cancelled out its relationship with the Dutch on the pretext of the Meja Bundar Accord.

Article 7 of Law No.13/1956 clearly stipulated: “(clause 1) The interests of the Dutch in any territory of the Republic of Indonesia is duly treated based on the prevailing rules and regulations of Temporary Constitution of the Republic of Indonesia and legislations that apply and shall apply within the territory of Republic of Indonesia. (clause 2) Rights, Concession, Permits and measures to run the Dutch owned enterprises shall be considered provided that is not against the interests of the state’s development efforts. (clause 3) Such a treatment as delineated above may not be justified on any privileges in whatsoever reasons.

In context of North Sumatera, the takeover of the Dutch-owned assets was conducted through so called a Military Authority Announcement NO. PM/Peng 0010/12/57. The announcement briefly stated: (1) The struggle of West Irian Liberation comprises of all Indonesian people’s efforts – under the leadership of the government of Republic of Indonesia; (2) Efforts in relation to the liberation of West Irian shall be duly conducted orderly and peacefully … so on; (3) The authority (shifting of authority) over the Dutch owned enterprises shall be conducted in pursuance to the government’s order or Military Authority by of exercising measures to be defined as such: (4) Any unsolicited Laws falling by the way side of the prevailing law shall not make anyone free from further investigation and legal prosecution; (5) Any unilateral action over the said Dutch owned enterprises by persons or groups are strictly banned (6) Successively, after the Military Authority Announcement, then emerged some other regulations, namely: Military Authority Announcement NO. PM/KPTS-0042/12/57 on The Direct Monitoring of all Dutch owned Enterprises. Later, Military Authority Announcement NO. PM/KPTS-0045/12/57 on The Taking Over of all Behher Authority over all Dutch Enterprises, and Military Authority Regulation NO. PM/PR-006/12/57 on Restriction of Movement of the Dutch People.

Cautions over the taking over of the Dutch owned enterprises was perceptibly reflected from one of the mandates released by the Commander in Chief of T&T-I Bukit Barisan which was essentially stating: “The Dutch-owned enterprises that prevail in Indonesia are generally carrying social function, whereas for the state and the people, they may contribute significant meaning. Therefore, the state and the people feel the necessity for the continuation and perfection with regard to the operation of the said enterprises. Despite the owners of the said enterprises, it is the sole responsibility of the government and for the whole sake of the people to secure smooth operation of the said enterprises. Any efforts that imply such a disorder or that of causing disharmonies against the smooth operation shall be

\(^5\) Jasver Van de Kerkhof (2005) Indonesianisasi of Dutch Economic Interests, 1930-1960: The Case of Internatio in Bijdragen Tot de Taal, Land en Volkenkunde, 161.2/3 (Leiden: KITLV, 2005), p. 188. J. Th. Bank, Rubber, Rijk and Religie; De Coloniale Trilogie in de Indonsische Kwestie 1945-1949 ini Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden. (Amsterdam, 1996), p. 230-259.
banned by whatsoever means.” More or less one year period after the stern action of the takeover of the Dutch owned enterprises, then Law No. 86 of 1958 was officially adopted as already quoted in several paragraphs above.

II. The Law on Nationalization: Criticism and Defense

Article 1 of the Law No. 86 of 1958 was the real core essence of what the state wanted in context of “political revenge” against the Dutch. The first article stipulated: The Dutch owned enterprises being located within the territory of the Republic of Indonesia – those of going to be officially decided under the government’s regulations shall be covered by the rules of Nationalization and are fully and arbitrarily owned by the government of Republic of Indonesia”. Explicitly, this law stipulated that Onteigeningsordonantie (Stb.1920. No.574) on Deprivation of Rights did not apply in this context of nationalization. This ordinance provided guaranty that no one was never allowed to be snatched from his/her ownership of wealth without prior being prosecuted before the prevailing justice. In the state perspectives, this ordinance shall only apply for individual expropriation – whilst this Nationalization law had its own general character. Other reason emphasized that the ordinance on the deprivation of right was made under a legal system, which was based on the supremacy of individual rights. In the mean time, the Nationalization Law was developed under a legal system, which was emphasized in context of social function of a private ownership (individual).

The Government Regulation No. 4 of 1959 on the Determination of Agricultural Enterprises/Tobacco Plantation of the Dutch owned clearly mentioned that there were 38 tobacco plantations to be nationalized, and 22 among them were located on North Sumatera. In the basic consideration of the Government Regulation it is stated that the Agricultural Enterprise/tobacco plantations are important branches of production for the people and that determine the lives of many people. The twenty two tobacco plantations as said are as the followings:

| No. | Name of Plantation | Location         | Owners                          |
|-----|--------------------|------------------|---------------------------------|
| 1.  | Bandar Klippa      | Deli/Serdang District | NV Vereningde Deli Mij        |
| 2.  | Bulu Tjina         | Deli/Serdang District | Same as above                  |
| 3.  | Helvetia           | Deli/Serdang District | Same as above                  |
| 4.  | Klambir Lima       | Deli/Serdang District | Same as above                  |
| 5.  | Kloempang          | Deli/Serdang District | Same as above                  |
| 6.  | Kwala Begomit      | Langkat           | Same as above                  |
| 7.  | Kwala Bingei       | Langkat           | Same as above                  |
| 8.  | Mariendal          | Deli/Serdang District | Same as above                  |
| 9.  | Medan Estate       | Deli/Serdang District | Same as above                  |
| 10. | Padang Brahrang    | Langkat           | Same as above                  |
| 11. | Rotterdam AB       | Deli/Serdang District | Same as above                  |
| 12. | Saentis            | Deli/Serdang District | Same as above                  |
| 13. | Sampali            | Deli/Serdang District | Same as above                  |
| 14. | Tandem             | Deli/Serdang District | Same as above                  |
| 15. | Tandem Ilir        | Deli/Serdang District | Same as above                  |
| 16. | Tandjoeng Djati    | Langkat           | Same as above                  |
| 17. | Timbang Langkat    | Langkat           | NV. Sinembah Mij.              |
| 18. | Batang Kwis        | Deli/Serdang’ District | Same as above                 |
The Nationalization Law No. 86 of 1958 was gaining a lot of criticism and challenges by law. By essence, this Law contains a defect at least in some respects: first, despite as repeatedly stated in Law No. 86 of 1958 that the act of nationalization is consistent with the cancellation of relations of Indonesia and the Netherlands based on the Meja Bundar Conference with reference to. Law No. 13 of 1956, but if confronted with article 7 of Law No. 13 of 1956, which reads: "The interests of the Dutch in the territory of the Republic of Indonesia are treated according to the rules contained in the Constitution of the Republic of Indonesia and Legislation that applies or would apply in the territory of the Republic of Indonesia. Rights, concessions, licenses and how to run the Dutch company would not be ignored so long as not against the country's development. The Treatment as referred to the above shall not be based on the privileges for any reason. ", just did not show an attitude of consistency. In other words, the Article 7 states that it still requires the state to respect the rights owned by the Dutch companies, despite the note that says not against the country's development. In other words, event with the Law No. 13 of 1956 alone, the Dutch already lost the rights/privileges that distinguished them from citizens or of other foreign enterprises – the same privileges they had got every since.

Second, the act nationalization performed by Indonesian was clearly directed to campaign for the liberation of West Irian from the Dutch domination. The campaign was conducted by the ways in which private property are taken by "forced" to be the state-owned. Indonesia also declined to file a dispute against the Dutch to the attention of an international court. Such ways are seen as something to be taken partially and with intentions to omit the private rights of others (in this case the individuals and the Dutch legal entities). In this context, Indonesia can be categorized as to have done what was so called detournement de pouvoir (the abuse of power).

Third, the practice of nationalization means a removal of the entire civil rights of the individual and of the Dutch owned enterprises. This means that all the enterprises had to give up and let go all the wealth, offices, documents, securities, cash, financial data and all objects owned by them in Indonesia. All letters and correspondences overtaken then been opened by Indonesian officials who were appointed, by which action was very contrary to article 17 of the Provisional Constitution of 1950 and article 234 of the Criminal Code (KUH Pidana). In short, they lose all rights as the owners as regulated under article 570 of Civil Code (KUH Perdata).

Fourth, the first Ministerial Decree No. 485/MP/1959 stated that in the event, in the enterprises there were foreign individuals of non Dutch citizens, then compensations would firstly be made to any individuals of the non-Dutch citizens. It was quite contrary to article 2 of the Nationalization Law, which was implicitly implying that no discrimination would apply in context of settling up the compensation. Therefore, the nationalization itself had been of a violation based on the principle of international law, most specifically related to the principles of non-discrimination.

Relating to the nationalization, which was discriminatory in nature, Henri Rolin quoted that the law was clearly illegal on the grounds that it only touched a single class of
people and the Dutch legal entity. Mc. Nair and Verdross further emphasized on what Rolin had mentioned quoting that it was called as discriminatory and illegal because the parameter of the nationalization was only aimed at a foreign group.\(^6\) Decision to conduct the nationalization, which was regarded discriminatory, was incompatible by the momentum of peace as regulated within international laws. Besides, the principles of the non-discriminatory had been adopted by many theorists and international trials or arbitration.\(^7\) Even, by the contents of Meja Bundar Conference, matters related to guaranty was also applied for the Dutch owned Enterprises domiciled in Indonesia. This was what caused, according to many international legal experts, *the nationalization was incompatible with Indonesia’s obligation vis à vis with the Netherlands arising from treaties which are still in force.*\(^8\)

A number of juridical arguments elaborated above, in reality, was turned out not immediately to be able to frame the main opinion on the ways or nationalization measures used Indonesia at that time. There are a number of argumentation to fight against thought, opinion and theories used. Firstly, a matter of nationalization is a crucial notion to get away fully from foreign domination and this is a mutual realization widely owned by the majority of Indonesian people. It has been of what was so called *rechtbewustzijn* (Legal Awareness) of the people of Indonesia. Such an awareness has become not only as the source of legal philosophy but also as positive law. And, in line with the matter, then the emergence of the nationalization as a means of formal regulation, which was adopted by the official regime, can annul other legal products – either be of those in the lower or those of the linear hierarchies compared to it. Article 570 of the civil law and article 44 of the Trade Law for instance, by the adoption of Nationalization Law, normatively, lose its binding power. The doctrine of *Lex Posterior derogat Lex Anteriori* applies in this context.

Second, in the constitutional approach, the lawsuit said that the Nationalization Law was illegal and unwarranted. On the contrary, the products of colonial law were the one that was actually against many aspects of the people’s social justice. This could be demonstrated through, for instance, Article 570 of the Criminal Code, which gives absolute rights to individuals to get hold of properties/wealth based on *zakelijke rechten*. On the contrary, the Nationalization Law, which was based on Provisional Constitution of 1950 could have refer to Article 26 verse three (3) which stated that the personal rights was to have social function. In addition, the Nationalization Law also have made necessary adjustment to the principles of justice as stipulated in article 27 of the Provisional Constitution of 1950, which stated: “*The expropriation of personal rights for the sake of public interests upon any properties or unwarranted rights, other otherwise with proper compensation in accordance with rules and regulation.*” In the event that a property be destroyed for the sake of public interests, either permanently or temporarily, it shall be destroyed completely to the state of unusable, by any public authority, it shall be done by an accompanying compensation in accordance with the prevailing rules and regulation, unless otherwise determined by rules differently.” Means of direct showing to certain articles in this constitution is important to show which was illegal and legal in this case.

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\(^6\) The Netherlands International Law Review, Vol.VI, July. (1959), p. 287. See also WLG Lemaire, De Onderbeheerstellingen en de Nasionalisaties van de Nederlandse Bedrijven in Indonesia in Rechtsgeleerd Magazijn Themis. Aflevering 4 (Leiden: 1959).

\(^7\) S. Friedman, Expropriation in International Law. (London: Stevens, 1941), p.132 and 190. J.H. Herz Expropriation of Foreign Property in American Journal of International Law, Vol.35. p. 249, 251 and 253.

\(^8\) Sanusi, *Op.cit.* p. 149.
Third, relating to the alleged discrimination being addressed to the Nationalization Law, the facts looked nothing like what appeared on the surface. The empirical situation showed that the Dutch owned enterprises still enjoyed a high economic position compared to other foreign capital enterprises. The Dutch estimated to remain controlling about 30 – 40 percent of Indonesia’s economy.9 Further, the Nationalization Law could also be applied to other foreign entrepreneurs other than those of Dutch origins, as it could be seen from its stipulation, “wholly or partly Dutch-Owned” in the nationalization law.

Fourth, there was an assumption that said the illegality of the nationalization law lied on the premature termination of the existing concession contracts. In general (internationally), it was recognized that a concession contract would cause obligations and rights that could not be directly interfered or intervened by the state’s law, except that by referring to rules of the concession contract (lex contractus), unless otherwise it was stated differently. Unfortunately, such clauses could not be found within the nationalization law and because of that Indonesia just could be dragged into the international arbitration/tribune. The last argument from the standpoint of Indonesian Government demonstrated very clearly the position of the state when the concession contract was drafted. In other words, why such clauses were not stipulated within the concession contract wholly because Indonesia was not and certainly not a contracting partners in context of the concession contract, instead that of the Sultanate and the Foreign Enterprises. This side has not been much reviews of the scholars that wrote about the Nationalization of the Dutch owned enterprises of 1957/1958.

III. Bremen Case: Aspects of Customary Law Within Foreign Justice

The lawsuit conducted by Vereningde Deli Mij and Senembah Mij against Indonesia government was triggered by the removal of tobacco auction market from the Netherland (Amsterdam and Rotterdam) to Germany (Bremen), the establishment of German-Indonesian Tobacco Trading Company of Bremen and the influx of the first 5000 balles of tobacco to Bremen Port, the harvest of 1958. The lawsuit was the culmination point after some incidents in the post of the nationalization, namely: either Deli Mij or Senembah Mij would not recognize the prevailing agreement against Indonesia’s government in context of tobacco export on pretext they were not anymore tied to any agreement in the post of the nationalization. The two enterprises filed lawsuit against The Branch of Indonesian Bank in Amsterdam and refused to repay all of their debts, which was estimated at around 80.000.000 (eighty million) Gulden (H.Fl,s, Holland Florijns).

The legal basis of the plaintiffs to promote their lawsuits was that they considered themselves as the official owner of the disputed tobacco – as they believed that the tobacco was produced from their plantation areas in Sumatera where they had concession rights of plantation (landbouwconcessie). Such rights, in view of the plaintiffs, was of rights upon materials (zakelijke aard) even if other people had planted tobacco on it – the tobacco would remain of rights (eigendom) of the plaintiffs.10

There were three important lawsuits forwarded by Deli and Sinembah Mij in this phenomenal case. First, asking the Bremen District Court to declare that 5000 balles of tobacco to be belonged to the property of Deli and Sinembah Mij. Second, forcing the court to declare that the Nationalization Law No. 86 of 1958 was against the law and to have no

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9 Sanusi, Ahmad. Op.cit. p. 158.
10 Gouw Giok Siong , Hukum Internasional pada Nasionalisasi di Indonesia. (Jakarta: Fakultas Hukum dan Pengetahuan Masyarakat Universitas Indonesia, 1960), p.152.
binding legal power, mainly with regard to extra-territorial context. Third, forcing the court to impose the implementation of Article 30 of Civil Code of the Germany, namely putting this case as a serious violation of international law. In this context, they also asked the court to issue a verdict or intermediate decision that the disputed tobacco be first confiscated and to declare that the Nationalization Law was not in proper compliances to the International Law.

In the issue related to whom was considered to be the owner of the tobacco, according to Indonesia Government, there should be made clear first the basis to know which law to be actually used to tackle the problems regarding the agricultural land concession. The Indonesia Government had at least used 3 legal basis in the plead forwarded in the Bremen Court, namely: first, in relation to the matters of agrarian law of inter-groups: “The agricultural concession land that included an autonomous domain (zelfbestuur) of Deli Sultanate in context of governance arrangement prevailing when the such rights was made. The land of the autonomous domain was the land subdued under the customary law.”

Second, in relation to the application of Customary law: “If the Customary Law to be used in conjunction with the yields of the harvest, then the planters and the cultivators were the parties to be considered as the owners of the yields of the harvest, “Wie zaat die maait”, so that was one reason that could be maintained in the Customary Law.” This legal basis was suggested by expert in the area of customary Law, Soekanto, a professor at the University of Indonesia. The plaintiff was rather startled on the reasons of using of this customary law. They did not expect at all that the customary law would be used as a way of defending. From the beginning they had used western and European law as a way to defend, articles to be known within Burgerlijk Wetboek.

Third, the agricultural concession rights was a private rights, in nature: The Dutch Enterprises argued the rights of plantation concession made between the Sultanate along with its cronies and the Dutch owned enterprises was the rights of materials (zakelijk rechten) – in other words to be mentioned as the rights of erfpacht. Therefore, as stipulated in Article 721 of the Civil Code, it was stated that anyone who was so called erfpatcher shall enjoy every rights contained therein the materials (eingendom) upon the land (De erfpachter oefent alle regten uit, welke aan de eigendom van het erf verknocht zijn). Because of its nature of rights, then the rights over the yields of the harvest was consequently considered strong and valid, because it had what was so called a vruchtrekkingsrecht). In response to this, Indonesia Government denied and pleaded back that such a concession was of a private rights (persoonlijkrecht), so that was recognized in European legal system.

The judges’ decision in this context had become very interesting – not upon whom to be won or be found guilty but on the perspectives used, in which various aspects of local customary laws and of the Dutch private law to become the backbones in the decision making process. The Judge’s views in Bremen were like the following: First, the Customary Law recognized that if a person claimed rights of ownership over any agricultural products then the concerned person had to prove that he or she was the one sowing the seeds and planting the products. Customary law said: “He who sows the seed, he harvests “wie zaait, die maait).” In this context, the plaintiffs could not physically prove of sowing the seeds, sowing and harvesting the yields/crops due to the nationalization of December 1957. Second, the western civil law did not recognize any rights of wealth over something that was produced

11 Ibid. p.153.
12 Ibid.
from a concession land no longer in direct control of the concession holders in time of the harvest.

In view of the two perspectives used, the Bremen’s judges further said that all the concession and the administration of the existing plantation carried out by the New Plantation Enterprises and the administration of local military was fully representing the interests of the Republic Indonesia. In addition, the Government of Indonesia was not of the guardian of the two enterprises filing the lawsuits. Owner of the land, the crops/yields and the administration of the plantation was the Government of Indonesia. So then if the Government of Indonesia would then cultivate the land, plant seed and harvest the crops was indeed not to run obligation on behalf of the plaintiffs, instead it was because of the rights they originally owned.

In another description, the Bremen Judge quoted that the decision might have been different if the grant concession proposed by the plaintiffs to have had material rights, in nature (zakelijke rechten), which of course would not have been lost or expired due to the loss of the rights of the land tenure. The court after the search through the literature and Indonesian jurisprudence stated that the concession was persoonlijk rechten. Unfortunately, the plaintiff did not attempt to apply for change of Persoonlijke Rechten to zakelijke Rechten shortly after the re-negotiation relating to the management of the plantation in 1951.\footnote{Martin Domke, Indonesian Nationalization Measures Before Foreign Courts in The American Journal of International Law. Vol.54 No.2, April (1960), p. 309.}

Bremen Court just did not see at all that this case was doubtful, and therefore there was no need to enforce article 100 of the Germany Civil Code, which actually opened a possible chance to propose an appeal to a higher court on pretext of the case having a doubtful character.\footnote{Article 100 (2) of The Basic Law of The Federal Republic Germany, 1949.} According to German Judges, both validity and legality of Nationalization law of 1958 were not of being doubtful anymore provided that all materials being nationalized were located within the country that was carrying out the nationalization (Indonesia). In addition the judge argued that article NO. 30 German Civil Code which stipulated that foreign law can be deferred by German judge, when this usage would constitute a violation of decency or against the purpose of the German law and could only be used in cases that meet one element so called inlandsbeziehungen, i.e. something related to the German domestic affairs, could not be used in this context because these elements were not met.\footnote{Siong, Op.cit. p. 163.}

**IV. Common Faults of the Nationalization and the Loss of Customary Lands**

The use of elements of the customary law in legal defenses of the lawyers representing the Government of Indonesia in the trial in Bremen as elaborated above, implicitly, indicated a seizure/ recognition of rights by the Indonesian Government over the rights owned by the autonomous governments and the shadowing legal communities. However, the recognition of which is also agreed upon by the Bremen judges, showed no correlation in the daily practice of the people’s life. The Sultanates of Eastern Sumatra along with all of their rights in context of legal relation with the Dutch owned enterprises was clearly ignored - not even to be the basis in the discourse around the nationalization of the Dutch owned enterprises.
Judicial assumptions with regard to such a neglect was referred to the common assumption that the power of the autonomous areas had consequently been lost by the issuance of Law No. 1 of 1957 on the Principles of Local Governments. The article 2, verse 2 of Law reads: "Autonomous Regions according to the importance and the development of today's society can be defined as a Special District level I, II or III or Autonomous Regions to the level I, II or III, which is entitled to manage their own households." and in the explanatory note, the article says:

“In addition, it needs to be explained herein that there is no differences in levels among the areas of municipalities (swapraja) except that of the Capital City of the state, which indeed carries its own position and history. The provision of this article No. 2 stipulates that the area of municipalities by laws can be made into Special District or even a Common District. It further means that the municipalities become the areas that are granted by law with autonomous power, which is basically to have been in compliance of the spirit of article No. 132 of the Provisional Law. In relation to the Special District, each time any autonomous area is formed to be a Special District or region, then it is basically we have given it a new status to the autonomous area, which is the form of arrangement of its governance is held according to article NO. 132 paragraph 1 of the Provisional Law. To any autonomous, area an autonomous authority shall be given by law, so that any autonomous area is not allowed to be free from practicing autonomous authority democratically as mandated by the law, to which people the authority is granted almost all of the autonomous power, except that of all related to customary dealings that can be maintained in the hand of the autonomous district and its clients provided that all the people remain abiding under the prevailing customary laws. In the event that an Autonomous Areas is formed to be a Special District or a Common District, then it carries within itself the removal of its status to be an autonomous area, and by itself the changing status of its being an autonomous area shall then be made and arranged differently, namely regarding the high-ranking officials and other common officials of the areas, which to the most extent possible be appointed to be in the formation of the officials of the Special District in accordance with related requirements of needed skills and expertise, etc.”

Whether or not will the removal/abolishment as stipulated within the Law No. 1 of 1957 by itself be annulling various relations of civil rights as already determined before? How is it to treat the plantation concession between the previous Eastern Sumatera Sultanates and the Dutch origin Entrepreneurs, which was already and obviously determined as personal/individual rights (persoonlijk recht) – and instead not as material rights (zakelijk recht) by earlier writers and the panel of judges in Bremen Court? Or, may the nationalization automatically abolish or annul personal/private rights of any groups, which is obviously part of its own nation?

In his dissertation, Robert van De Wall quoted that the plantation concession constituted a private/personal right which was based on the agreement between the Sultanate and the concession holders (de landbouw concessie is een persoonlijk recht, berustend op een overeenkomst tussen de Sultan en de concessionaris). Still in the dissertation, some facts were shown within the Sultanate of Deli, Serdang and of Langkat Sultanate there were found about 5493 plantations and none of them was in the form of rights of erfpacth (that after the period of 1960 – through the Basic Agrarian Law No. 5 of 1960 to be converted to be the
rights of HGU) except that of what was from the beginning officially mentioned as a concession agreement – as already and widely indicated in various written documents. Therefore, it was clear that the conversion and or the shifting from concession rights to the rights of HGU in context of the said nationalization was not having strong legal basis in expropriating and stating the lands of the ex-concession to be under the ownership of the government of Indonesia.17

In addition, as also affirmed within International Civic Law it was clearly known of the principle “Lex rei sitae”. According to this principle what is created, removed/abolished and transferred, in terms of rights over things or objects shall be governed by law from which rights and places the objects are factually located. This principle of “lex situs” applies to both moving and fixed objects. This “lex Situs” principle can also be used with regard to the transfer of rights of objects, which is based on the nationalization. The country, in which place the objects are located is the one who can determine whether or not a regulation on nationalization is effectively done with regard to the transfer of rights to be the state owned. Martin Wolff had clearly quoted this. This writer had further affirmed as long as the related confiscation decree came in relation to any objects located within the territory of the state conducting the confiscation, then it certain came up with the transfer of titles of rights ownership to the related state and this will be respected everywhere and so as it is also related to the objects being confiscated to be under the ownership of any foreign individuals and not of the citizens of the state conducting the confiscation.18

Article No. 1 of Law No. 86 of 1958 on the Nationalization of the Dutch owned Enterprises states: “The Dutch owned enterprises factually located in the territory of Republic of Indonesia that will be determined and regulated by Indonesian law shall be affected by the nationalization and is officially claimed to be in the full and free ownership of the state of Republic of Indonesia. Within the article 1 State Regulation No. 2 of 1959 on the Principles of the Implementation of the Nationalization of the Dutch Owned Enterprises (LN 1959, No. 5), it was stipulated that the ones being affected by the nationalization are all wealth and assets, either be moving or fixed assets and either be rights or liabilities or receivables. These legal norms lead us to a conclusion that wealth/assets or anything relating to the Dutch owned enterprises, but not of their wealth, such as concession lands and any rights entitled to the rightful owners, namely the Sultanate of Deli and other smaller sultanates, which was legally binding that time could not be nationalized to be under the ownership of Republic Indonesia.

The Government of Indonesia seemed to have evenly equalized the qualities of autonomous areas those of located in Java and those of located in Sumatera (most specifically autonomous areas located along the eastern coast of North Sumatera. As a matter of facts, the construct of the concession agreement between the Sultanates and the Dutch origin entrepreneurs had never been found the same in any areas of Java Island. In other words, the long terms contracts of plantations owned by the Dutch enterprises in Java island were made on the basis of Material Rights more or less like erfpacht upon areas directly under the authority of the Gubernemen and parties within the areas are only Gubernemen government and other Dutch origin entrepreneurs – whilst the concessions made in the former Eastern Sumatera were private and long terms contracts between two subjects or parties of the civil law, namely the Sultanates and the Dutch origin entrepreneurs.

17 Robert Van de Waal Robert, Richtlijnen voor Een Ontwikkelingsplan voor de Oostkust van Sumatra (Wageningen: Landbouw Universiteit, 1950), p. 54.
18 Wolff, Op.cit. p. 522.
IV. Conclusion

Such a prolonged economic crises and the failure of winning diplomatic struggles for the West Irian had become strong legal basis for Soekarno to launch his debut for enacting the nationalization of the Dutch owned enterprises in Indonesia by the end year of 1957. The government seemed to have blinded his eyes when the so called nationalization was enforced without considering the basis for legal relations as a means of resolution of conflict between the Dutch owned enterprises and the entity of the Sultanates in eastern Sumatera.

This remains to be an eternal question whether leaders and law experts in Jakarta really know that all lands used as major plantations in Eastern Sumatera, mainly in Deli, Serdang and Langkat, are actually communal lands entitled to the Sultanates to tie themselves into contracts with the Dutch owned plantation enterprises? Do they really understand that the said contracts were of long terms leasing to be made on the basis of private rights? It was clearly revealed that some essential and crucial matters were not put into proper account. These are all very likely to take place due to the dissenting outlooks over the state management sides upon the proclamation of 1945 and upon the enforcement of Law No. 1 of 1951 on the Principles of Governance in the Regions to have been used as strong legal basis for the annihilation of the Sultanate, Autonomous areas, vorstenlanden and the like.

As a matter of fact, in view of normative outlook, such an insight was baseless. The elaborating paragraph of Law No. 1 of 1957 stipulated like the following:

“Due to the presence or absence of the units of indigenous community as a working basis to develop the economic level, one has to be aware that the economic matters are not congruent to the matters relating to customary law, where as when a unit of indigenous people to be made into an autonomous area or is included into an autonomous area, then it does not mean that the entities, rights and obligation of the customary leaders are by itself abolished or removed. What likely to be abolished or removed is only some characteristic of customary practices relating to self-governing system, where as if only one unit of indigenous community to be made into an autonomous area, then with the characteristic pointed out herein, shall be in congruence with the power system as delineated in the understanding of the autonomy. Capability to digest such a difference, namely the difference in autonomy and customary power, will be of important basis to ensure the dynamic of the autonomy itself to the very utmost satisfaction of the people, regardless of the facts of their being so confined under the customary law system.”19

Whether or not the civic matters in context of the making of contract of plantation concession between the two parties who agreed to get into the enforcement of agreement, for any rightful objects then be interfered by the state – like the one stipulated within the legal elaboration above – into the aspects of customary law of state-like governance? If right! It is then true that the state, in this case through Sorkarno governance, has envisaged that those lands being under the concessions to have been under the seizure of the state. As a matter of facts, if it would only have been analyzed comprehensively, the said land-leasing deals should have been part of private issues whatsoever. Further, the state itself knew that as long as the said concessions were forced into effect, there had been no land and building tax to be knowingly enforced or to be affected upon the lands of plantation concession. Thus, how

19 See elucidation of Law No. 1 of 1957, p. 26.
would it be possible for the state to have claimed and seized the civil assets of an indigenous group of people of the Deli Sultanate to be into the ownership of the state.

It would have been much naïve, in a later stage, in context of the lawsuits proposed by the two of Dutch owned enterprises in the Bremen Court in Germany, as already elucidated before, the government of Indonesia though his attorney making use of an argument, which was very contrary to what was shown before the people of the Sultanate. Before the people of the Sultanate, the state said that the concessions were constituting public related rights, zakelijk recht, and of customary acts of government’s like interests. However, before the Bremen Court, the Government of Indonesia argued that the disputed lands of the tobacco concession belonged to the indigenous people and the legal relation between the Dutch own enterprises and of the Sultanate was of private legal rights relation (persoonlijk).

It became obviously clear for us how the state through the Soekarno administration to have used customary issues as a shield and as a way to defend the nationalization policies in the one hand. However, domestically, communalism in the forms of customary land occupation was blindly turned down without providing favorable options to the previous owners. On the other hand, the use of term “nationalization” upon the land previously owned by indigenous people has been of the contrary act out of the real meaning of the nationalization itself. How could the nationalization term be attached to the lands originally owned by indigenous people, which was used to serve in supporting the existing government? Or has the state assumed that the Sultanate and its people were also foreigners and consequently to have regarded proper to seize the assets they owned.

Law No. 86 of 1958 on the Nationalization of the Dutch owned Enterprises was of a totally wrong policy that put evenly all legal constructs between the Dutch owned enterprises and the people’s groups. Such an act would have been much proper if imposed upon plantations in Java Island, because all plantations in Java were of the status of material right, erfpacht. Instead, for the lands of Deli, Serdang and Langkat, the case was totally distinctive. And, there had been no such material rights legal relation or erfpacht in the three areas mentioned herein.

Through the enactment of this said law was actually the denials of communal land rights owned by Melayu people to have commenced along the eastern coast of Sumatera. All the sultanates mentioned earlier just did not put forward any reactions against the political moves imposed by the ruling state. This has been much due to traumatic situation that had not been fully subsided of a series of events taking place during the beginning years before independence, namely social revolutions. The label of feudalism and becoming important parts of the “Dutch Collaborator” had made them (the Sultanates) difficult to defend the lands of ex-tobacco concession.

As a matter of facts, long before the nationalization occurred, the Sultan was also no longer considered as the only institution that must be taken into account in the context of contracts of the plantation. The state’s intervention, through the military with regard to the affairs of securing the plantations after being abandoned by the Japan troops, indirectly pushing out the role and function of the Sultanates over the contracts they had signed. The peasant folks who became an important backbone of the legal alliance here no longer get the protection and defense of the Sultanate. Furthermore, many of them have been accused of the illegal occupation and criminalized by the law enforcement authorities.
Out of the blue, all rules and regulations adopted by the relatively young state were against the groups of people that had been many generations living, cultivating and plowing the lands. These groups of the people had for many years been enjoying the communal rights of their customary lands through either the mechanism of “Jaluran” cultivation system and through other permits of land cultivation in accordance with local best practices. The social chaos in the post of Japanese’s fall from allied forces had brought implication to the legal disruption in context of matters relating to the lands of ex-tobacco concessions. The legal construct was disrupted and the existing Dutch owned plantations had to strive to stay exist by relying on the existing state institutions and law. The chaotic situation had forced the military to do unnecessary intervention and this developed to be the threatening habits in later stages covering the whole murkiness in the areas of plantations in eastern Sumatera or part of North Sumatera in the present. All plantations in the name the State’s owned enterprises are actually owned and managed for the sake of the people would then be at ease to use of the help of the legal enforcers to fight back some groups of people trying to occupy and reuse the lands of ex-tobacco concessions.

The Nationalization, *Indonesianization*, Confiscation or whatever it calls, in the end would cause the annihilation of one original rights, which has for many years been enjoyed by Melayu people. This is all due to the obscurity of legal facts and the history of land confiscation as well as the stigmatization stabbing deep inside to the heart of the life of the Sultanates and of the indigenous people as the groups of Dutch compradors and of the feudalism that had thought of themselves – a stigma that around a decade before the nationalization had ever been addressed to them and that of causing many of the common Melayu people and the Royal Families got killed in Eastern Sumatera.20

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