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Research Paper

Role of Divestment in Realizing the Welfare of Indonesian

Suwarsit Suwarsit[1]

[1] *Faculty of Law, Pancasila University, South Jakarta, Indonesia*

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***Corresponding Author:**
Suwarsit Suwarsit
Email:
suwarsitshmhcla@gmail.com

Abstract: Welfare state is a country that participates in the economic interests of its people. Divestment is the sale of business carried out by a company and is the opposite of investment. Given the definitions, this study aims to find out if divestment can create an Indonesian welfare state. The results of the study show that in realizing the Indonesian welfare state, divestment should be carried out by foreign companies by selling their shares to the Indonesian side through the sovereignty owned by the Indonesian State in the mineral and coal mining sector. Sovereignty owned by the Indonesian state plays an important role for the Indonesian state to oblige the divestment of foreign companies. Without the sovereignty of the Indonesian state, the divestment of foreign companies in Indonesian is unlikely to occur.

Keyword: Coal Mining, Divestment, Welfare State.

1. Introduction

The welfare state is defined as a socially responsible state, a thriving capitalist market economy, and a civil society that is integrated into a historical bloc characterized by high levels of wealth, welfare, and social equality. This broader definition of the welfare state has envisioned the modern welfare state as a combination of Keynesian, fordist Compromise, and Beveridgean welfare system. Such a broad view of the welfare state is concerned with providing political, economic, and social conditions for the interests of its people [1].

The welfare state is a response to the concept of the night watch state. The state of the night watchman, the basic character of which is freedom, initially developed in the 18th century, mainly because of the push for ‘invisible hands. In this liberal system, the role of the state is very minimal, so it is often referred to as a minimum state, which is a view that believes that the government does not have the right to use a monopoly to enforce or regulate relations or transactions between citizens. This situation is the background for the birth of socialism or a new understanding that requires more intensive government intervention in the economy and all fields of society which is manifested in the form of a welfare state [2].

Against the background of the socio-economic conditions of the community which are increasingly concerning, in particular by the failure of a free market economic system without any intervention from the State, this has resulted in an economic crisis in the community. At that time, the relationship between society and the state, which was based on freedom and equality, was no longer adequate. The role of the state which was previously limited to order has been expanded by giving greater authority to the state to regulate the economy of the people. The public interest as the basis of public law can no longer be defined as state interest, namely as a power that maintains order or bourgeois.

The idea of a welfare state is not only a description of a situation or a way to get happiness but also a tool that is forced for every human being to get his rights. The welfare state is the mother of ideologies such as Marxism, Socialism, and Social Democracy [3].

On the other hand, divestment is the sale of an existing business by a company and the opposite of investing in new assets [4]. Hornby & Wehmeier also said that divestment is a provision that regulates the sale of shares owned by a company or how to get money from investments owned by someone [5]. While Miriam Flickinger defines divestment as the company's decision to increase the important value of the company's assets, which aims to increase the company's power in changing the asset structure and resource allocation [6].

2. Literature Review

According to Abdul Moin, the business shrinking strategy is basically taken by the company if it is in a weak competitive position. The influencing factors come from the internal environment. Among others are low labor productivity, liquidity problems, too much debt, inefficiency in the production process which results in low product quality, and inexperienced salespeople. While from the external environment, the factors may include macroeconomic conditions and social conditions that are not conducive, changes in consumer tastes, the strong threat of competitors, and the emergence of new entrants in the industry thus limiting the company's space to compete [7].

Furthermore, in the business strategy, Abdul Moin explained that the company's management must always evaluate strategies based on the results of the company's external and internal environment diagnoses. For example, it decides when the company will enter a new business field when to expand, and when to leave the business, so part of the management's decision on whether to leave or enter a new business must be an integral part of the strategy and policies that are in line with the company's vision and mission [7].

Divestment is a business strategy choice for companies. Jan-Hendrik Sewing, in his book, describes the role that divestment can play as a strategic option for company development [8]. The main measure of success for the seller is to close the transaction at a price that includes a premium over the retention value of the property. Hence, to achieve that, the above potential is presented to the market on a risk-free basis in a credible manner. As the calculation of reserves is interpretive and the buyer takes the risk of the assets differently, aggressive interpretation of the data is generally a good deal [9].

The company's business strategy can be done by divesting a business unit or part of the assets in a company. This strategy is carried out because divestment can also gain profits if done properly so that it gets offers from buyers that are quite high. Divestment is a trend for companies in carrying out business strategies for companies to obtain company profits and heal companies from bankruptcy.

However, in divesting, they must obtain a fairly high offer or sales agreement that is considered profitable by the company's management.

Divestment is targeted to increase the value of the company so that selling its business units is certainly different from other business strategies such as Mergers and Acquisitions. Mergers and acquisitions have an impact on the size of the company, so divestment will result in a smaller company size due to the separation or sale of some business units. The difference between divestment and acquisition is very significant two, and these differences have an impact on important aspects of the divestment process. The differences in the process are the existence of substantial communication and management challenges, lack of a robust knowledge base, and the need for the preparation and staging of the transaction [10].

Divestment has occurred in Indonesia such as those carried out by mining companies, namely Freeport McMoran [11], Newmont [12], Kaltim Prima Coal [13], and Vale [14], the State of Indonesia is one of the developing countries and has a number of poor people in March 2022 by 26.16 million people [15].

Although poverty is not a moral, socio-cultural problem or something that is permanently excluded from lower-class society, it is an economic risk that affects everyone. The goal of the welfare state is not for the poor, but to ensure that there is a common framework of resources, services, and adequate opportunities for the needs of society and can be used by everyone [16]. Thus, divestment can create a welfare state for Indonesia.

This research is important because it is different from other studies that do not examine the harmonization of the relationship between the central government and local governments in the divestment of mining company shares [17], as well as rational choice theory in mining share divestment schemes [18], and the study of PT Freeport Indonesia's Contract of Work divestment law [19].

3. Methodology

This research represents a qualitative with study’s focus the efforts of the Indonesian state to prosper its people by requiring divestment in its economic sector. The research data uses secondary data which are divided from: The Importance of Self-Determination in The Sovereignty of The State of The Republic of Indonesia, Prosperity in State Sovereignty Against Indonesia's Natural Resources, Divestment Can Be Forced Through the Divestment Law, and Indonesian Investment Law and Mineral and Coal Mining Resources Law Indonesian. The data obtained is then analyzed and presented by describing the actual situation.

4. Finding and Disscussion

4.1. The Importance of Self-Determination in The Sovereignty of The State of The Republic of Indonesia

The state is an organization within a region, which has the highest legal power and is obeyed by its people. Scholars, who emphasize the state as the core of politics, focus their attention on state institutions and their formal forms. These definitions are traditional and somewhat narrow in scope. This approach is called the institutional approach. The word "state" can have two definitions, firstly, a state is a society that occupies an area as a political unit and the second is a guarantee institution for political unity that occupies an area with its powerful tools to regulate human life in society [20].

Regarding the elements of the state, it has also been stated in the Montevideo Convention of 1933 (Montevideo Convention on Rights and Duties of States of 1933), in Article 1 there are four characteristics of a country said to be a country, the four characteristics are government, a defined territory, a permanent population, and the ability of the state to enter into international relations.

From the text of the Convention, it can be seen that the use of the words "sovereignty" or "independence" is avoided and the formula "a capacity to enter into relations with other states" is given. If this fourth element does not exist, then the qualifications of the state as a subject of international law will be lost. Thus, its status can be in the form of a colonial state or a state of a federal state [21].

For a country, the ability to establish international relations (even if it is limited) is important, so that its international personality is not lost altogether. The ability to enter into external relations also depends on the recognition of other countries because without it, it is difficult for a new country to establish international relations with other countries, thus the formation of a new state must first meet the requirements of Article 1 of the 1933 Montevideo Convention and secondly recognition from other countries.

From the descriptions above, the requirements must be fulfilled for the establishment of a state. It is also supported by the statement of Soepomo in a meeting of the Investigating Agency for Efforts to Prepare for Indonesian Independence (hereinafter called BPUPKI) on May 13, 1945, which stated:

> "The absolute conditions for establishing a state from a legal point of view and a formal (jurisprudence) point of view are that there must be a territory, people and there must be a sovereign government according to international law".

Soepomo as a figure of the independence of the Republic of Indonesia and a figure in the formation of the Republic of Indonesia explained the importance of state sovereignty which is not only recognized in national law or its intention in its actions to its people requires sovereignty that is recognized according to international law.

The Proclamation of Independence of the Republic of Indonesia on August 17, 1945, was a statement of the Indonesian nation to the international community about the existence of a new state, namely the Republic of Indonesia. Muhammad Yamin interprets the meaning of the Proclamation of Independence as follows [22]:

> "The Proclamation of Independence is an international legal instrument to declare to the people and the whole world that the Indonesian nation takes fate into its own hands to hold all rights to independence which include the nation, the homeland, governance, and the happiness of society".

Mohammad Yamin's interpretation explains sharply that in international law the Proclamation of Independence is the embodiment of the right to self-determination involving the nation (population), homeland (region), and government as a tool to make people happy.

The Proclamation of Independence as the right to self-determination in the 1945 Constitution is contained in the first paragraph of the Preamble. The first paragraph of the Preamble is an affirmation of the right of all nations to independence, which affirming that in the sense that independence is the authority of the state, therefore all colonialism on earth must be annihilated because it is not in accordance with the principles of justice and principles that are in humans.

Its interpretation is in accordance with the concept of the right to self-determination in international law as regulated in Article 1 paragraph (2) of the United Nations Charter which is not intended as an operational rule but as a global moral code. The provisions of Article 1 paragraph (2) of the United Nations Charter in essence explain the respect for the principles of equal rights and the right of the people to self-determination, and taking other appropriate measures to strengthen universal peace can develop friendly relations between nations.

The Atlantic Charter signed by President Roosevelt of the United States and British Prime Minister Winston Churchill on August 14, 1941, contributed to the doctrine of the right to self-determination. The inclusion of the principle of self-determination in the United Nations Charter means that the principle of self-determination has gained recognition as a principle in international law.

The application of the principle of self-determination can be found in the proclamation of the national independence of a nation free from the colonial system, such as the Proclamation of Independence of the Republic of Indonesia on August 17, 1945. The implementation of independence for certain residents within the territory of a nation to determine or have their own government is the same as various provisions contained in the 1962 New York Agreement on the Surrender of West Irian. The right of every nation to freely determine the political, social, and economic system in accordance with its national ideals is a manifestation of the right to self-determination.

The third paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia states that by the grace of Allah the Almighty and with the encouragement of a noble desire to live a free national life, the Indonesian people hereby declare their independence.

This third paragraph contains a statement or proclamation of Indonesian independence to the international community regarding the intention of the Indonesian people to establish The An independent Republic of Indonesia. Thus, the statement of the Proclamation of Independence of the Republic of Indonesia has earned its place in the concept of international law.

Thus, the three paragraphs of the Preamble to the 1945 Constitution of the Republic of Indonesia are provisions regarding the Republic of Indonesia which begins with the concept of the right to self-determination which is carried out through the struggle for independence as an announcement to the international community regarding the intention of the Indonesian people to establish the Republic of Indonesia which is independent and sovereign.

4.2. Prosperity In State Sovereignty Against Indonesia's Natural Resources

Jean Bodin said that true sovereignty always seizes its sovereignty [23]. It is almost the same as Vaughan Love who states that sovereignty can have connotations that include principles such as self-determination, non-intervention, and so on so that the reference to sovereignty brings these principles into account what factors must be taken into account [24].

The concept of state sovereignty is also the basis of one of the doctrines known as the act of state doctrine. This doctrine in England is known as: “the sovereign act doctrine”. This legal doctrine that emerged in the nineteenth century asserts [25]: that every sovereign state is bound to respect the independence of other sovereign states and the courts of a country will not judge the actions of the government of another country committed within its own territory.

Several aspects need to be considered in sovereignty, these aspects are divided into three namely external aspects, internal aspects, and territorial aspects. These three aspects are as follows [26]:

a. The external aspect of sovereignty is the authority possessed by a country to freely use it, without any pressure or interference from other countries, which means that in this aspect the state can freely act to determine its attitude on its international policies;
b. The internal aspect of sovereignty is the authority of a state to form institutions in government, state instruments, and how they work as desired;
c. The territorial aspect of sovereignty is the full and exclusive authority of a country over natural resources within its territory.

Sovereignty can be defined as the implementation of the basic principles for order. The point is that for its safety, society needs power to be a guide. The concept of sovereignty contains the principle of authority, namely power, or the ability possessed by a person or an entity to carry out a legal action, which can produce effects, power, coercion, domination, and control of others [27].

State sovereignty over natural resources in the United Nations General Assembly Resolution of December 21, 1952, concerning the principle of self-determination in the economic field of each country (economic self-determination) affirms the right of every country to utilize freely its natural resources [28]. The 1974 United Nations General Assembly and the Declaration on the establishment of a New Indonesian Economic System and the 1974 Charter of Economic Rights and Duties of States reaffirmed the state's right to control its natural resources in order to promote economic growth [29].

State sovereignty over other natural resources is also regulated in the Covenant on Economic, Social, and Cultural Rights (Article 1). In addition, Covenant and Civil Political Rights (Article 1) dated December 16, 1966, affirms the right of a country to freely utilize its natural resources [30], and one of them in full can be seen in the United Nations Resolution 1803 (XVII) on December 14, 1962, concerning Permanent Sovereignty over Natural Resources, which explains among others “The rights of the people and the nation to permanent sovereignty and their natural resources must be provided for the national development and the welfare of the people of the country concerned” [31].

Dealing with the State's sovereignty over natural resources, the State has the right to dispose of its natural resources freely without interference from other States, and the State has broad rights to use them for interests and purposes. State sovereignty over natural resources is recognized in international law.

The principle of state authority does not mean that the state becomes the entrepreneur, but it can also be managed by national private companies and even foreign companies. The state is given the power to regulate the economy and prohibit the exploitation of the weak by other people with capital. The state as a regulator given the power must make strict rules against foreign investment when it comes to the interests of the state for the welfare of the people and make rules that are friendly to foreign investment. This means that the interests of the people to obtain the maximum benefit from the exploitation of natural resources must be a priority in opening foreign investment so that foreign investment is only a means to realize the prosperity of the people.

Welfare which is the goal of controlling natural resources can be seen through the regulations of Ghana and the Philippines. Minerals property of the Republic in The Mineral and Mining ACT, 2006 which explains that every mineral, both under and above the land of Ghana, then rivers, watercourses, in the exclusive economic zone and covered by the territorial sea or continental shelf is the property of the Republic. Ghana which is used for the welfare of the people, while section 2 of the Philippine Mining Act of 1995 explains that welfare is aimed at protecting the rights of the affected community and protecting the environment.

The country's constitution contained in Article 33 Paragraph (3) of the Constitution of the Republic of Indonesia 1945, as one of the state's economic systems, explains that the water, land, and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. The State of Indonesia has explicitly recognized and has sovereignty over the natural resources in its territory. Sovereignty is owned and can be used as a tool to achieve its goals, namely the welfare of its people.

4.3. Divestment Can Be Forced Through the Divestment Law

Divestment which is believed to be a company's business strategy that is considered to be healthy for the company if the sale gets a fairly high offer price obviously requires a series of preparations for the company's management. Preparation to divest the business unit, if it has been decided, the thing that needs to be prepared is that the shareholders get the maximum value in the sale agreement. Preparation for this divestment has several steps, namely [32]:

a. Building Capabilities. Sales require preparation that is influenced by the company's internal and external costs. This is done to ensure the right price and success in sales;
b. Forming a Team during the Divestment Process. During the divestment process, it is necessary to form a team that is responsible for sales from preparation to the transfer of business units. There are cases where a company plans to divest a lot of the time required, thus requiring building a Corporate Development team focused on repeat sales, even though Members of the Corporate Development team are difficult to motivate, as sales cause the company to shrink rather than grow which has an impact on career sustainability;
c. Requires Advisor. The risk of divestment in the company is very high since the seller usually plays a role in submitting several bids and sometimes negotiates simultaneously with several prospective buyers. The seller will likely need an advisor to provide expertise and a competent workforce;
d. Resources from Other Companies. The seller must collect various company resources to complete the sales process effectively. The team managing the deal should call on staff from the same corporate and line functions. In fact, the sales process usually requires a much greater dedication of resources, especially at the preparatory stage than at the purchase. This is because the purchasing workload increases after the deal is completed, whereas the selling requires preparation and a competent team to get a good price and finish after the sale deal.

Divestment as one of the company's business strategies can actively take steps to better position itself to achieve its goals, so the criteria for divestment decisions depend on the particular business situation. The company's objectives and strategies which mean the divestment motives are diverse and most have more than one determining factor. The various divestment motives in the company as described by Jan-Hendrik Sewing are [8]:

a. Dropping ballast. The motive for such divestment is the unsatisfactory performance of the business unit and business units that are not profitable for the company.
b. Enabling maneuvers. That is, a business unit in a strong position to be divested to use attractive returns for funding acquisitions or other investments;
c. Establishing strategic fit means that strategic change can occur at different levels within a company, for example through a complete strategic reorientation, gradual new strategic focus areas, or strategic refocusing on core strengths. Therefore, a strong business unit can also be divested because it results in a mismatch between individual and corporate businesses;
d. Supporting restructuring, in this case, divestment can be considered due to company resource constraints, and certain business units have disproportionate resource requirements, either in terms of financial or managerial attention.

According to Abdul Moin, the divestment motive has more than one determining factor because it returns to competence, avoids negative synergies, is not economically profitable, has financial difficulties, changes in company strategy, obtains additional funds, gets cash immediately, and other reasons for individual shares shareholders. While Jim Haag gave several reasons, among others:

geographic location is no longer attractive, assets held against their financial metrics are assessed poorly (high lifting costs or low-profit margins), properties for sale no longer fit into the company's portfolio, the environment has changed (increased regulatory oversight or landowner issues), scheduled capital outlays do not have the desired profitability, and reserve recovery is in jeopardy (performance indicators have deteriorated).

Regarding the divestment motive, Salim distinguishes it into two types of divestment motives, namely voluntary divestment, and involuntary divestment. Voluntary divestment can be used as a way to return or save investment. It can be carried out by private legal entities, such as Limited Liability Companies, Firms, and Limited Liability Companies but can also be carried out by public legal entities such as the State, for example, the Indonesian Government divesting shares of State-Owned Enterprises to a Singapore legal entity, namely Singapore Technology Private Ltd. The State-Owned Enterprise is Indosat, which in 2002 was considered by the Government to cover the needs of the 2002 State Budget, which had experienced a deficit [33].

In addition to voluntary divestment, there is also involuntary divestment. The reason for this involuntary divestment is due to coercion on the company caused by the existence of laws and regulations. The reasons for involuntary divestment due to nationalization or statutory regulations can be seen as an example of the case of companies in the United States, namely American Telephone & Telegraph (AT&T) and Microsoft which were once considered monopolies and had to be split into two companies to avoid unfair competition. Unlike Germany, which did not divest in cases of unfair business competition, this is possible because the country has five institutions that are deployed in law enforcement, such as the Anti-Cartel Agency, the Federal Ministry of Economy, the Regional Cartel Office, the Monopoly Commission, and the Courts [34].

Regarding the motives above, it is clear that the divestment is carried out only for business considerations, namely to maintain the company's profitability. In contrast to the divestment motive in law, it is an obligation, meaning that the disposal of shares is carried out not because of business considerations, but rather to fulfill contractual obligations and/or applicable laws and regulations so that foreign investors release some of their shares to be sold to national participants. In other words, the divestment motive comes from external to the company, due to coercion from the government.

4.4. Indonesian Investment Law and Mineral and Coal Mining Resources Law Indonesian

Investment law is the implementation of the state in its relations with the international community, especially as a member of the World Trade Organization (WTO) international organization. The background of the establishment of the WTO is inseparable from the history of the birth of the GATT (General Agreement on Tariffs and Trade) which aims to improve living standards, and incomes, create jobs, expand production and trade, and make optimal use of the world's wealth resources, has other objectives to carry out activities such as [35]:

a. The WTO introduces the notion of sustainable development in the use of the world's resources and the need to protect and preserve different economic environments;
b. The WTO recognizes positive efforts to ensure that developing countries, particularly disadvantaged countries, get a better share of developments in international trade.

As the main international economic institution, WTO is considered important because it plays a crucial role in international trade, especially in solving trade problems in general. The most important thing is the fact, that the large number of countries that are members of the WTO and the desire of these countries to be bound by the obligations contained in the WTO [36].

The principles of the WTO include the principle of non-discrimination, market access rules including transparency, regulations regarding unfair trade, special regulations for developing countries, rules regarding decision-making and dispute resolution, and rules governing conflicts between trade liberalization with social values and interests.

Law Investment No. 25 of 2007, the consequence of the State of Indonesia as a member of the WTO. The principles of investment has a close correlation with law enforcement, where this is realized in the form of legal certainty over applicable legal provisions, not only on regulations that specifically regulate investment issues, but also other regulations, both sectoral and cross-sectoral in nature [37].

The condition of the submission of foreign investment to the recipient country was also emphasized by Chandrawulan, regarding Judge Oda who declared the establishment of a foreign company in a country. Furthermore, in making foreign investment regulations and policies, policymakers at least face the following problems [38]:

a. How to attract foreign direct investment without causing harm to domestic foreign currency savings and use of natural resources while investment in developing countries, especially in the natural resource sector, requires no small amount of money.
b. How to protect the legal rights of foreign investment and provide adequate protection, while at the same time maintaining dominance as a sovereign state and minimizing negative effects on foreign direct investment, one of the reasons is that foreign investment can make the dependence of the investor country bring profits from the country that owns the resources to the investor country.
c. How to form a law and tax system that can simultaneously encourage economic growth and on the other hand attract foreign investment to increase sufficient income according to the requirements for using state finances.

In addition, foreign direct investment flowing into a country is determined by several things. They are the global savings imbalance which will determine the amount of capital that may enter through foreign investment both officially through the government and the private sector, the comparative advantage of the recipient country of capital in certain industrial fields which will attract foreign investors to invest, and the competitive advantage of private companies that can encourage them to compete in globalization.

The objectives of foreign investment include attracting significant capital flows to a country, obtaining benefits in the form of low production costs, local tax benefits, and others, and obtaining higher returns, higher than at home through higher economic growth rates, a more profitable tax system, and better infrastructure[39]. Foreign investment arrangements in Indonesia are not only regulated by the Investment Law, but also by other laws and regulations that are hierarchically under the law. Even, they are also regulated by other sectoral laws and do not cover investment arrangements in banking, insurance, securities business (securities companies), and financing institutions.

Law Investment No. 25 of 2007 shows the implementation of the country's economic sovereignty over the current capital obtained by a country such as Indonesia which is not only obtained from within the country but also obtained from abroad. Before, it distinguished between capital obtained from abroad and capital obtained from within the country by the issuance of the Law Investment No. 1 of 1967 with Law Investment No. 6 of 1968.

After the issuance of Article 1 of Law Investment No. 25 of 2007, Investment law in Indonesia no longer distinguishes capital originating from abroad and capital originating within the country. According to Article 3 paragraph (2) of Law Investment No. 25 of 2007, the objectives of implementing investment are, among others, to increase national economic growth, increase the competitiveness of the national business world, increase national technological capacity and capability, encourage the development of the people's economy, and increasing the welfare of the community.

According to Article 7 of Law Investment No. 25 of 2007, the treatment investment Government provides equal treatment to all investors from any country conducting investment activities in Indonesia, except for investors from a country that obtains special rights based on an agreement with Indonesia.

The next article is on the treatment of investment. The Government will not take action to nationalize or take over the ownership rights of investors, except by law. Whereas if the Government takes actions to nationalize or take over ownership rights, it will provide compensation, the amount of which is determined based on the market price, and the settlement can be done through arbitration.

The treatment of investment in Article 7 and Article 8 of Law Investment No. 25 of 2007, is like a regulation that may occur or an article that needs to be anticipated by the investment party because if it is carried out it provides rights and obligations for both the investment party and the Government itself. Investments are required to carry out government policies that will occur through the laws that are issued if there is a share takeover.

Explanation in the Law Mineral Coal Mining No. 3 of 2020, mineral and coal mining resources as one of Indonesia's natural resources have been firmly controlled by the state to achieve prosperity for its people. State control which has been regulated in the Law Mineral Coal Mining No. 4 of 2009, has now changed with the issuance of the Law Mineral Coal Mining No. 3 of 2020. The reason for the amendment of Law Mineral Coal Mining No. 4 of 2009 its implementing regulations is considered not to be able to answer the problems of actual conditions in the implementation of Mineral and Coal Mining, including cross-sectoral problems between the Mining sector and the non-mining sector.

5. Conclusion

Divestment as a business strategy in companies that is different from mergers and acquisitions in its implementation can be forced through the law, while foreign investment in Indonesia as a form of cooperation with the Indonesian state becomes a member of international organizations. Law Number 25 of 2007 is the implementation of the state's economic sovereignty over capital not only obtained from within the country but also from abroad. It is different from the previous law which distinguishes between capital obtained from abroad and the one obtained from within the country.

One of the characteristics of Indonesia's welfare state is seen in the state constitution as regulated in Article 33 Paragraph 3 of the 1945 Constitution regarding the earth, water, and natural resources in its territory controlled by the state to achieve the goal of realizing welfare for its people. Divestment in realizing Indonesia's welfare state is carried out by foreign companies by selling their shares to the Indonesian side through the sovereignty owned by Indonesia in the mineral and coal mining sector by requiring foreign capital to divest as regulated in Article 112 of Law Mineral Coal Mining No. 3 of 2020 and acquisition of shares in Article 8 of Law Investment No. 25 of 2007.

In other words, the divestment will not be able to create a welfare state for Indonesia if the state cannot use its sovereignty. Sovereignty owned by the State of Indonesia plays an important role for the country to realize the welfare of Indonesia through divestment. The sovereignty possessed by the state make the divestment of foreign companies happen.

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