

Divestasi saham di bidang pertambangan mineral dan batubara dalam rangka penanaman modal asing di Indonesia = Share divestment in mineral and coal mining area in the frame of foreign investmennt in Indonesia

Ahmad Redi, author

Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=20350858&lokasi=lokal>

Abstrak

Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara dan Peraturan Pemerintah Nomor 24 Tahun 2012 tentang Perubahan Peraturan Pemerintah Nomor 23 Tahun 2010 tentang Pelaksanaan Kegiatan Usaha Pertambangan Mineral dan Batubara mengatur mengenai kewajiban divestasi saham pemegang izin usaha pertambangan asing, namun pada kenyataannya peraturan perundang-undangan tersebut masih memiliki ketidaklengkapan dan ketidakjelasan pengaturan, diantaranya mengenai mekanisme dan tata cara divestasi saham; prosedur penawaran; pilihan tata cara, kriteria penilaian, dan penetapan harga saham. Selain itu masih terdapat masalah, antara lain potensi sengketa dan renegosiasi KK/PKP2B sebagai akibat pengenaan kewajiban divestasi.

Berdasarkan hal tersebut, penelitian ini menganalisis secara kritis dan preskriptif mengenai: (1) peraturan perundang-undangan yang mengatur divestasi saham di bidang pertambangan mineral dan batubara serta analisis mengenai pembentukan dan penerapan peraturan perundang-undangan divestasi di bidang pertambangan mineral dan batubara; (2) tujuan pelaksanaan kewajiban divestasi saham di bidang pertambangan mineral dan batubara serta hambatan yang timbul dalam pencapaian tujuan divestasi saham; (3) persoalan hukum yang terjadi dan yang mungkin akan terjadi dalam pelaksanaan kewajiban divestasi saham di bidang pertambangan mineral dan batubara serta penyelesaian persoalannya dalam rangka pelaksanaan penanaman modal asing. Adapun metode penelitian yang digunakan yaitu metode penelitian yuridis-normatif. Pendekatan dalam penelitian hukum ini bersifat kualitatif.

Hasil penelitian menunjukkan bahwa pengaturan divestasi saham telah dimulai sejak Undang-Undang No. 11 Tahun 1967 sampai dengan Undang-Undang Nomor 4 Tahun 2009 serta peraturan pelaksanaannya.

Pengaturan yang telah ada dan masih berlaku tersebut, belum dapat diterapkan secara implementatif karena proses dan hasil pembentukan peraturan perundang-undangan memiliki beberapa kelemahan. Selanjutnya penelitian juga menunjukkan hasil bahwa divestasi saham berperan antara lain dalam rangka memastikan kepatuhan perusahaan dalam pembayaran pajak, royalti, dan kewajiban tanggung jawab sosial perusahaan; serta membangun tata kelola dan pengawasan yang lebih baik. Sedangkan hambatan pelaksanaan divestasi saham antara lain hambatan modal, realisasi divestasi pemegang saham asing rendah, dan kemauan politik Pemerintah dan pemerintah daerah. Selanjutnya hasil penelitian ini juga menunjukkan bahwa masih banyak persoalan divestasi saham yang ada, diantaranya mengenai potensi sengketa divestasi dan pilihan mekanisme divestasi. Penyelesaian persoalan divestasi saham tersebut dapat dilakukan antara lain melalui pembentukan dan penguatan sovereign wealth funds sebagai unit pengelola divestasi saham; pembentukan holding BUMN di bidang pertambangan mineral dan batubara; pembentukan perusahaan konsorsium; serta renegosiasi KK dan PKP2B.

.....Act Number 4 of 2009 on Mineral and Coal Mining and Government Regulation Number 24 of 2012 on Revision of Government Regulation Number 23 of 2010 on Implementation of Mineral and Coal Mining

Business Activity regulate share divestment of foreign mining business permit holder, however, in reality the said legislative regulations are still incomplete and vague in regulatory aspect, among others, on mechanism and procedure of share divestment; procedure of offer; choice of procedure, criteria of selection, and stipulation of share price. Moreover, there remains problems, among others are potential of dispute and KK and PKP2B renegotiation as a result of imposition of divestment obligation.

Based on the above, this research is to analyze critically and prescriptively on: (1) legislative regulations which regulate share divestment in mineral and coal mining area and analysis on making and application of legislative regulations in mineral and coal mining area; (2) goal of share divestment obligation in mineral and coal mining area and obstacle that might occur in reaching the goal of share divestment; (3) legal problem that happens and that might happen in implementation of share divestment obligation in mineral and coal mining area, together with settlement of the problem in the frame of foreign investment implementation. The research method being used is normative-juridical method, and the approach in this legal research is qualitative in nature.

The result of research shows that arrangement of share divestment has begun since Act Number 11 of 1967 until Act Number 4 of 2009 and their implementing regulations. The regulations that have existed and are still valid, cannot be applied because the process and result of making such legislative regulations have some weaknesses. In addition the research also shows the result that share divestment has important role among others, to make certain compliance of the company in payment of tax, royalty, and corporate social responsibility; and develop better governance and supervision. While the obstacles of share divestment, among others are capital, low realization of foreign shareholders divestment, and political will of Government and local government. Furthermore, the result of this research also shows there are still many problems of existing share divestment, among others are potential of divestment dispute and choice of divestment mechanism. Settlement for share divestment problem can be conducted, among others, through creation and reinforcement of sovereign wealth funds as share divestment management unit; creation of SOE holding in mineral and coal mining area; creation of consortium company; and renegotiation of KK and PKP2B.