

The Conflict of Private-National Interests
in the Divestment of PT. Newmont Nusa Tenggara's Shares
(The Study on Newmont Divestment 2008-2016)

Ferdie Hasiman, Julian Aldrian Pasha, Post-graduate Student of The University of Indonesia

Abstract

The 1945 Constitution mandates that strategic mining must be controlled by the state. Not by foreign corporations. Based on that mandate, Indonesian government is struggling for the shares divestment of Newmont Nusa Tenggara (NNT), an American based mining company. NNT operates the Batu Hijau and the Elang Dodo Rinti mine. NNT's Contract of Work mandates NNT to divest shares of 51 percent. NNT disobeyed the divestment order. In the divestment process, there is a conflict of private-national interests. The divestment process becomes an event to seize the oligarchy. In some term, a new oligarchy regulates Newmont.

Keywords: Newmont Nusa Tenggara, Constitution's mandate, strategic mining, Contract of Work, divestment order, Law No.4 / 2009, Agus Martowardoyo, Bakrie Group, PT. Multi Daerah Bersaing, Oligarchy, Winters, state-owned company, foreign company, Medco, civil society, Arifin Panigoro.

INTRODUCTION

In this paper I only want to elaborate the divestment of PT Newmont Nusa Tenggara's shares. The purpose of the divestment is to restore the mandate of The 1945 Constitution of Republic of Indonesia. Constitution mandates that strategic mining must be controlled by the state for the welfare of the people. Foreign corporations may not be controlling shareholders of mining companies.

Newmont is a company from the United States and operates copper mines in Batu Hijau and Elang Dodo Rinti, West Sumbawa, West Nusa Tenggara. Newmont controls the concession area of 97,200 hectares including Elang Dodo Rinti. This company is the second largest copper and gold mining company after Freeport Indonesia. In 2014, gold production reached 690,000 ounces. The Batu Hijau mine produced 542 pounds of copper and 737,000 ounces of gold in 2011. The Batu Hijau mine has reached the peak of production in 2014, while Elang Dodo Rinti is estimated to have reserves of 25 million ounces of gold and 15 billion pounds of copper. Based on this fact, the Batu Hijau and Elang Dodo Rinti mines are potential mines in the future. (Annual Report Newmont Mining Corporation, 2014: 54)

Newmont Nusa Tenggara is a Contract of Work signed by the government in 1986. In Newmont CoW, which was signed in 1986, there is a clause regarding the divestment order. Article 24 (b) in the CoW mandates Newmont to divest shares of 51 percent as of 5 years after the mining operation period. Divestment is carried out in stages for 5 years, from 2006-2010.

However, until the appointed time, Newmont never divested 51 percent of the shares to the state.

On March 3, 2008, the Indonesian government sued Newmont for international arbitration in Geneva. The International Arbitration Decision on March 31, 2009 finally won the Indonesian Government and ordered Newmont to divest 51 percent of the shares to the national party, the Central government or the regional government.¹

METHODOLOGY

The author combined three different kinds of methods. *First*, the author made a qualitative research. *Second*, the author interviewed some experts who have sufficient knowledge to elaborate this topic. *Third*, the author conducted the research based on some literature. Some literature reviews are needed as a foundation and as support for this paper.

RESULTS OF RESEARCH AND DISCUSSION

The Conflict of Private-National Interests in Newmont's Divestment Process

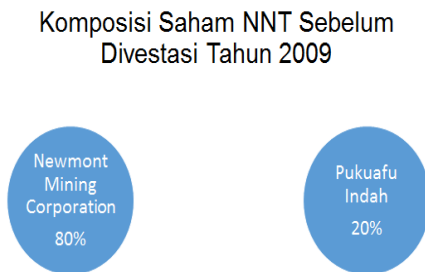
1. Newmont Divestment Becomes an Event to Scramble Oligarchy

Newmont Nusa Tenggara (NNT) is a mining company from the United States that produces copper and gold in Batu Hijau, West Sumbawa, West Nusa Tenggara (NTB). As much as 80 percent of NNT's shares are controlled by Newmont Mining Corporation and 20 percent are

¹ Arbitral Tribunal Session was held in Jakarta on 8 - 13 of December 2008. It was held in accordance with the arbitral procedure of United Nation Commission on International Trade Law

(UNCITRAL). On March 31st, 2009 The Arbitral Tribunal published the final decision. The government of Indonesia won the court arbitral session.

controlled by a local businessman, PT Pukuafu Indah. The composition of Newmont's shares before the divestment is presented in the chart below:



In accordance with article 24 (b) in the Contract of Work, NNT must divest 51 percent of its foreign shares to the national party. Newmont then had to divest 31 percent of the shares to the national party, because 20 percent of Newmont's shares had been secured by a domestic businessman, Jusuf Meruk, through PT Pukuafu Indah.

The process of divesting 31 percent of the shares made in two stages. The first stage of shares divestment was 24 percent with the deadline for the 2009 divestment process. While the remaining 7 percent was released no later than 2011, after Law No.4 / 2009 took effect.

Divesting 51 percent of Newmont's shares is slightly different from divesting other mining companies, such as Freeport Indonesia and Vale Indonesia. It is different because the shares divestment process has been going on since 2009. That is, the divestment coincides with the birth of Law No.4 / 2009. This law orders the process of renegotiating a one-year contract after the contract expires. Nevertheless, the Newmont divestment process is still in line with the spirit of Law No.4 / 2009. The divestment process was accelerated because the Indonesian governments and

Newmont have disputed over the divestment of shares since 2008.

As the operationalization of Law No.4 / 2009, concerning minerals and coal (Minerba: mineral dan batu bara), the government has issued **PP No. 24/2012**, concerning the Implementation of Mineral and Coal Mining Business Activities. This PP mandates mining controlled by foreign corporations to divest 51 percent of shares gradually after five years of production to the central government, regional government, state-owned enterprises, regionally owned enterprises, or local corporations through tenders.

However, in the 24 percent divestment of Newmont's shares, the central government received nothing. At that time, The Minister of Finance led by Sri Mulyani, ordered that 24 percent of Newmont's shares be purchased by the central government. However, Sri Mulyani's efforts were strongly protested by the House of representatives (DPR). For example, Sri Mulyani said that the central government was willing to buy Newmont shares through state-owned companies (BUMN), such as PT Aneka Tambang and PT Timah Tbk. Even so, the finances of the two state-owned companies were insufficient to buy 24 percent of Newmont's shares worth 850 million dollars or Rp. 7,650 trillion.

One way to cover that, Sri Mulyani said, is by making a capital injection into a state-owned company. However, the House of Representatives did not allow capital injection to state-owned companies at the 2009 Budget Board meeting. The House of Representatives actually supported if 24 percent of Newmont's shares were handed over to the NTB Provincial Government, West Sumbawa Regional Government and Sumbawa Regional Government. However,

Sri Mulyani maintained that 24 percent of Newmont's shares must be submitted to the central government. On the contrary, Sri Mulyani did not want Newmont shares to be bought by a subsidiary of Bakrie Group, Multi Capital. However, after Sri Mulyani was replaced, the government then allowed the regional government to buy 24 percent of Newmont's shares.

The NTB Governor, Zainul Majdi (carried by the Golkar-Hanura-Garinda coalition) for example, said that the NTB government was obliged to get a portion of Newmont's shares, because the Newmont operating area was in its territory. Majdi then coordinated with the Sumbawa Barat and Sumbawa district governments to buy Newmont shares. The NTB regional government then formed a joint venture company, PT Multi Daerah Maju Bersaing (MDB) to take over 24 percent of Newmont's shares. MDB is a joint venture between the NTB provincial government, West Sumbawa district and Sumba district.

In March, 2009, MDB formed a consortium company with PT Multi Capital owned by the Bakrie Group on the grounds that the regions did not have enough funding to buy Newmont shares. During the divestment process of 24 percent of Newmont's shares, Aburizal Bakrie, the shareholder of the Bakrie Group, served as the Minister of Welfare and an important person in Golkar.

On July 23, 2009, MDB and Multicapital signed a Memorandum of Understanding (MoU) to buy 24 percent of Newmont's shares. Based on the MoU, MDB can only fund the purchase of 10 percent of the 24 percent of Newmont

shares which are the allotment of the Regional Government consortium. And the remainder will be borne by Multi Capital. DMB is then willing to share the dividend yield on Newmont shares with a portion of 75% for Multi Capital and the remaining 25% for DMB

The completion of the 24 percent divestment of Newmont's first phase shares has implications for the reduction of Newmont Nusa Tenggara's shares in the Batu Hijau and Elang Dodo Rinti mines. Newmont Mining Corporation's shares then left 56 percent and if the 7 percent shares in the second phase were completed, then the remaining Newmont Mining Corporation shares became 49 percent. That means, Newmont Mining Corporation is not a controlling shareholder in NNT.

Nonetheless, NNT continues to try to become the controller of the Batu Hijau mine. The indication was that on June 25, 2010, PT Indonesia Masbaga Investama, owned by Suria Atmadja (Emtek Group), bought 2.2 percent of PT Newmont Nusa Tenggara's shares from PT Pukuafu Indah for US \$ 71.3 million or around Rp. 641 billion.

This share purchase transaction is allegedly full of irregularities. Newmont Nusa Tenggara's parent company, the Newmont Southeast Partnership, was accused of being behind this transaction. In the 2011 consolidated financial statements, Newmont claimed to enter into an agreement with PT Pukuafu Indah and PT Indonesia Masbaga. As a funder, Newmont can control the voting rights of the two companies.² In the document, it was stated that the US-based mining company

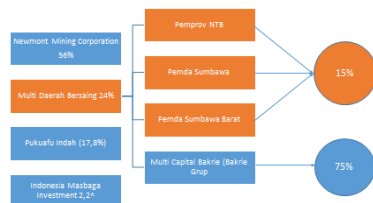
²The agreements also provide Newmont with certain voting rights and obligations related to the noncontrolling partners combined 20 percent share

of PTNNT and commitments from PTPI and PTIMI to support the application of Newmont standards to the operation of the Batu Hijau

disbursed debt to Indonesia Masbaga to fund the purchase of shares. Indonesian Masbaga loans will be paid in installments from dividend payments.

The aim is for the mining company from the United States to retain a majority ownership in Newmont Nusa Tenggara. This is related to the number of shares owned by Newmont after the divestment of its gold mining business unit in Indonesia. After the divestment, Newmont only controlled 49 percent of the shares. The rest, 24 percent owned by PT Multi Daerah Bersaing (a Bakrie Group and regional joint venture company), 17.8 percent by PT Pukaafu Indah (Jusuf Merukh - deceased), 7 percent by the Indonesian government, and 2.2 percent owned by Indonesia Masbaga. The composition of shares after the first 24 percent divestment and the purchase of 2.2 percent of NTT from PT Pukaafu Indah became as follows:

Saham Newmont Batu Hijau Pasca Divestasi



In 2010, the regional government in Sumbawa Barat protested against dividend distribution from a joint venture company PT Multi Daerah Bersaing (MDB), due to the reduced dividends obtained by the region from managing the green stone gold mine. The total dividends received by NTB Province, West Sumbawa Regency and Sumbawa Regency are only Rp100 billion from Multicapital, compared to dividends

received by PT Bumi Resources of Rp.820 billion. MDB is a company controlled by the province of NTB (40%), West Sumbawa district (40%) and Sumbawa district (20%). Ironically, MDB claimed that the regions did not have the right to receive dividends, because they did not include capital in the operation of the second gold mine after Freeport. In fact, the regional government has collaborated with PT Multicapital to buy 10 percent of Newmont's shares.

Former Environment Minister in Abdul Rahman Wahid's era, Wimar Witoelarsaid that the Bakrie business group had successfully bought Newmont shares because it was supported by the Golkar party led by Aburizal Bakrie, who urged Newmont shares to be handed over to the regional government. In fact, behind the local government, there is a Bakrie group that supports it.³ Koran Tempo (May 20th, 2010) also stated that it was Bakrie Group's interests made the Golkar Party demanded to give up 24 percent of Newmont's shares to the Regional Government.

After successfully obtaining the first phase of Newmont shares, Bakrie Group continued to increase its portion of shares in Newmont by purchasing 7 percent of the remaining Newmont shares that had not been divested. Bakrie Group actually wants to be the controlling shareholder of the Batu Hijau mine by making a 31 percent stake in Newmont Batu Hijau. This model scheme has been successfully carried out by the Bakrie Group in divesting 51 percent of KPC and Arutmin shares from foreign mining companies, BHP Balliton and Rio Tinto. In the divestments of KPC and

mine.Baca; Annual Report, Newmont Mining Corporation ,2011, hal 96

³Wimar Witoelar's Opinion, Okezone.con, December 6th 2009.

Arutmin, Bakrie Group entered through a share allotment granted by the central government to the East Kalimantan Provincial Government of 51 percent in 2001

Nevertheless, the Bakrie Group's efforts to control Newmont's shares were challenged by Finance Minister Agus Martowardojo, who at that time replaced Sri Mulyani. In April 2011, the management of Newmont Nusa Tenggara began offering a 7 percent stake to the government for Rp.2.4 trillion. Agus Martowardojo said the central government wanted to buy a 7 percent Newmont divestment stake. This step was taken by considering the experience of divesting 24 percent of Newmont's first phase shares. In the first phase of divestment, the Regional Government must partner with local companies through PT Multi Daerah Bersaing (consortium of Bakrie Group and Regional Government). If the 7 percent divestment of Newmont shares is submitted to the Regional Government, it is not impossible that local businesses will fall and the people will not benefit from the Newmont divestment.⁴

The central government is not yet one vote regarding the 7 percent divestment of PT Newmont's shares. Interests between ministries are still high. The Coordinating Minister for Economic Affairs, Hatta Rajasa, said at that time that the Newmont share divestment was left to the regions. In fact, the regions did not have enough funds to buy 7 percent of Newmont's shares valued at Rp 2.4 trillion. While Agus Martowardojo remained firm in saying that

Newmont's shares must be controlled by the central government.

Agus said, the mechanism for purchasing 7 percent of Newmont's shares through Government Investment Center (PT Pusat Investasi Pemerintah). However, the House of Representatives opposed the decision because it had to obtain permission from the parliament. Nonetheless, Agus Martowardojo remained firm in saying that the purchase did not need to obtain the approval of the House of Representatives. The divestment carried out by the government through the Government Investment Center of a Public Service Agency (Badan Layanan Umum) is classified as an investment, so it does not need a the House of Representatives permission.

In response to Agus' statement at the time, Chairman of the House of Representatives Commission XI Harry Azhar Azis (Golkar) said that the House of Representatives did not approve the agreement to purchase 7% of the remaining shares of Newmont's divested shares through PT Pusat Investasi Pemerintah. According to Harry, every use of state finance must go through the DPR's approval.⁵

As the strengthening base, the House of Representatives Commission XI in August 2011 asked the Supreme Audit Agency (Badan Pemeriksa Keuangan) to audit the Government Investment Center (PIP) regarding the purchase of 7% Newmont shares. The Supreme Audit Agency also conducted an audit of the PIP. An audit of the purchase of the 7% divestment of Newmont's shares only

⁴<http://nasional.kompas.com/read/2010/12/20/22342335/alasan.pemerintah.beli.saham.newmont>, accessed on 8, September, 2017

⁵<http://www.bpk.go.id/news/dpr-tetap-tolak-pip-beli-saham-newmont>, accessed on 18, September, 2017.

focused on technical purchases, whether it is right or not that the PIP included state finances. On October 24, 2011, the BPK concluded that the PIP was included in state finances, so it needed the approval from the DPR.

Based on the BPK's findings, Commission XI in the House of Representatives immediately made a decision. The composition of the coalition in the House of Representatives led by the Democratic-Golkar Party succeeded in lobbying the opposition Indonesian Democratic Party of Struggle (PDIP) and Hanura parties at that time. Based on the unanimous decision of the House of Representatives, 7 percent of the remaining Newmont shares must be submitted to the NTB Regional Government.

Agus Martowardjo then did not accept the DPR's decision. Agus sued the BPK and DPR's decision regarding the PIP audit to the Constitutional Court (MK). Agus considered PIP was an investment fund that was separated from state finances, so it did not need to get the approval of the House of Representatives.⁶

On 31, July, 2012, the Constitutional Court rejected the lawsuit filed by the Government regarding the Dispute over the Authority of State Institutions (Sengketa Kewenangan Lembaga Negara). Procedurally, the 7 percent divestment of Newmont shares must go through the DPR's approval mechanism, because it uses state finances. This was reinforced by the decision of the Constitutional Court (MK) which rejected the lawsuit of the Ministry of Finance to take over Newmont through PIP.

After the Constitutional Court's decision, Agus Martowardjoyo was then resettled from the Ministry of Finance and shifted to become the Governor of Bank Indonesia in 2013. The election of Agus by Commission XI was conducted in a voting by 54 members of Commission XI. As many as 46 members of Commission XI approved the nomination of Agus Marto as the Governor of BI. While 7 members refused and 1 member chose to abstain.

After Agus's finance ministry was left behind, the position was filled by Chatib Basrie. In the hands of Chatib Basrie the 7 percent divestment of Newmont's shares still retains the position of its predecessor, Agus Martowardojo, buying Newmont shares through PIP. Even after the end of Susilo Bambang Yudhiyono's term of office, the debate over the 7 percent divestment from Newmont had not ended. The problem is, despite the binding decision from the Constitutional Court, without the approval of the Ministry of Finance, the share divestment will not work. Because of this problem, the divestment of 7 percent of Newmont's shares continued to hang.

The constellation of the 7 percent stake in Newmont changed after the regime change from Susilo Bambang Yudhoyono (SBY) to the Jokowi-JK government in 2014. During the Jokowi-JK administration, Aburizal Bakrie lost an important position in the Golkar Party. Moreover, the debt problems and financial pressures surrounding the Bakrie Group's holding company (PT Bumi Resources Tbk) caused the passion of Bakrie Group to

⁶<http://id.beritasatu.com/energy/bpk-pip-perlu-persetujuan-dpr-beli-newmont/22732>, accessed on 20, September, 2017

pursue the remaining 7 percent of Newmont's shares stalled.

The mineral downstream policy that was rolled out by the government since January 12th, 2014 also helped change the constellation of the struggle for Newmont shares. Downstream mineral policy manages that all foreign and local mining companies may not export raw minerals, such as copper. All foreign and local mining companies must build domestic smelters. For years, Newmont Nusa Tenggara did not build domestic smelters. The company only sends 40 percent copper concentrate to PT Smelthing Gresik, East Java. Meanwhile, the remaining 60 percent is exported. In 2014, Newmont sent 58,400 tons of copper concentrate to PT Smelthing, Gresik. In this new policy, 60 percent of Newmont copper concentrate sent outside was no longer allowed. So, Newmont can only produce 40 percent of copper.

Newmont and its majority shareholder, in 2015, announced the submission of an international arbitration suit against the Government regarding the export ban. Newmont has a reason. According to this company the export ban resulted in the termination of production activities in the Batu Hijau mine and caused economic difficulties and losses for PTNNT employees, contractors and other stakeholders. The company tried to minimize expenditure costs and maintain the company's ability, around 80 percent of Newmont's 4,000 employees will be placed in stand-by status with salary deductions. However, Newmont's claim was ignored by the Indonesian government. Newmont then continued to experience pressure because of Law No.4 / 2009, requiring mining companies to build smelters.

The strong pressure from the government to implement a downstream

mineral policy forced Newmont to make business deals with national private entrepreneurs. In the midst of the 7 percent share divestment negotiation process, Newmont Mining Corporation decided to sell all the remaining shares in Newmont Nusa Tenggara to Amman Mineral Resources (AMMAN), a company owned by Medco Group (Arifin Panigoro) on July 1th, 2016. After the sale of Newmont Nusa Tenggara's share, the shares of local companies, PT Multi Daerah Bersaing (owned by the Regional Government and Bakrie Group) were also sold to Amman Mineral. Amman Mineral then controls 82.2% of Newmont's shares in Batu Hijau for US \$ 2.6 billion.

Medco Group, a company pioneered by tycoon Arifin Panigoro has indeed been eyeing Newmont since 2015. The factor of closeness with the ruling party and the closeness of Medco Energy with several ministers helped facilitate the process of divesting Newmont shares.

Saham Newmont Batu Hijau Sekarang



The entry of Amman Mineral as a majority shareholder in Newmont has automatically made the renegotiation of contract and the divestment of Newmont fell. In fact, Newmont still set aside 7 percent of the shares that must be released to the national party. Then, the government does not carried out the constitutional order of UUD '45 and Law No.4 / 2009, concerning minerals and mining, which mandates the returns of strategic mining to

the state for the welfare of the people. The government should stop the corporate action, because Newmont still sets aside 7 percent of shares that have not been divested to the government.

2 New Oligarchy Regulates Newmont

The corporate action violates the provisions of Article 112 of UU Nomor 4 tahun 2009 concerning Mineral and Coal Mining. This Law stipulates that after five years of production, the business entity holding a mining business permit (Izin Usaha Pertambangan) and a special mining business permit (Izin Usaha Pertambangan Khusus) which is owned by foreigners are required to divest shares or sell foreign shares to the government, regional government, BUMN, BUMD, or national private business entities through an auction process.

This provision is emphasized in Government Regulation (Peraturan Pemerintah) Number 23 of 2010, which was last amended by Government Regulation Number 77 of 2014 concerning Minerba Mining Business Activities. Therefore, based on the provisions of the Minerba Act, PT NNT is obliged to sell its shares to Indonesian participants sequentially, namely to the government, regional government, BUMN, BUMD, or national private business entities.

Bambang Gatot, Director General of Minerals and Mining, said: "The government in the Newmont case can't conduct a stock sale auction process because the entire process is still controlled by Newmont. The auction process is carried out if the Newmont contract expires. Every

vital asset whose contract expires must be returned to the central government. The central government then conducts an auction. While Newmont's contract period is still long. Newmont's corporate actions are purely a corporate decision. This corporate action has made the ongoing renegotiation and share divestment process was canceled. The government is also not in a position to force the investigation process to be completed first and then he can take corporate action. At that time, Newmont and Medco only asked for approval from the government. And the government did not object to the corporate action".⁷

Bambang Gatot's statement, representing the government, shows that the state has no role in determining the direction of divestment. The state should play more role. The state has the power to clarify that corporate action must not be carried out because Newmont is still in the process of divestment.

Ironically, some of the financing obtained by PT Medco comes from the financing of three State-owned companies (BUMN). Whereas, if we want to stand in the national interest, the corporate action to purchase PT NNT's majority shares can be done directly by BUMN without going through PT Medco. PT Medco also acquired PT NNT with the financing help from BUMN. Moreover, Medco's core business has been in the oil and gas sector. This means that Medco has never had experience in processing mineral mining, such as PT Aneka Tambang Tbk. With the ownership by state-owned companies, for example PT ANTAM, PT Bukit Asam, or

⁷This direct citation is the summary of the author's interview with Bambang Gatot on February 9th, 2018 in The Office of Dirjen Minerba.

PT Nickel, the elements of control and exploitation by the state can guarantee the implementation of the people's prosperity in accordance with Article 33 paragraph (3). Of course, juridically and philosophically corporate action of PT Medco can be a prohibited corporate action because it harms national interests, including legal interests.

Mining state-owned companies should be used as the main instrument in purchasing shares of mining companies, which are subject to the obligation to divest shares. On the contrary, The mining state-owned companies are only spectators, watching state-owned banking companies helping the other companies to pursue mining industry.

In fact, Indonesia's natural resources must be held for the greatest prosperity of the people. It is not as much as possible for the prosperity of small groups of owners who have the access and capital.

However, in the corporate actions carried out by Newmont and Medco Group, the state does not seem to have the power to uphold the constitution and the law. The state actually tends to support corporate actions carried out by Newmont and Medco, despite violating the law.

ESDM Minister Sudirman Said at the time welcomed the acquisition of 82.2% of Newmont's shares by Medco Group. Sudirman said that national companies should take a greater role. With the changing composition of share ownership, Newmont is no longer a foreign company.

According to Sudirman, this will benefit the national economy. Especially the economy in the Newmont mining area. The profits from the mining business are no longer brought abroad, the added value can be enjoyed domestically.⁸

Maritime Coordinating Minister, Rizal Ramli, also supports Medco Group to take over Newmont shares. Rizal actually praised the steps of Arifin Panigoro (boss of Medco Group) as a national businessman who took over Newmont shares where there were still so many mineral content in the mine. Rizal added that Arifin's steps prove that national entrepreneurs are strong enough to manage their own natural wealth, as well as dismissing the issue of weak local entrepreneurs in Indonesia.⁹

The statement of the state ministers above clearly shows that the government does not want to carry out the mandate of the 1945 constitution and the law about minerals and coals regarding the Newmont divestment. The problem is not about Newmont being taken over by domestic entrepreneurs and the constitutional affairs are finished. The government's consistency runs a divestment according to the stages and mechanisms regulated by Law No.4 / 2009, concerning Minerals and Mining is very important. The law stipulates that the government is obliged to divest shares of foreign mining companies. However, the strength of large business groups turned out to make the country weak in upholding the mandate of the 1945 Constitution.

⁸Michael Agustinus, Newmont Diakuisisi Medco, Sudirman Said: Nilai Tambah Tak Lagi ke Luar Negeri. Tanggal 13, Juli, 2016, ini dalam pemberitaan, <https://finance.detik.com/energi/3252270/newmont-diakuisisi-medco-sudirman-said-nilai-tambah-tak-lagi-ke-luar-negeri>, diakses tanggal 30 Januari, 2018.

⁹Adiatmaputra Fajar Pratama, Rizal Ramli Dukung Arifin Panigoro Caplok 76 Persen Saham Newmont, tanggal 26, November, 2016, dalam <http://www.tribunnews.com/bisnis/2015/11/26/rizal-ramli-dukung-arifin-panigoro-caplok-76-persen-saham-newmont>, diakses tanggal 30, Januari, 2018

The role of civil society is also never show up in controlling the corporate actions carried out by Newmont-Medco. There are no Non-Governmental Organizations (Lembaga Swadaya Masyarakat) and media that are so brave in criticizing Newmont-Medco's corporate actions. It is as if Newmont-Medco's corporate action is not problematic. In fact, Newmont still has to divest 7 percent of its shares to the government.

The author assumes the absence of the role of the state and the absence of civil society control over the corporate actions carried out by Newmont-Medco due to the oligarchic power. Strategic policies such as mining divestment are held by the interests of oligarchs. Some people accused the Newmont shares divestment has been illegally taken over by the oligarchy's strength and the interests of investors.

The oligarchy that the author meant in this thesis was economic oligarchy, as stated by Jeffrey Winters. Winters defines the Oligark as "an actor who controls the concentration of material resources that can be used to maintain personal wealth".¹⁰ For Winters, throughout the course of history, material wealth concentrated in minorities has always invited threats from outsiders who want to control or redistribute the wealth. So, the political dynamics of the Oligark are always related to the threat and how the Oligark maintains it. This defense of wealth includes two components, namely property defense and income defense.¹¹

Winters provides the definition of oligarchy as a system that refers to "the politics of wealth defense by actors who have material wealth (Oligark)". Winters

presents an important aspect of oligarchy, namely wealth becomes a material resource for the oligarchs' power and the political dynamics of its defense which are managed politically. Winters said that the oligarchy could be directly involved in politics, but at some time it was not. In one period, the Oligark was actively involved in maintaining wealth with weapons, but in other times it was unarmed, and so on.

This oligarchic power has caused power not to be maximal in realizing public interests related to mining. The power of capital dictates national policies. Jacques Ranciere in his book *Hatred of Democracy* (2006) says, oligarchy is the power of powerful people both politically and economically to carry out economic consolidation and capital accumulation. For Ranciere, the oligarchy always uses democratic procedures to accumulate personal wealth.¹²

What Ranciere said was almost the same as Jeffrey Winters' explanation. Winters said that oligarchs are actors who dominate and control a large concentration of material resources that can be used to maintain or increase personal wealth. Resource control is carried out for personal interests and not institutions. Oligarchs and elites support each other to consolidate political and economic power.¹³

In the case of Newmont's divestment, we see how the oligarchy makes the state lose its power in determining the direction of the divestment policy. In the first case of Newmont, we also see how the oligarchy uses the hands of the state, both the central government, local governments and political parties, the state

¹⁰Jeffrey A. Winters, *Oligarki terj.*, Jakarta: Gramedia Pustaka Utama, 2011. Hlm, 6

¹¹Ibid,..hal 9-10

¹²J. Ranciere, *Hatred Of Democracy*, (trans by, Steve Corcoran), London, Verso, 2006, hal, 123

¹³Jeffrey A. Winters (terj), *Oligarki*, Jakarta, Gramedia, 2011, hal 8-9

institutions (BPK) to control strategic mining, such as Newmont.

Oligarchy are people who have strong financial resources and political resources. They have extensive networks in business, politics and law affairs. Oligarchy are people who have access to power. So whoever has close access to the authorities, it is he who benefits from our mining resources. It could be an explanation of why Medco Group is so easy to get loans from state-owned banks.

Joseph Stiglitz named this situation as a asymmetry of power. Asymmetry of power means that the power itself gives an easy access for investors to control and monopolize natural resources.¹⁴

The 1998 reform was an important stage for the consolidation of oligarchs in Indonesia. If in the New Order era, their patron was Suharto's power. In the era of reform, the oligarchy exodized political parties.¹⁵ There are indeed oligarchs who are not directly involved in practical politics, but they are able to control power, because at the time of elections, politicians need funds for campaign costs. They became shadow rulers in political parties. However, there are business people who go directly to political parties, such as Aburizal Bakrie (Golkar) and Harry Tanoesoedibjo (Hanura, Nasdem & Perindo). If in the New Order era, their patron was Suharto's power, now their patrons are political parties who are able to control the position of regional heads

Then, oligarchy is able to control the governor, regent, mayor at the local level to get concessions. Regional Autonomy then became an easy land for

fighting the capital to seize regional natural resources and a place to hunt for rent. The area becomes an open space for oligarchs to seek rent. With a coalition of political parties, they will fight hard to win in areas with abundant natural resource bases, such as Papua, West Sumbawa and East Kalimantan. Regional governments in the regions, especially regents, mayors are difficult to control by the central government. This cunning strategy shifts the oligarchy to the area, where natural resource deposits abound. Oligarchy does not want to be bound by government regulations; export restrictions and tax collection. They are anti-democratic. Democracy for them is only limited to an open system of autocrat selection. Regimes that are in favor of their interests will be supported.

These large groups in the Migdal language are strong people. It is these strong people who regulate policies and influence state policies. Lobbying domestic business groups that acquire Newmont shares may affect the divestment policy. Those who benefit from the divestment policy are large business groups that are close to power and political parties, such as the Bakrie Group and Medco Group. All that happened because the government was fragile dealing with large corporations. The Gunnar Myrdal thesis in the 1960s in the Asian Drama on soft states in South and Southeast Asia, including in Indonesia, was justified in the mineral relaxation policy. The weak state is characterized by a lot of corruption, many state officials make laws and regulations, but many are flawed and not implemented. The government put the

¹⁴Joseph Stiglitz, *Globalization and Its Discontents*, New York –London, W.W Norton & Company, 2002, hal, 76

¹⁵Jeffrey Winters, *Opcit,..hal* , 267

corporation in the top of decision making, while the people did not become the basis of calculations in important decision making.

The state was labeled as a paid bouncer country. The government put the corporation on the top position in decision making. While the people did not become the basis of calculations in important decision making. The paid bouncer state obeys the corporation more than its people.¹⁶ The paid bouncer state is a common symptom in the corporatocracy regime. Corporatocracy is a government that is governed by a corporation or investor. In the corporatocracy regime, democracy is just not fails, but it is dead

The risk is that the mandate of the 1945 Constitution on economic sovereignty is taken away. Indonesia sailed without government control. Indonesia was controlled by powerful people who were able to influence the power of the government and political parties. These strong people have caused the divestment process to not be optimal and have failed to return the mandate of the 1945 Constitution. The interests of strong people cause the country to become weak (soft state). As a result, leaders become not creative in designing public policies. Oligarchy and strong anti-democratic people. Democracy for them is only limited to an open system of autocrat selection. Regimes that are in favor of their interests will be supported.

¹⁶I. Wibowo, Emoh Negara, Yogyakarta, Kanisius, 2006, hal 123

CONCLUSION

The mining sector is an arena of rent seeking for business people, governments and politicians. It's just that they often argue in the name of development. In fact, what really happened was not development, but looting natural resources. The desire for accumulation caused the company to commit corruption. As a result, state revenues declined. The Corruption Eradication Commission (KPK) for example, found state losses of Rp 12 trillion from the coal and mineral mining sector throughout 2010-2012. This makes the country lose money.

Then, mining investment only perpetuates class formation, that is, the bourgeoisie class (the businessmen served by state officials) and the people who are impoverished and excluded because agricultural land is annexed to mining.¹⁷ The bourgeoisie controls collective resources and monopolizes investment. While the people do not have access to economic resources that make them not independent and they are forced to sell labor to survive.

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¹⁷Cypri Jehan Paju Dale, Keusa, Pembangunan dan Pemiskinan Sistemik, Labuan-Bajo, NTT, Sunspirit, 2013, hal 31-32

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