

Name:

Result for this question: / 25 points (of 100 for the course) 17.06.2023,

Thomas Schmitz

Special comments:

Prof. Dr. Thomas Schmitz

Semester 2, 2024/2025

THE LAW OF NATURAL RESOURCES IN GERMAN AND EUROPEAN LAW

Contribution to the course Natural Resources Law from a Comparative Perspective

Questions for the final examination

(25/100 points for the course)

1. Unlike in Indonesian law, there are no general principles of natural resources law or natural resources tenure in European and German law. Why not? [5 points]
2. Please explain briefly the system of exploration license [Erlaubnis], extraction license [Bewilligung], operation plan [Betriebsplan], environmental impact assessment and royalties for the mining of freely mineable resources under German mining law. Why is the legal term "freely mineable resources" ["bergfreie Bodenschätze"] irritating? [10 points]
3. The European Union's Regulation on Deforestation-free Products (EUDR) is controversial in Indonesia. Why? What does it require and how does it affect Indonesians? What is your assessment of this law and its approach? [10 points]
4. Additional (optional) question [up to 6 extra points]: In Europe, fisheries policy strives to strike a balance between economic and ecological interests for a sustainable development of fish stocks and fisheries. Therefore, it follows a fundamental principle of modern fishing, which is also promoted by the United Nations. Which principle? In which important law is it anchored?

Note: This is a *closed book exam*, but you are free to look up the text of any laws you may need in the internet.

This is an academic examination. Please write in legible handwriting and present your text in an appealing form. Read the question very carefully and think carefully before you formulate your answers. Make sure that your text answers precisely and exhaustively the question asked but is limited to what is asked for, is concise, has a clear and consistent structure with well-formulated precise headlines and shows well your deeper understanding of the subject matter.

After the exam, all students are welcome to contact me to discuss in detail the strong and weak points of their paper (office: B.VI.11; e-mail: t.schmitz@thomas-schmitz-eu.de; phone/WhatsApp: +62 812 9824 3441).

The topics were discussed in the lectures and presented in [Slide 1](#) (§ 1 II.4), [Slide 2](#) (§ 2 III./IV.), [Slide 3](#) (§ 3 VII.) and [Slide 5](#) (§ 5 II.1) of my course materials, which are available for download at the [special website for my course contribution](#).

1. **Why no general principles of natural resources law/tenure?** (/ 5 points)
 - because there is no coherent field of "natural resources law" but a wealth of law relating to natural resources spread across various, heterogeneous fields of law (in case of thorough explanation: (/ 1 extra p.)
 - moreover, principles that limit the access of foreigners to land ownership are excluded in the EU by the principles of nondiscrimination on grounds of nationality and of an open market economy
2. **The system for the mining of "freely mineable resources"** ["bergfreie Bodenschätze"] (/ 10 points)
 - requirement of *exploration license* and *small field royalty for prospecting* freely mineable resources (/ 2 p.)
 - requirement of *extraction license* and *10 % mining royalty for extracting* freely mineable resources (/ 2 p.)
 - requirement of *approved operation plan* for erecting, carrying out & terminating operations (/ 2 p.)
 - approval procedure for most major mining projects includes *environmental impact assessment* with involvement of other authorities & the public and a reasoned EIA report (/ 2 p.)
 - legal term "freely mineable resources" [resp. "bergfreie Bodenschätze"] irritating because resources not really freely mineable, but everyone is free to apply to the state for a license against royalties (/ 2 p.)
 - other relevant aspects: (in case of many details: (/ 2 extra p.)
3. **The controversial EU Regulation on Deforestation-free Products (EUDR)** (Regulation 2023/1115) (/ 10 points)
 - prohibits EU import of goods resulting from recent deforestation, forest degradation or breach of local law (/ 1 p.)
 - requires operators & traders in cattle, cocoa, coffee, oil palm, rubber, soya, wood and derived products to provide a *due diligence statement* submitted to the *EUDR Information System* (/ 3 p.)
 - controversial because it practically forces European environmental policies on sovereign third countries and affects Indonesian businesses by the *immense bureaucratic burden* it imposes (/ 1 p.)
 - see for illustration the 45 pages Guidance document of the European Commission... (/ 2 p.)
 - your own assessment/reasoning: (in case of very thorough presentation/discussion: (/ 2 extra p.) (/ 3 p.)
 - These points are granted *under the assumption - and condition - that you have developed your reasoning yourself* or found/read it in the preparation of this exam but *not with the help of an artificial intelligence chatbot during the exam*.

4. Additional (optional) question: The fundamental principle of modern fishing

(/ 6 extra points)

- the principle: *principle of the maximum sustainable yield (MSY)*
- details?
- anchored in the EU *Common Fisheries Policy Regulation* in art. 2 on the objectives of the European Common Fisheries Policy (CFP)
- also anchored in global law in the UN Convention on the Law of the Seas (UNCLOS)

(/ 3 p.)

in case of many details: (/ 2 more p.)

(/ 3 p.)

(/ 2 more p.)

(Date: Final Exam Question (NatResLaw))

Final exam observation

Dear participants of the course Natural Resources Law,

I have corrected your answers to my questions in the final examination. All in all, the results are encouraging. Many of you have studied thoroughly and presented very good or even excellent papers that often demonstrate a high degree of understanding of the subject matter. However, please allow me to present some observations:

1. There were differences between Classes A and B: The *papers in Class A* were *significantly better*. Apparently many course participants in Class A focused on my questions in this exam, while in Class B they may have more focused on those of my colleague. The texts in Class A were longer and more elaborate, while the handwriting of the texts in Class B often showed that they were written in a hurry. I cannot say whether this is good or bad, because this depends on your performance in the other part of the exam: I hope that the students in Class A have not neglected the questions of my colleague and that the students in Class B achieved better results for their answers to those questions than to mine. Otherwise you will not have used your diligence and energy efficiently.

2. Many students, in particular in Class B, *focused too strongly on question 1*. They presented an excellent, long and elaborate answer to this question but ignored that they could only achieve a maximum of 5 points for it, while they could achieve 10 points for the answers to questions 2 and 3. You need to think tactically in an exam, especially when time is short! I recommend to plan how much time you want to invest for which question before you start writing.

3. Your *answers to question 3* often *jumped directly to the critical discussion* of the EU Regulation on Deforestation-free Products (EUDR) and its impact on Indonesia, although the exam question asked explicitly what this regulation required. Many discussed the pros and cons of the regulation without actually presenting its contents and thus missed valuable points. Please keep in mind that always the facts are the best basis for a discussion. Moreover, read any exam question carefully and make sure that you do not forget to answer any sub-question!

I have filled out an *individual assessment sheet for every single exam paper*. I can send you your personal assessment sheet on request. Moreover, everyone is welcome to pick up his or her exam paper at the IUP management (mbak Tyas) and consult me in my office (A.VI.11) to discuss in detail the strong and weak points of his/her paper.

Best wishes for your further studies,

Thomas Schmitz