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*Research Paper*

Implementation of Corporate Social and Environmental Responsibility in Mining Shares

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ABSTRACT

Shares divestment, especially mining shares divestment began to be heavily discussed either by experts or the Government since the emergence of shares divestment dispute between Indonesian Government and PT. Newmont Nusa Tenggara [currently PT. NNT has changed its name to PT. Amman Mineral Nusa Tenggara (PT. AMNT)]. Based on Minister of Energy and Mineral Resources Regulation number 9 of 2017, those who can buy divested shares are the central and regional governments, BUMN and BUMD, National Private, Indonesia Stock Exchange, IPO and the subsequent sales are through the stock exchange. This research is normative juridical research. The approaches used are the statute approach and the conceptual approach. To support normative juridical research, empirical juridical research is also carried out at PT. NNT. The results of this research is regarding to the implementation of corporate social and environmental responsibility in share divestment of PT. NNT in which the actual share ownership of stakeholders can participate in the purchase of PT. NNT shares, because respecting the interests of stakeholders is one of the principles of social responsibility based on ISO 26000. In fact, the implementation of social and environmental responsibility in the divestment of PT NNT shares, the stakeholders are not included. Stakeholders, namely managers and employees, can actually be included in the purchase of divested shares; their participation provides benefits to the company. This is because the stakeholders are very knowledgeable and able to control company mechanism. In implementing the social and environmental responsibility of a mining company, stakeholders can buy divested shares by making loans from various banks in Indonesia that has implemented 'green bank' concept.

Keywords: CSR, share divestment, mining

INTRODUCTION

There has been a shift in corporate management: from management based on shareholders theory to stakeholders theory. If previously the management of the company based on shareholders theory prioritized or emphasized the interests of the stock or owner, then, on the contrary, now there appears a view of stakeholders theory that emphasizes the management of the company for the interests of stakeholders. In stakeholders theory, the company is seen as a social institution, where the interests of

shareholders are not dominant in its management system. With the tendency of corporate management based on the stakeholders theory, the issue of social responsibility (hereinafter referred to as Corporate Social Responsibility - CSR) becomes an interesting issue to be studied, let alone CSR is a topic related to business ethics. This involves corporate moral responsibility towards company's employees, the environment and the communities around the company (Nasution, 2012:1-2).

Shares divestment, especially mining shares divestment began to be heavily discussed either by experts or the Government since the emergence of shares divestment dispute between Indonesian Government and PT. Newmont Nusa Tenggara [currently PT. NNT has changed its name to PT. Amman Mineral Nusa Tenggara (PT. AMNT)]. The issue of divestment of mining shares is a problem that has received enough attention from many parties because it concerns the sense of nationalism. As was the 7% divestment dispute between the Central Government and the Regional Government. It began since September 2, 1986 in the signing work contract between the Minister of Energy and Mining and PT.NNT, whose shares of PT.NNT establishment were owned by Newmont Indonesia Limited and PT. Pukuafu Indah. In accordance with the contract, PT.NNT is required to divest 31% of its shares from 2006 to 2010.

ESDM Regulation Number 9 of 2017 concerning Procedures for Share Divestment and Determination Mechanism of Divestment Share Prices in Mineral and Coal Mining Business states that those who can buy divestment shares are:

1. Central and Local Government; the sale is through negotiations.
2. BUMN and BUMD; the sale is through auction.
3. National Private; the sale is through auction.
4. Indonesian Stock Exchange, and IPO; the subsequent sale is through the stock exchange.

Indonesian divestment policy or regulation is an effort to assert greater state control over mineral resources. This regulation mandates foreign mining companies to periodically divest and increase their share to local domiciled entities, for Indonesians. The government hopes the regulation will benefit the Indonesian people in two ways. First, it allows Indonesian people who hold shares in mining companies to directly get benefit from their business, rather than through tax

revenue. Secondly, this allows Indonesian companies to acquire new mining technology, develop new business practices, and to encourage greater employment and domestic business opportunities in this country. The divestment regulation is also part of the government's plan to build a stronger state-owned company (BUMN) in the mining sector. (Manley and Emmanuel, 2017: 1).

Based on the description above, the problem is on how the company applies social and environmental responsibility in divesting mining shares.

METHODS

This research is a normative juridical research that is research focused on examining the application of the rules or norms in positive law. The approach used was the statute approach and a conceptual approach. The statute approach lied on Law Number 4 of 2009 concerning Mineral and Coal Mining and Government Regulation article 106 Number 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business.

In addition, to support normative juridical research, empirical juridical research was also conducted. Empirical juridical research examined the law validity (law in action) as a norm that applies in social life. In other words, the object of this research is the study regarding community behavior. (Fajar and Yulianto, 2010: 51). The object of this research observation was in the form of the influence of the regulation implementation toward the community behavior and or regarding community behavior that influences the formation of law. As Holmes said that 'life of the law experience, as well as logic', he stresses the pragmatic empirical aspects of law. (Loid, 1975: 400).

Type and source of data used in this research was secondary data (library data), which consists of data collected from primary law materials including the 1945 Constitution of the Unitary State of Indonesian Republic, Law Number 4 of

2009 concerning Mineral and Coal Mining and Government Regulation Number 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business. Secondary law material was in the form of law books and law writing such as opinions or scientific commentaries of law experts. In addition, tertiary law materials were intended to explain primary and secondary law materials, such as dictionaries and others. Primary Data (field data/ empirical data) was also used, i.e. data collected from interviewing several informants involved in providing information about CSR and shares divestment, such as the legal part of PT. NNT (PT. AMNT) and the people living around mining companies.

Secondary data collection technique used library research that is collecting primary, secondary and tertiary legal materials. The process of collecting primary data was used field data from interviewing through providing a list of questions. Then, data obtained and collected were analyzed. Analysis for qualitative data was carried out by selecting articles containing legal norms governing social and environmental responsibility of the company, and then systematic of these articles was made so that it would produce certain classification in accordance with the issues discussed. The collected data is then classified and retrieved which is relevant for further analysis using law logic, description, argumentation, systemization and explanation. In the description and argumentation stages, the contents of the legal rules contained in the primary law sources were explained and determined. At the stage of systemization, there is a presentation on the hierarchical relationship between law rules relating to law issues while the explanation stage was carried out an analysis of the meaning contained in these legal rules. In collecting data, researchers used deductive method (general to specific), which means reviewing various references, both legislation and literature books, then reviewed specifically and deeply to obtain legal norms, legal

principles or sorted out subsequent articles combined with the results of field analysis that are relevant to the issues raised.

RESULT AND DISCUSSION

1. Concept of Share Divestment

Divestment is a relinquishment, an exemption, a reduction in capital, in which the company carries out an act by selling the company's assets to another party. (Alwi, 2007: 271). The term 'divestment' comes from English. Divestment (in property law, the cutting short of an interest prior to its normal termination). Restatement Second, the complete loss of an interest in land (total divestment) or the partial loss of it by virtue of others sharing it (partial divestment) (Campbell Black, 1990: 478).

Regarding the term share divestment, Erman Rajagukguk uses the term Indonesianization of shares, namely transferring shares from foreign partners to national partners. Without national partners who take participation in running, determining policies or controlling their interests within the company, Indonesianization of shares does not mean much. Transfer of shares does not only mean the transfer of profits, but more importantly is the transfer of control over the company (Rajagukguk, 1985: 106).

The definition of divestment is found in Article 1 Number 13 of Government Regulation Number 1 of 2008 concerning Government Investment and Article 1 of Minister of Finance Regulation Number 183/ PMK.05/ 2008 concerning Requirements and Procedures for Divestment of Government Investment. Divestment is:

"The sale of securities and / or government ownership in part or in whole to other parties"

In this definition, divestment is construed as buying and selling. The subject is the government and other parties. The other party means a person or legal entity. The object of buying and selling is securities and government assets. Securities are shares and/ or debt securities. Another

definition of divestment is defined by Sally Wehmeier as "the act of selling the shares you have bought in the company or taken money away from where you have invested (Salim HS, 2010: 3)."

Divestment is a provision governing the sale of shares owned by a company or how to get profit from investments owned by someone. Another expert who analyzes the meaning of divestment is Miriam Flickinger. Divestment is defined: (Flickinger, 2009: 1)

"As a firm decision to dispose of a significant portion of its assets and can increase the strength of a firm by changing its asset structure and its resource allocation patterns."

In another definition, divestment is constructed as a company decision to increase the importance of assets owned by the company. The aim is to increase the company's strength in changing the structure of assets and the allocation of resources.

Meanwhile, according to Jeff Madura, in finance and economics, divestment is the reduction of several types of assets both in the form of finance or goods; it can also be called sales from businesses owned by companies. This is the opposite of investing in new assets. (<http://Id.Wikipedia.org/wiki/Detest>)

Basically, divestment is not only carried out by the Government solely, but also by legal entities, especially foreign legal entities that invest in the mining sector. Usually capital owned by foreign legal entities consists of 80 percent of foreign capital and 20 percent of domestic capital. Divestment can not only be done in the form of buying and selling, but also can be done in the form of a grant or testament.

According to Salim HS, the divestment is: (Salim HS, 2010: 3)

"The transfer of assets or shares owned by the government and / or foreign investors to other parties, and the latter is obliged to fulfill their achievements in accordance with what has been agreed"

The subjects of divestment in the definition are the government and foreign

investors, especially those engaged in mining with other parties. The objects include assets or shares. Divestment can not only be done by private legal entities such as Limited Liability Companies, Firms, CVs, but can also be done by public legal entities, such as the state, province, district or city. In conducting private transactions, a public legal entity is represented by a State-Owned Enterprise (BUMN) or a Regional-Owned Enterprise (BUMD). Each legal entity has different motivation, encouragement or efforts to divest.

2. The birth of ISO 26000 as a CSR Guidance

Regarding the management of companies today has experienced a shift, from management based on shareholder theory to stakeholder theory. The management of the company based on shareholder theory prioritizes the interests of shares or owners, while stakeholder theory focuses on managing the company in the interests of stakeholders. Stakeholder theory sees a company as a social institution in which the interests of shareholders are not a dominant thing in the management system. With company management based on stakeholder theory, the issue of CSR becomes an interesting issue to study which CSR is a topic relating to business ethics. This is the corporate moral responsibilities towards company employees, the environment and the community around the company.

In September 2004, ISO (International Organization for Standardization) as the parent organization of international standardization took the initiative to invite various parties to form a team (working group) in charge of the birth of guidelines and standardization for social responsibility named ISO 26000: Guidance Standard on Social Responsibility. (<http://forumcsrkesos.or.id/iso-26000-sebagai-pedoman-baru-Responsibility-social-company-csr/>).

The setting for ISO activities in social responsibility lies in the general understanding that social responsibility is

very important for the continuation of an organization. This understanding was reflected in two sessions, namely the 1992 Rio Earth Summit on the Environment and the 2002 World Summit on Sustainable Development (WSSD) held in South Africa. The establishment of ISO 26000 began when in 2001 the ISO structure requested the ISO on Consumer Policy or COPOLCO to negotiate the preparation of Corporate Social Responsibility standards. Furthermore, the ISO structure adopted the COPOLCO report on the formation of the Strategic Advisory Group on Social Responsibility in 2002. In June 2004 pre-conferences and conferences were held in developing countries. Then on October 2004, the New York Item Proposal or NYIP was circulated to all member countries, and then voting was held on January 2005, in which 29 countries agreed, while 4 did not. In this case there was a development in the preparation, from CSR or Corporate Social Responsibility to SR or Social Responsibility only. This change, according to the represented committee of Indonesia, is due to ISO 26000 guideline is intended not only for corporations but for all forms of organization, both private and public.

ISO 26000 provides voluntary standard guidelines regarding the social responsibility of an institution that covers all sectors of public or private in both developing and developed countries. ISO 26000 will provide added value to the social responsibility activities that are currently developing by: 1) developing a consensus on the understanding of social responsibility and issues; 2) providing guidance on translating principles into effective activities; and 3) sorting out best practices that have been developed and disseminated for the benefit of the international or local community.

(www.iso.org/files/live/sites/isoorg/files/archive/pdf/en/iso_26000_project_overview.pdf)

The principles of social responsibility based on ISO 26000: 2010 (Jalal, 2013: 20) are:

a. Accountability

b. Transparency

c. Ethical behavior

d. Respect for stakeholder interests

e. Compliance with the law

f. Respect for international norms of behavior

g. Enforcement of human rights (HAM)

The principle of accountability is to prove that the organization is doing everything right, the accountability requested is to the stakeholders, in terms of the organization's impact on society and the environment including accidental or unpredictable impacts. The organization should accept and even encourage medial investigations into the operational impacts.

The principle of transparency means that an organization should state transparently to all decisions and activities that have an impact on society and the environment. What is demanded is openness that is "clear accurate and complete" of all policies, decisions and activities. Promotion of ethical behavior is carried out through the development of governance structures that encourage ethical behavior, create and apply standards of ethical behavior, and continuously improve the standards of ethical behavior.

Respect for the interests of stakeholders means that an organization must respect and respond to the interests of its stakeholders. What must be done is to identify, respond to needs, recognize legal rights and legitimate interests, and lastly recognize broader interests related to sustainable development. Compliance with the law means that an organization must accept that compliance with the law is an obligation. What must be done is to comply with all regulations, ensure that all activities are in accordance with the relevant legal framework, comply with all rules that are made themselves fairly and impartially, know changes in regulations, and periodically check compliance level.

Respect for norms of international behavior states that in countries where national law or its implementation is not sufficient to protect environmental and social conditions,

rather an organization must endeavor to refer to international norms of behavior.

Respect for human rights means that every organization must respect human rights, and recognize how important human rights are and their universal nature. When a human rights situation is found to be unprotected, the organization must protect human rights and not take advantage of the situation, and if there are no human rights regulations at the national level, the organization must refer it to international human rights standards.

Based on the ISO 26000 concept, the application of social responsibility should be integrated throughout all organizational activities that cover the 7 (seven) main issues above. Thus if a company only pays attention to certain issues, such as environmental aspects, then the company has not actually carried out social responsibility. For example, a company is very concerned about environmental issues, but the company still advertises employee recruitment by specifically mentioning the needs of employees according to a certain gender. According to the ISO 26000 concept, the company has not actually fully carried out its social responsibilities. Another example is when company gives concern to the suppliers of companies belonging to small industries by issuing a policy of payment transactions that are faster to suppliers of Small and Medium Enterprises (SMEs). Logically, certain products or services produced by SMEs on certain economies of scale will be more efficient if implemented by SMEs. However, SMEs usually do not have strong cash flow and adequate collateral for making loans to banks, so if the company helps the SME supplier, then it can be said that the company has carried out part of its social responsibility.

Regarding the implementation of social responsibility at PT NNT (now PT. AMNT) it has indeed referred to ISO 26000. PT. NNT has indeed to adopt ISO 26000, where in this case the part that handles CSR, namely Community Development, has

changed its name to Social Responsibility (SR). However, its application has not been maximized. In fact, the most up to date social responsibility nowadays, beside from the environment, is also the welfare of employees (family). For example is based on researchers' interviews with staff in the field who handle PT.NNT scholarships, where employees' families are not included in scholarships from elementary to university level; only prioritized for the community.

3. Implementation of Corporate Social and Environmental Responsibility in Mining Shares Divestment

The implementation of share divestment must be recognized as not easy when we swift our hand given many obstacles in it such as the difficult process of renegotiation of contracts of work. Share divestment is basically a form of obligation that must be carried out by foreign investors to the Government of Indonesia, or Indonesian citizens or Indonesian legal entities with the aim of increasing the welfare of the public because dividends received by buyers of shares will be used in development area and community development. Applicability of Law Number 4 of 2009 concerning Mineral and Coal Mining has provided a new framework in the management of mining materials because up to now the work contract as a form of cooperation in managing national mines is still seen as providing benefits to companies compared to the state as the owner of mining assets.

The divestment regulation was first mentioned in Law Number 4 of 2009 concerning Mineral and Coal Mining and was followed by several implementing regulations. There are several implementing regulations that have been issued by the government to oversee the divestment policy regulated in Number 4 of 2009 concerning Mineral and Coal Mining, namely:

1. Government Regulation Number 23 of 2010 concerning Implementation of Mineral and Coal Mining Business activities, namely

Article 97, which at present has undergone 4 (four) changes, namely:

a. Government Regulation Number 24 of 2012 concerning Amendment to Government Regulation Number 23 of 2010 concerning Implementation of the Activity of Mineral and Coal Mining Business.

b. Government Regulation Number 77 of 2014 concerning the Third Amendment to Government Regulation Number 23 of 2010 concerning the Implementation of the Activity of Mineral and Coal Mining Business.

c. Government Regulation Number 1 of 2017 Regarding the Third Amendment to Government Regulation Number 23 of 2010 Concerning the Implementation of the Activity of the Mineral and Coal Mining Business

2. Minister of Energy and Mineral Resources Regulation Number 9 of 2017 Concerning Procedure for Share Divestment and Determination Mechanism of Divestment Share Price in Mineral and Coal Mining Business Activities.

The Natural Resource Governance Institute (NRGI) assesses that the rules have the potential to impact more than 100 projects in Indonesia, which collectively have a mineral resource value of more than USD 1 trillion (IDR 13,300 trillion). NRGI researcher, David Manley said there were 3 key components of mining divestment policy. First, how much is the amount of divestment. Second, who can buy divested shares. Third, what is the sale price of the divestment shares (Huzaini, <http://www.hukumonline.com/berita/baca/lt58d3ac131df8c/3-komponen-penting-kebpolicies-divestasi-saham-company-mining>).

According to David Manley, the first element determines what proportion of shares must be divested by foreign mining companies and in what year they have to start divesting. The divestment regulation requires each foreign-owned mining company to divest an increased portion of shares to the government, BUMN or national private sector. The amount depends

on how long the company has been producing.

This rule is stated in Government Regulation Article 97 Number 1 of 2017 concerning the Fourth Amendment to Government Regulation Number 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities.

(1) Holders of IUP and IUPK in the framework of foreign investment, after 5 (five) years of production are obliged to divest their shares stage by stage, so that in the tenth year shares of at least 51% (fifty one percent) are owned by Indonesian participants.

(2) The ownership of Indonesian participants as referred to paragraph (1), in each year after the end of the fifth year of production should not be less than the percentage as follows: a. sixth year 20% (twenty percent); b. seventh year 30% (thirty percent); c. eighth year 37% (thirty-seven percent); d. ninth year 44% (forty-four percent); e. tenth year 51% (fifty one percent), of the total shares.

For the second element, according to David Manley, divestment rules determine who can buy divested shares. Before the Minister of Energy and Mineral Resources Regulation Number 9 of 2017 concerning Procedures for Share Divestment and Mechanisms for Determining Divestment Share Prices in Mineral and Coal Mining Business Activities is issued by the Government, divestment rules have three levels of potential buyers. Minister of Energy and Mineral Resources Regulation Number 9 of 2017 adds the next option, which has the potential to offer shares to the Indonesia stock exchange. The government gets the first chance to buy equity in a mining company. Sales scheme through negotiation.

If the Government refuses then the next level will be offered alternately. Minister of Energy and Mineral Resources Regulation Number 9 of 2017 states that if the remaining equity is not sold to the four levels mentioned above, the company can choose either repeating the process in the

following year or listing on the Indonesian stock exchange. Those who can buy divestment shares are:

1. Central and Local Government; the sale is through negotiations.
2. BUMN and BUMD; the sale is through auction.
3. National Private; the sale is through auction.
4. Indonesian Stock Exchange, and IPO; the subsequent sale is through the stock exchange.

Regarding the application of corporate social and environmental responsibility in the divestment of PT. Newmont Nusa Tenggara (has now changed its name to PT. Amman Mineral Nusa Tenggara) that is the actual share ownership of stakeholders can participate in the purchase of PT.NNT shares, because respect for stakeholder interests is one of the principles of social responsibility based on ISO 26000. The definition of stakeholders is groups without whom organizational support will not exist and each group or individual who can influence or be affected by the achievement of organizational goals. (Crowther, 2008: 28). It can be seen from the definition that many people can be stakeholders to organize the company. The most common groups that we consider to be stakeholders include: (Crowther, 2008: 28)

- a. Manager
- b. Employee
- c. Customer
- d. Investor
- e. Shareholders
- f. Supplier

Then there are some general groups that are often included namely:

- a. Government
- b. Broad community
- c. Local community

However, in the case of implementing social and environmental responsibility of share divestment of PT NNT, these stakeholders were not included. Stakeholders, who are managers and employees, can actually be included in the matter of purchasing the invested shares.

With the participation of stakeholders in the purchase of shares, it provides benefits for the company, because it allows for the people of Indonesia (especially managers and employees) who hold shares in mining companies to directly benefit from the business of foreign mining companies, rather than indirectly through tax revenue.

Considering that the shares of PT.NNT which were divested are quite large, that is 3% or US \$ 109 million in 2006, 7% or US \$ 282 million in 2007, 7% or US \$ 426 million in 2008 and in 2009 the divestment was 7% or US \$ 348 million. In implementing the social and environmental responsibility of a mining company, stakeholders can buy shares invested by making loans from various banks in Indonesia which has implemented the concept of green bank.

According to the World Bank, Green Bank is a financial institution that gives priority to sustainability in its business practices. Green banking is based on at least four elements of life which are nature, well-being, economy and society. A green bank or industry will integrate the four elements into a business principle that cares about ecosystems and the quality of human life. So in the end what emerges is an output in the form of a company's operational cost efficiency, competitive advantage, a strong corporate identity and brand image and a balanced achievement of business targets. This is a long-term business strategy that does not only aim at profit but also produces benefits for sustainable empowerment and environmental preservation in the community.

According to IDLC finance Limited, "Green Banking" is the operation of the financial sector with a special focus on the environmental, ecological and social factors, targeting conservation of natural and natural resources. The term broadly encompasses awareness of creation and promotion of environment-friendly projects and practices, and reduction of overall carbon footprint from both its financing and in-house operations. Through green banking, the

Financial Institutions are not only required to improve their own standards, but also play an active role in demanding the same from its stakeholders as well" (http://idlc.com/public/documents/policies/Green_Banking_Policy_final.pdf)

Based on that, the definition of green banking is the operation of the financial sector with a special focus on environmental, ecological and social factors, which target the conservation of nature and natural resources. This term includes developing awareness and promotion of environmentally friendly projects and practices, and reducing the overall carbon footprint both in terms of financing and in-house operations.

Through green banking, financial institutions are not only needed to improve their own standards, but also play an active role in demanding the same from their stakeholders.

In this case, banking and industry need to adapt absolutely with the environment interdependently as a way to win market competition while at the same time preserving this increasingly severe environment because banking and industry certainly cannot live without a good environment. This is reflected in aspects of a good business climate and sustainable environment.

CONCLUSION

Implementation of corporate social and environmental responsibility in the share divestment of PT. Newmont Nusa Tenggara (has now changed its name to PT. Amman Mineral Nusa Tenggara) is about the actual share ownership of stakeholders can participate in the purchase of PT.NNT shares, because respect for stakeholder interests is one of the principles of social responsibility based on ISO 26000. The fact shows that this responsibility does not run well because the stakeholders were not included in company share divestment. Stakeholders, that are managers and employees, can actually be included in the purchase of divested shares, because the

participation of stakeholders in the purchase of shares provides benefits to the company. This is because the stakeholders are very knowledgeable and able to control the company mechanism.

Considering that the shares of PT.NNT which were divested are quite large, that is 3% or US \$ 109 million in 2006, 7% or US \$ 282 million in 2007, 7% or US \$ 426 million in 2008 and in 2009 the divestment was 7% or US \$ 348 million. In implementing the social and environmental responsibility of a mining company, stakeholders can buy shares invested by making loans from various banks in Indonesia which has implemented the concept of green bank.

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