

Purchase of NNT Shares by Government Does Not Violate Rules


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Purchase of 7% shares of PT. Newmont Nusa Tenggara (NNT) by the government through the Government Investment Center (PIP) does not violate the laws in force, particularly the Law No.1/2004 on State Treasury and Law No. 17/2003 on State Finance. Thus, the purchase of 7% NNT shares does not need the approval of Parliament, for the purchase of these shares is under the authority of government, in this matter Minister of Finance in accordance with Article 41 of Law No.1/2004 jo Article 6 paragraph (1) and (2) Government Regulation No. 1/ 2008.

According to UGM business legal expert, Prof. Dr. Nindyo Pramono, S.H, MS. said the purchase of these shares was not a direct investment, but indirect investment. The shares purchase is a logical consequence of the work contract that must be divested up to 51% to the government and other Indonesian partners per year 2010.

"In addition, the shares purchase is a realization of government authority as mentioned in Law No. 1/2004. It is share investments rather than equity inclusion," said Nindyo at the seminar "Analyzing the Authority of House of Representatives on Share Divestment of PT. Newmont Nusa Tenggara," through the approach of Investment Law, Corporate Law, and Constitutional Law, in UGM Faculty of Law, Monday (14/11).

In relation to differences perspective between House of Representatives and the CPC on the one hand with the Minister of Finance on the other hand, if the legal basis used by the House and the CPC to assess the 7% shares purchase of NNT is Article 45 (2) jo Article 46 (1) point c of Law No. 1 / 2004, then the conclusion is that the purchase of 7% shares shall indeed be approved by House of Representatives.



However, in views of business legal aspect, Nindyo added, the basis is not quite correct. He argued that Article 45 (2) refers to the form of direct investment which is equity inclusion, while the 7% NNT share purchase was indirect investment in part of the work contract that is indeed required to be purchased by the government of Indonesia or an assigned party, until it reaches 51%.

"Moreover, I think the purchase of 7% NNT shares is not appropriate to be included in the category "in certain circumstances to rescue the national economy" as stated in Article 24 paragraph (7) of Law No. 17/2003. Therefore, prior approval of House of Representatives is not necessary," Nindyo explained.

Certain circumstances to save the national economy can be seen, among others, when a buy back has to be conducted toward go-public SOEs shares in the Indonesian Stock Exchange around October 2008. At the time buy back was needed due to new national economic conditions that were experiencing shock (under certain circumstances), so rescue was needed.

Meanwhile, UGM constitutional law expert, Mohammad Fajrul Falaakh, S.H, M.A, M.Sc. said a review should be conducted in the case of PT.NNT share divestment regarding the use of state budget funds. Moreover, the CPC audit results of the 7% NNT divestment by the government was assessed to be against the rule for using state budget funds.

"Well, the share purchase by the other party outside the Indonesian government also seems as not fully thought out when the work contract was signed," Fajrul explained.

Earlier, at the same venue Head of Government Investment Center, Saritaon Siregar reiterated that the government remains confident that the purchasing policy of 7% PT.NNT shares is according to the procedure. Saritaon argues that disagreement between the two high state institutions, House of Representatives and government (Finance Minister), about whether the government should buy PT.NNT shares should not be prolonged and there would be a solution.

The Government's intention to buy the shares is, among others, to improve and handle the

management, royalties, export and CSR better," said Saritaon.

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