

ABSTRACT

The development of mining activity in Indonesia is more rapid and useful. Yet, the natural resources production still cannot fulfill the national interest of Indonesia. However, Indonesia realizes that it has limited in term of funding in the exploration and exploitation of natural resources. By the reason, to run the activities, Indonesia needs to cooperate with foreign parties, because in running a natural resources management it is required a huge capital, advanced technology, experts and risk management as well. Therefore, to achieve the goal of the state, Indonesia obliged the foreign investment to divest the shares to Indonesia which is regulated in Article 112 of Law No. 4 of 2009 and Government Regulation No. 24 of 2012 which requires foreign companies to divest their share until 51%. However, A week before takeoff his position as president, Susilo Bambang Yudhoyono enacted new Government Regulation No. 77 of 2014 which cut the amount of shares that have to be divest by foreign companies to Indonesia from 51% to only 30%. This legal research analyzes current regulation on divestment of share in Indonesian mining sector and also analyzes whether current regulation on divestment of shares is in line with Article 33 paragraph (3) of 1945 Constitution on state control over natural resources. This normative legal research come to the conclusion that the enactment of Government Regulation No. 77 of 2014 is against the Article 33 of 1945 Constitution which requires 'state control' over natural resources to ensure the greatest possible prosperity of the people. In order to achieve the goal of the state which in line with Article 33 of 1945 Constitution, the government of Indonesia should be firm in regulating the divestment of shares itself by regulating it in the Law level. Thus, the president cannot revise it easily but the legal enforcement of this regulation will be more effective and efficient.

Keyword: divestment, mining, Indonesia