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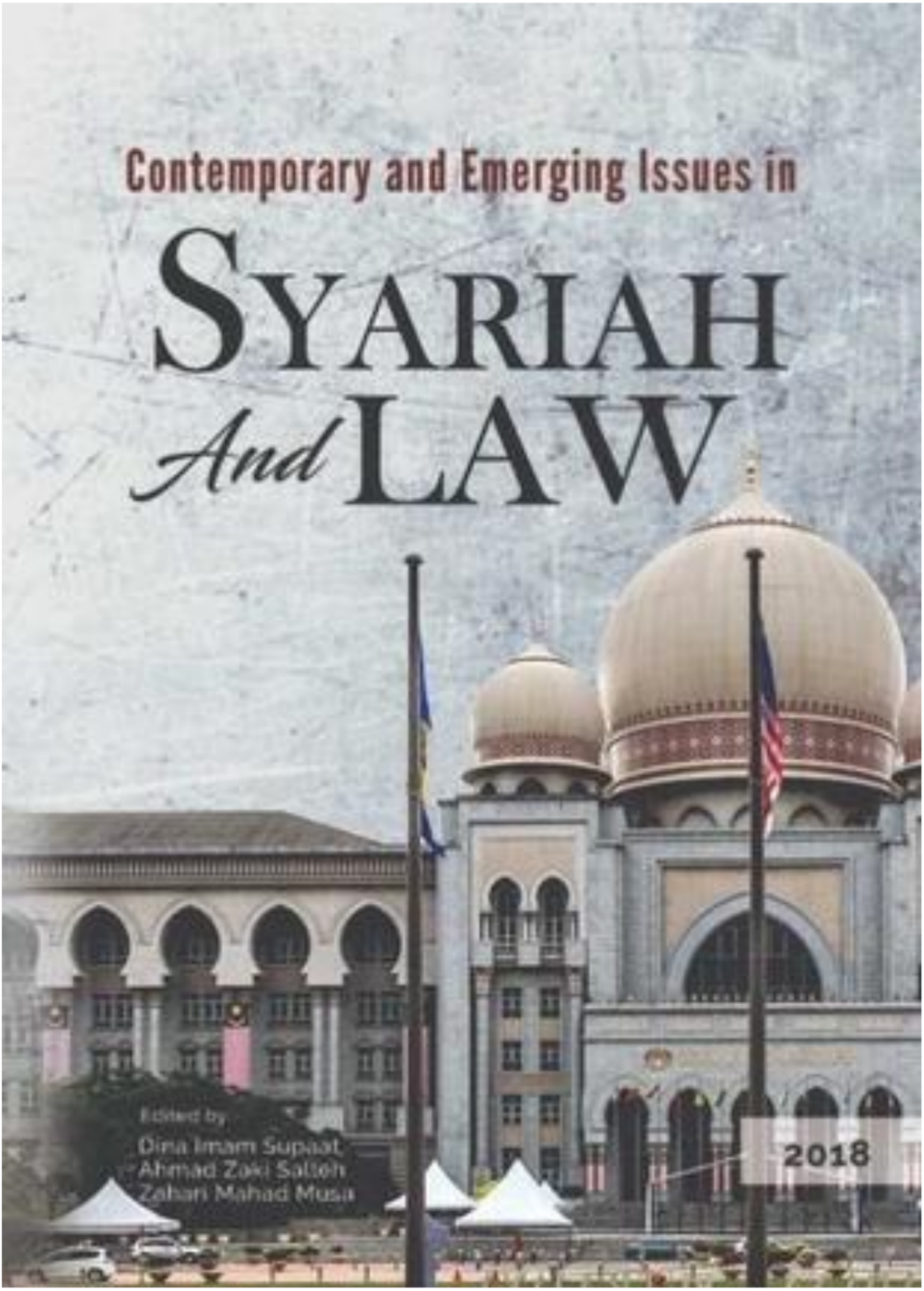
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Edited by
Dina Imam Supaat
Ahmad Zaki Salleh
Zahari Mahad Musa
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Editors:
DINA IMAM SUPAAT
AHMAD ZAKI SALLEH
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CONTENTS

PREFACE

Alhamdulillah, all praise to Allah, by whose grace and blessings the publication of this special book entitled 'Contemporary and Emerging Issues in Syariah and Law.' This book reflects the journey of learned minds that work relentlessly to uphold the Syariah and law and their importance in the creation of social order.

Contemporary and Emerging Issues in Syariah and Law is an outcome of the International Seminar on Syariah and Law 2018 (INSLA 2018) organised by Faculty of Syariah and Law, Universiti Sains Islam Malaysia (USIM). It comprised of selected papers presented at INSLA 2018 that aims is to promote the harmonisation of syariah and law in every aspects of human life.

The issue of harmonizing the syariah law and the common law has become exponentially important and has been consistently addressed in various platforms to comprehend and appreciate the methodology and principles employed by jurists in Syariah and law. Better understanding on the syariah and law are built through the appreciation of the conflicts, interfaces and convergence in both the legal system.

As indicated in the title of the book, the chapters encompass diverse issues and subjects in the area of syariah and law and the application of syariah and law principles. The book portrays contemporary and emerging syariah and law issues in Southeast Asia, and selected countries in the Middle-east and Africa.

Noteworthy and challenging debates are presented in 31 chapters covering Syariah and law matters in financing, banking, negligence, privacy, communication technology, criminal justice, family, society, work ethics, gamification and education, enforcement, terrorism, consumer protection, land and environment.

We wish to express our appreciation to all authors for the contribution of broad spectrum of articles in this book. We pray that this book becomes part of a continuous charity and the knowledge shared are beneficial to human kind.

The Editors
2019

CHAPTER 9
THE OBLIGATION OF SHARE DIVESTMENT OF MINING COMPANY ON THE APPLICATION OF SOCIAL AND ENVIRONMENTAL RESPONSIBILITY

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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 the company's employees, the environment and the communities around the company (Bismar Nasution: 2012).

CSR obligations in Indonesia are explicitly regulated in legislation. The implementation of CSR based on voluntary principles on the consideration of business ethics may be transferred into mandatory principles since legal obligations should be built on moral values. This is not debatable because law and morals cannot be separated. There is a close connection between law and ethics; in the Roman Empire, there is a well-known saying: *Quid leges sine moribus?*, meaning that 'what is the meaning of the law if not accompanied by morality?' (K. Bertens: 2010).

Concerning the mining management system in Indonesia, it is pluralistic due to various contracts 15 mining permits used. Applicable mining contracts or permits, inter alia, are based on Law No. 11 of 1967 on Principal Provisions of Mining and Law No. 4 of 2009 on Mineral and Coal Mining (*Pertambangan Mineral dan Batubara*, hereinafter referred to as the Minerba Act).

In the mining concession system under the Minerba Act, three forms of permits are used. Permits granted to the applicant include: a mining business permit (*Izin Usaha Pertambangan*, hereinafter called IUP), a community mining permit (*Izin Pertambangan Rakyat*, hereinafter called IPR), and a special mining business permit (*Izin Usaha Pertambangan Khusus*, hereinafter called IUPK), yet this Minerba Act still acknowledges the existence of contracts or permits previously applied.

a. Contracts of work and agreements of coal mining that have existed prior to the enactment of this law shall remain in force until the expiry of them.
b. The provisions contained in the contracts of work and agreements of coal mining as referred to in letter (a) shall be adjusted no later than one year after the law is enacted, except on state revenues.

Following the enactment of this Minerba Act, the government issued Presidential Decree No. 3 of 2012 on Evaluation Team for Adjustment of Coal Mining's Contracts of Work and Working Agreements. This evaluation team has the focus of work to renegotiate mining contracts of holders of work contracts and agreements of coal mining. The matters renegotiated are the area of work, extension of the contract into an IUP, state revenue

either tax or royalty, obligation of divestment of shares, obligation of management and purification in the country as well as the obligation of the use of domestic mining goods and services.

With the enactment of the Minerba Act, this brings changes and regulatory reforms concerning general mining in Indonesia. Juridically, the renewal was done through the replacement of Law No. 11 of 1967 on Principal Provisions of Mining with Law No. 4 of 2009 because in practice Law No. 11 of 1967 is deemed to have been unable to accommodate the development of mining activities both nationally and internationally from time to time. The development of practices of mining activities concerns, among others, the division of authority between the government and the regional government in relation to regional autonomy, regulation of mining business licensing, areas of mining business permit, reclamation obligations and post-mining activities, obligation of domestic fulfillment, increase in added value and divestment of shares of holders of foreign mining business license.

Regarding the divestment of mining shares, it began to be discussed after the emergence of share divestment dispute between the government of Indonesia and PT. Newmont Nusa Tenggara (recently PT. NNT has been renamed PT. Amman Mineral Nusa Tenggara (PT. AMNT)) – PT stands for *Perseroan Terbatas*, meaning corporation. The issue of the divestment of mining shares is a problem that quite gets the spotlight of many parties because it involves a sense of nationalism. This is also what happens in the dispute over 7% share divestment between the central government and the regional government, beginning when on September 2, 1986, there was a signing of a work contract between the Minister of Energy and Mining and PT. NNT, in which the shares at the time of establishment of PT. NNT was owned by Newmont Indonesia Limited and PT. Pukuafu Indah. Under the contract of work, PT. NNT was obliged to divest its shares by 31% from 2006 to 2010. Divestment was conducted in stages with details as follows: (Trias Palupi Kurnianingrum: 2012)

a. In 2006, the divestment amounted to 3% for US $ 109 million
b. In 2007, the divestment amounted to 7% for US $ 282 million
c. In 2008, the divestment amounted to 7% for US $ 426 million
d. In 2009, the divestment amounted to 7% for US $ 348 million

The total divestment of shares was 24% at a price of US $ 1.165 billion (agreed price of US $ 867 million). Then in March 2008, the government sued PT. NNT to International Arbitration for failing to divest its shares for bids in 2006 and 2007. One year later, the government won the lawsuit and PT. NNT was required to immediately conduct the divestment. In 2009, through Minister of Finance, Sri Mulyani Indrawati, the central government gave the local government the opportunity to obtain 24% of PT. NNT's shares. 24% of PT. NNT's shares are now controlled by PT. Multi Daerah Bersaing which is a joint venture between PT. Multi Capital and PT. Daerah Maju Bersaing (a joint venture of the provincial government, West Sumbawa Regency and Sumbawa Regency).

PT. Multi Capital controls 75% of shares in PT. Multi Daerah Bersaing, the remaining 25% by PT. Regional Maju Bersaing with "golden share". In the Multi Daerah Bersaing agreement, this percentage is agreed: 75:25 despite the addition of shares of the company. The remaining 7% divested share in 2010 was planned to be purchased by PT. Multi Daerah Bersaing, however, in April 2011, the central government through Minister of Finance, Agus Martowadojo, declared the buy of 7% of the shares in PT. NNT in 2010 amounting to US $ 271 million (in negotiation). This share purchase will be made through

the Government Investment Center. This is the problem of dispute over the share divestment between the central government and local government.

Thus, this paper will discuss the obligation of share divestment of mining companies on the application of social and environmental responsibility.

Research Methodology

This research adopts the study of a legal problem using the normative, juridical research that is focused on studying the application of rules or norms in positive law. The approach used in the normative, juridical research is the statutory and conceptual approach.

Discussion

Talking about divestment of shares, the divestment of mining shares had begun to be discussed by many experts and the government since the emergence of the dispute of divestment of shares between the government of Indonesia and PT. Newmont Nusa Tenggara.

The definition of divestment of shares refers to Government Regulation No. 23 of 2010 on Practice of Business Activities of Mineral and Coal Mining. Divestment of shares is: "Amount of foreign shares that must be offered for sale to Indonesian participa[illegible]."

In Government Regulation No. 23 of 2010 on Practice of Business Activities of Mineral and Coal Mining, CHAPTER IX concerning Share Divestment of Holders of Mining Business License and Special Licenses of Mining Business with Foreign-Owned Shares, Article 97:

(1) Foreign capital holders of IUP and IUPK, after five years from the date of production, are required to divest their shares, so that the shares shall be at least 20% owned by Indonesian participants.
(2) The divestment of shares as referred to in paragraph (1) shall be made directly to Indonesian participants consisting of the government, provincial government or local government of a regency/city, state-owned enterprises, local-owned enterprises or national private enterprises.
(3) In the event that the government is unwilling to purchase the shares as referred to in paragraph (1), it will be offered to the provincial or local government of the regency/municipality.
(4) If the provincial or local government of the regency/municipality as referred to in paragraph (3) is unwilling to buy shares, it will be offered to state-owned enterprises and local-owned enterprises by auction.
(5) If state-owned enterprises and local-owned enterprises as referred to in paragraph (4) are not willing to buy shares, it will be offered to national private enterprises by auction.
(6) The offer of shares as referred to in paragraph (1) shall be conducted within the period of 90 days after five-year issuance of production operation permit for the mining stage.
(7) The government, provincial government, local government of the regency/municipality, state-owned enterprises, and local enterprises shall declare their interest within a period of no more than 60 days after the date of bidding or offer.
(8) In the event that the government and the provincial government or local government of the regency/municipality, state-owned enterprises, and local

enterprises are not interested in acquiring the divestment of shares as referred to in paragraph (7), the shares are offered to national private entities within 30 days.

(9) National private enterprises shall declare its interest within no later than 30 days after the date of the bidding.

(10) Payment and delivery of shares purchased by Indonesian participants shall be conducted within 90 days after the date of the interest statement,

(11) or after the designation of the auction winner.

(12) If the divestment as referred to in paragraph (1) is not reached, the bidding of shares will be conducted in the following year based on the mechanisms of the provisions in paragraph (2) through paragraph (9).

However, after Government Regulation No. 24 of 2012 on Amendment to Government Regulation No. 23 of 2010 concerning Practice of Business Activities of Mineral and Coal Mining, Article 97 paragraph (1), paragraph (2), paragraph (3) and paragraph (11) are amended and between paragraph (1) and paragraph (2) is inserted one paragraph namely paragraph (1a) and the explanation of paragraph (1) is deleted, so that Article 97 reads as follows:

(1) Holders of IUP and IUPK in term of foreign investment, after five years of production, shall be obliged to divest its shares gradually, so that in its tenth year, at least 51% of the shares are owned by Indonesian participants.

(2) (1a) Ownership of Indonesian participants as referred to in paragraph (1), each year after the end of the fifth year of production shall not be less than the following percentage:

a.20% (twenty per cent) in the sixth year

b. 30% (thirty per cent) in the seventh year

c.37% (thirty-seven per cent) in the eighth year

d. 44% (forty-four per cent) in the ninth year

e.51% (fifty-one per cent) of the total of shares

(3) The divestment of shares as referred to in paragraph (1) shall be made to Indonesian participants consisting of the government, provincial government or local government of the regency/municipality, state-owned enterprises, and local enterprises and national private enterprises.

(4) In the event that the government is unwilling to purchase the shares as referred to in paragraph (2), it will be offered to the provincial government or local government of the regency/municipality.

(5) If the provincial government or local government of the regency/municipality as referred to in paragraph (3) is not willing to buy shares, it will be offered to state-owned enterprises and local enterprises by auction.

(6) If state-owned enterprises and local enterprises as referred to in paragraph (4) are not willing to buy shares, it will be offered to national private enterprises by auction.

(7) The offer of shares as referred to in paragraph (1) shall be conducted within the period of 90 days after five-year issuance of production operation permit for the mining stage.

(8) The government, provincial government, local government of the regency/municipality, state-owned enterprises, and local enterprises shall declare their interest within a period of no more than 60 days after the date of bidding or offer.

(9) In the event that the government and the provincial government or local government of the regency/municipality, state-owned enterprises, and local enterprises are not interested in acquiring the divestment of shares as referred to in paragraph (7), the shares are offered to national private entities within 30 days.

(10) National private enterprises shall declare its interest within no later than 30 days after the date of the bidding.

(11) Payment and delivery of shares purchased by Indonesian participants shall be conducted within 90 days after the date of the interest statement or the designation of the auction winner.

(12) If the divestment as referred to in paragraph (1a) is not reached, the bidding of shares will be conducted in the following year.

Juridically, the participants that are entitled to purchase shares that are divested by foreign investors have been determined. In Article 97 Paragraph (2) of Government Regulation No. 24 of 2012 on Amendment to Government Regulation No. 23 of 2010 concerning Practice of Business Activities of Mineral and Coal Mining, six participants have been awarded the right to purchase shares divested by mining companies, consisting of: (Salim Hs and Erlies Septiana Nurbani: 2013)

1. Government
2. Provincial government; or
3. The local government of the regency/municipality; or
4. State-owned enterprises; or
5. Local-owned enterprises; or
6. National private enterprises

The procedures for offering the shares are presented below:

1. If the government is not willing to purchase such shares, it will be offered to the provincial or local government of the regency/municipality.

2. If the provincial government or local government of the regency/municipality is not willing to buy the shares, it will be offered to state-owned enterprises and local-owned enterprises by auction.

3. If state-owned enterprises and local-owned enterprises are not willing to buy the shares, it will be offered to national private enterprises by auction.

4. The bidding of shares shall be made within 90 days after five-year issuance of production operation permit for the mining stage.

5. The government, provincial government, local government of the regency/municipality, state-owned enterprises, and local enterprises shall declare their interest within a period of no more than 60 days after the date of bidding or offer.

In the event that the government and the provincial government or local government of the regency/municipality, state-owned enterprises, and local enterprises are not interested in acquiring the divestment of shares, the shares are offered to national private entities within 30 days. National private enterprises shall declare its interest within no later than 30 days after the date of the bidding. Payment and delivery of shares purchased by Indonesian participants shall be conducted within 90 days after the date of the interest statement or the designation of the auction winner.

In the meantime, the government of Indonesia uses its juridical right to buy shares. One of the shares divested today is PT. Newmont Nusa Tenggara's shares. Amount of shares divested by PT. Newmont Nusa Tenggara is 7% or worth 2.7 trillion. The purpose of the purchase of 7% divested shares of PT. Newmont Nusa Tenggara is as the

implementation of the constitutional mandate, which is to safeguard the interests of the state. The interests of the state, among others, concern the safety of (Salim Hs and Erlies Septiana Nurbani: 2013)

1. State Revenue;
2. Environmental sustainability;
3. Domestic needs
4. Increase of domestic added value

The safeguard of the country's basic interests requires greater state involvement than ever before. This form of state involvement varies, ranging from higher taxes/royalties, more stringent environmental-impact regulations, and the requirement of prioritizing domestic needs before exports.

In Indonesia, this paradigm shift is also underway. The state's takeover of 7% of PT. NNT's divested shares is an effort to guard the state's interest in the utilization of Indonesia's natural resources. Although the state's ownership of the shares is minimal, the state has a guarantee to enter into the company's decision-making process, obtaining vital information of the company so that the state can better safeguard the state revenue, environmental impacts, and so on. Access to the operations of a company, particularly in the sector of natural resources, is critical to protecting the public interest. Government policy to get the 7% of the divested shares of PT. Newmont Nusa Tenggara is based on the principle of the policy itself. The purchase of 7% of divested shares of PT. Newmont Nusa Tenggara as the practice of the applicant's constitutional authority is conducted with the consideration that the state will have economic, social and other benefits.

The benefits gained from the buy of PT. Newmont Nusa Tenggara's divested shares are as follows: (Decision of the Constitutional Court Number 2/SKLN-X/2012)

1. To support and ensure corporate compliance in tax payments, royalties, and obligations of corporate social responsibility so that the multiplier effect of the industry can be felt more by the surrounding communities;
2. To maintain national interests based on international best practice principles;
3. To develop better governance and supervision for the practice of mining businesses in Indonesia so as to create a conducive, equitable and favourable business climate and cooperation mechanism for mining management in Indonesia;
4. To increase transparency and accountability in PT. Newmont Nusa Tenggara;
5. To encourage PT. Newmont Nusa Tenggara to further comply with the provisions of regulations in the sector of environmental management;
6. To become a supervisory pattern for the applicant of investment activities in extractive industries that manage natural resources, including to encourage renegotiation of similar work contracts to fulfil the mandate of Article 33 paragraph (2) and (3) of the 1945 Constitution.

The practice of share divestment must be acknowledged not an easy matter, considering a lot of obstacles in it, such as the tough process of renegotiation of a contract of work or even conflict of interest between the central government and local government. Divestment of shares is essentially one of the obligations that must be done by foreign investors to the government of Indonesia or citizens of Indonesia or Indonesian legal entities with the aim to improve the welfare of the society because dividends received by share buyers will be used in community development. The enactment of Law No. 4 of 2009 on Mineral and Coal Mining has provided a new framework for the management of mining materials, as up until now the contract of work as a form of collaboration in the management of the national mining is still considered to benefit companies compared to

the state as the owner of mining assets. The role and commitment of the government become important in the renegotiation of the contract of work to make the contract more beneficial to the state in terms of the state's revenue or economic empowerment in accordance with the mandate of Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution, considering the products of the mining are non-renewable natural resources as a gift of God that has an important role in fulfilling the livelihood of the people so that the management of the mining must be controlled by the state to provide real added value to the national economy in an effort to achieve prosperity and welfare of the people justly.

In addition, if there is a participation of the government and/or local government in mineral and coal mining companies as shareholders, transparency and accountability in managing the company will be created. The government and/or local government as shareholders have the following rights as regulated in the Law No. 40 of 2007:

a. The right to attend and vote in the General Meeting of Shareholders
b. The right to receive dividend payments and the rest of the wealth as the result of a liquidation
c. The right to see the list of shareholders and special lists provided at the place of domicile of the company
d. The right to obtain information related to the company and the Board of Directors and/or the Board of Commissioners in the General Meeting of Shareholders forum, insofar as it relates to the agenda of the meeting and is not contrary to the interests of the company.
e. On the written request from the shareholders, the Board of Directors grants the shareholders permission to check the list of shareholders, special lists, minutes of the General Meeting of Shareholders and annual reports, and obtain copies of the minutes of General Meeting of Shareholders and annual copies.

Through such rights, the government and/or the local government have special rights as shareholders. The right to vote in the General Meeting of Shareholders; the right to see the list of shareholders and special lists provided at the place of domicile of the company; the right to obtain information relating to the company from the Board of Directors and/or the Board of Commissioners in the General Meeting of Shareholders forum; and the right to check the list of shareholders, special lists, minutes of the General Meeting of Shareholders and annual reports, and obtain copies of the minutes of the General Meeting of Shareholders and copies of annual reports; they are all for the sake of transparency and accountability of the management of the enterprise. This will be different if the government and/or local government becomes the parties outside the company or the parties that do not have shares in the company.

Thus, the participation of the government and/or local government in the ownership of shares of mineral and coal mining companies is beneficial to the realization of transparency and accountability of foreign mineral and coal mining companies in Indonesia.

However, there are some new problems arising where PT. NNT changed into PT. Amman Mineral Nusa Tenggara on November 2, 2016, of which 82.2% of its shares are controlled by PT. Amman Mineral Internasional (PT. AMI). PT. AMI is an Indonesian company whose shareholders are Amman Investment and Medco Energi. The action was taken by PT. Medco can be legal issues in the legal aspects of mineral and coal mining and can be a "forbidden" acquisition in the legal regime of mineral and coal mining.

There are some legal problems including (Ahmad Redi: 2017)

1. The action of PT. Medco violates the provisions of Article 112 of Law No. 4 of 2009 on Mineral and Coal Mining, stipulating that after five years of production, business entities holding mining permits (IUP) and special permit of mining business (IUPK), whose shares are owned by foreigners, are required to divest its foreign shares to the government, local government, state-owned enterprises, local-owned enterprises or national private enterprises. This provision is reinforced in Government Regulation No. 23 of 2010, which lately has been replaced with Government Regulation No. 77 of 2014 on Mining Business Activities. Therefore, under the provision of this Minerba Act, PT. NNT is obliged to sell its shares to the Indonesian participants in this order: to the government, local government, state-owned enterprises, local-owned enterprises and national private enterprises. In actual fact, the shares were purchased directly by a national private business entity without first being offered in stages, as provided for in the Minerba Act and its implementing regulations. Textually, the objective of the norm of Article 112 is the legal subject in the form of IUP holders, not holders of Contract of Work, like PT. NNT, which conducts mining business activities with an instrument of a contract of work instead of IUP. However, Article 169 letter (b) of the Minerba Act states that the provisions contained in the articles of a contract of work and the coal mining agreement shall be adjusted no later than one year after the Minerba Act is enacted, except on state revenue. Thus, in the normative and juridical way, provisions of Article 112 of the Minerba Act concerning the obligation of divestment of shares operationally apply also to PT. NNT, although the actual implementation of Article 169 letter (b) is still a debate, especially related to the principle of *pacta sunt servanda* in a contract. The contract of work, as a contract, is sacred and cannot be changed without the consent of both parties. Changes to the contract must be made through renegotiations to amend the contract and include new obligations under the Minerba Act.

2. PT. NNT's share-divestment obligation is not only contained in the Minerba Act but also agreed in the contract of work between the government and PT. NNT. In Article 24 paragraph (3) and (4) of PT. NNT's contract of work, PT. NNT is obliged to divest the shares to Indonesian participants by 51 per cent in the tenth year of PT. NNT's production (in 2010). This obligation was even reinforced by the decision of the arbitration court of dispute resolution between the government of Indonesia and PT. NNT for the violation of PT. NNT against the obligation of the divestment of shares. The arbitration hearing was held in Jakarta on 8 to 13 December 2008 and carried out under the arbitration procedure of the United Nation Commission on International Trade Law (UNCITRAL) and on 31 March 2009 the Arbitral Tribunal issued a final decision, which substantially granted the win to the government of Republic of Indonesia and declared: (1) to order PT. NNT to put practice to the provisions of Article 24 paragraph (3) of the Contract of Work on the obligation of divestment of shares; (2) PT. NNT is in default (breach of contract); and (3) to order PT. NNT to divest a 17% share, comprising 3% of the 2006 divestment and 7% of the 2007 divestment to the local government; in 2008, NNT must release 7% of its shares to the government of Republic of Indonesia. All the above obligations must be executed within 180 days after the date of the decision of the Arbitration Court. Based on the agreement in the contract of work and endorsed by the decision of the international arbitration panel, PT. NNT must divest its shares to the government of Indonesia.

3. Philosophically, the imposition of the obligation of divestment of shares to foreign companies in Indonesia is based on the idea that with the ownership of government there will be a transition of benefits or gains and the transfer of control over Indonesia's mineral resources from foreign companies to the government of Indonesia. Such transfers of benefits, for example, are related to dividends – due to the majority of government's shares – and other privileges such as commissioners' rations and management control. The transfer of control is related to the ownership of majority shares by the government so that there is a guarantee of compliance on, among others, obligations of good mining practices, employment, environment, royalty and taxation. The share ownership by the government is, according to the Constitutional Court, also the implementation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, specifically concerning the functions of the state to conduct management (*beheersdaad*) through share-holding mechanism and/or through direct involvement in the management of State-Owned Enterprises or State-Owned Legal Entities as an institutional instrument through which the state i.e. the government makes use of its control over the resources to be fully used for the prosperity of the people.

Based on the three considerations above, PT. NNT can only legally sell its shares to the government. If the government is not interested, the subsequent bid quota should be to the local government, and if the local government is not interested then it should be offered to state-owned enterprises, then local-owned enterprises, and finally national private enterprises. What happened was PT. NNT immediately sold its shares to PT. Medco. The financing obtained by PT. Medco originated, among others, from the financing from three state-owned enterprises. If the national interest or advantage had been put forward, the action of PT. NNT's majority share purchase could have been done directly by the state-owned enterprises without going through PT. Medco. In fact, PT. Medco also acquired PT. NNT through the financing from state-owned enterprises. With the ownership by state-owned enterprises such as PT. ANTAM, PT. Bukit Asam, and PT. Nikel, the element of control and exploitation by the state can guarantee the full effort for the prosperity of the people according to Article 33 paragraph (3). Naturally, in a juridical-normative and philosophical way, PT. Medco's corporate action can be categorized as a forbidden action for harming national interests including legal interests. Mining state-owned enterprises are supposed to be the main instrument in buying shares of mining companies that are subject to divestment obligations, not the other way around: mining state-owned enterprises act as spectators, watching state-owned banks finance other companies, instead of state-owned enterprises, to pursue mining activities. Indonesia's natural resources must be used in a comprehensive way for the prosperity of the people, not the prosperity of small groups of owners of access and/or capital.

Conclusion

The obligation to divest the shares of a mining company towards the application of social and environmental responsibility to society is the divestment of shares which is essentially one of the obligations that must be fulfilled by foreign investors to the government of Indonesia or Indonesian citizens or Indonesian legal entities in order to improve the welfare of the people because dividends received by share buyers will be able to be used for the people and national development. In addition, if there is a participation of the government and/or local government in mineral and coal mining companies as shareholders, transparency and accountability in managing the company will take place.

The government and/or local government as shareholders have the right as regulated in the Law No. 40 of 2007.

Recommendation

In the divestment of shares by a mining company, it is expected to comply with the existing rules, and the company will be obliged to sell its shares to the Indonesian participants which are the government, local government, state-owned enterprises, local-owned enterprises and national private enterprises respectively.

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