

Kewajiban Divestasi Saham Penanaman Modal Asing di Bidang Pertambangan Mineral dan Batubara Dalam Rangka Perpanjangan Kontrak Karya Sebagai Kelanjutan Operasi (Studi Kasus: PT Vale Indonesia) = Obligation to Share Divestment from Foreign Investment in the Mineral and Coal Mining Sector in the Context of Extending the Contract of Work as a Continuation of Operations (Case Study: PT Vale Indonesia)

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Abstrak

Pelaksanaan kewajiban divestasi saham sebesar 51% bagi pemegang izin usaha di bidang pertambangan mineral dan Batubara yang sahamnya dimiliki asing kepada Peserta Indonesia yakni Pemerintah Pusat, Pemerintah Daerah, BUMN, BUMD serta Badan Usaha swata secara berjenjang merupakan suatu kewajiban yang harus dilaksanakan sesuai dengan Pasal 112 Undang-Undang Nomor 3 Tahun 2020 tentang perubahan atas Undang-Undang Nomor 4 Tahun 2009 tentang pertambangan Mineral dan Batubara (UU Minerba) beserta peraturan pelaksanaannya. Tulisan ini disusun dengan menggunakan metode penelitian doktrinal. Pelaksanaan Divestasi saham juga diwajibkan bagi pemegang kontrak karya atau perjanjian karya perusahaan pertambangan Batubara yang berlaku sebelum rezim izin berlaku sesuai dengan UU Minerba. Sebagai salah satu contoh yaitu pelaksanaan divestasi saham PT Vale Indonesia yang merupakan pemegang Kontrak Karya Tahun 1968 dan terakhir diamanatkan pada Tahun 2014, yang menyebutkan bahwa Divestasi Saham PT Vale Indonesia kepada peserta Indonesia hanya sebesar 40%. Perbedaan antara keberlakuan pelaksanaan divestasi saham PT Vale Indonesia dalam kontrak karya dengan UU Minerba tentu harus dipertimbangkan beberapa asas yakni asas kebebasan berkontrak dalam kontrak karya yang telah ada sebelum UU Minerba berlaku sesuai Pasal 1338 KUH Perdata, serta asas hak menguasai negara atas sumber daya alam yang terkandung di Indonesia dikuasai oleh negara dan dimanfaatkan untuk sebesar-besarnya kemakmuran rakyat sesuai Pasal 33 ayat (3) UUD NRI 1945. Adapun ketentuan pelaksanaan divestasi saham PT Vale Indonesia dalam kontrak karya merupakan salah satu pertimbangan bagi Pemerintah untuk dapat memberikan perpanjangan Kontrak Karya menjadi IUPK Sebagai Kelanjutan Operasi Kontrak/Perjanjian, namun demikian dalam UU Minerba maupun peraturan pelaksanaannya pelaksanaan divestasi bukanlah persyaratan untuk dapat diberikannya perpanjangan kontrak menjadi IUPK Sebagai Kelanjutan Operasi Kontrak/Perjanjian.

.....Implementation of the obligation to share divestment of 51% for business license holders in the mineral and coal mining sector whose shares are owned by foreigners to Indonesian Participants namely the Central Government, Regional Government, BUMN, BUMD and private business entities in stages is an obligation that must be implemented in accordance with Article 112 Law Number 3 of 2020 concerning amendments to Law Number 4 of 2009 concerning Mineral and Coal mining (UU Minerba) and its implementing regulations. This article was prepared using doctrinal research methods. Implementation of share divestment is also mandatory for holders of work contracts or coal mining business work agreements that were in effect before the permit regime came into effect in accordance with the Minerba Law. As one example, namely the implementation of the divestment of shares in PT Vale Indonesia, which is the holder of the 1968 Contract

of Work and was last amended in 2014, which stated that the divestment of PT Vale Indonesia shares to Indonesian participants was only 40%. The difference between the implementation of PT Vale Indonesia's share divestment in a work contract and the Minerba Law must of course take into account several principles, namely the principle of freedom of contract in the work contract which existed before the Minerba Law came into force in accordance with Article 1338 of the Civil Code, as well as the principle of the state's right to control over natural resources. contained in Indonesia are controlled by the state and utilized for the greatest prosperity of the people in accordance with Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The provisions for implementing the divestment of PT Vale Indonesia shares in the work contract are one of the considerations for the Government to be able to grant an extension of the Work Contract to become an IUPK As a Continuation of Contract/Agreement Operations, however, in the Minerba Law and its implementing regulations, the implementation of divestment is not a requirement for a contract extension to become an IUPK as a Continuation of Contract/Agreement Operations.