

Kewajiban Divestasi Saham bagi Penanaman Modal Asing di Bidang Pertambangan Mineral dan Batubara = Share Divestment Obligations for Foreign Direct Investments in the Sector of Mineral and Coal Mining

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Abstrak

Kewajiban divestasi saham asing kepada peserta Indonesia telah dimuat dalam ketentuan peraturan perundang-undangan. Namun demikian, untuk sektor pertambangan mineral dan Batubara, pengaturan terkait kewajiban divestasi saham penanaman modal asing kepada peserta Indonesia dimuat secara lebih detail diantaranya melalui diterbitkannya Undang-Undang Nomor 3 Tahun 2020 tentang Pertambangan Mineral dan Batubara dan Peraturan Pemerintah Nomor 96 Tahun 2021 yang masing-masing telah mengamandemen peraturan sebelumnya, terdapat perbedaan pengaturan kewajiban divestasi saham bagi pihak asing baik dari segi persentase saham yang wajib dialihkan maupun tenggat waktu implementasi kewajiban dimaksud. Penulisan ini menitikberatkan pada 2 (dua) pembahasan yakni: (1) mengkaji berbagai instrumen pengaturan nasional dan implementasi kewajiban divestasi saham asing di bidang pertambangan mineral dan Batubara dan (2) menganalisa implementasi dan permasalahan dalam Pelaksanaan Kewajiban Divestasi Saham Asing di Bidang Pertambangan Mineral dan Batubara. Permasalahan implementasi divestasi saham asing diantaranya terkait peraturan perundang-undangan nasional yang terus mengalami perubahan dalam tempo singkat sehingga mengakibatkan ketidakpastian investasi dalam 1 dekade terakhir, pertimbangan politis dalam penyusunan peraturan perundang-undangan mengenai divestasi saham asing, serta perhitungan keekonomian untuk komoditas non mineral logam dan Batubara yang ditawarkan dalam kerangka divestasi saham asing. Oleh karena itu, Pemerintah perlu memastikan adanya konsistensi regulasi dan kebijakan terkait kewajiban divestasi saham asing diantaranya dengan mempertahankan kebijakan penghitungan menggunakan metode discounted cash flow.

.....The obligation for foreign share divestment to Indonesian participants has been stipulated in the legal regulations. However, for the mineral and coal mining sector, the regulations concerning the obligation of foreign investment share divestment to Indonesian participants are detailed further through the issuance of Law No. 3 of 2020 concerning Mineral and Coal Mining and Government Regulation No. 96 of 2021, which have each amended previous regulations. There are differences in the regulations regarding the obligation of share divestment for foreign parties, both in terms of the percentage of shares that must be transferred and the deadlines for implementing these obligations. This writing focuses on two main discussions: (1) examining various national regulatory instruments and the implementation of the foreign share divestment obligation in the mineral and coal mining sector, and (2) analyzing the implementation and issues related to the Foreign Share Divestment Obligation in the mineral and coal mining sector. Issues related to the implementation of foreign share divestment include the frequent changes in national legislation, which have led to investment uncertainty over the past decade, political considerations in the formulation of legislation on foreign share divestment, and the economic calculations for non-metallic mineral commodities and coal offered under the foreign share divestment framework. Therefore, the government needs to ensure regulatory and policy consistency regarding the foreign share divestment obligation, including maintaining

the calculation policy using the discounted cash flow method.