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RESEARCH ARTICLE

Harmonization Of Central And Regional Government Relations In Share Divestment Mining Company Pt. Freeport

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ABSTRACT

Divestment of shares is part of the manifestation of national sovereignty. The achievement of share divestment will lead a country to have good welfare. However, stock divestment is sometimes unfair between the central and regional governments. This paper will attempt to examine the legislation in the field of share divestment, the relationship between the central and regional governments in relation to the legal objectives in Indonesia. The purpose of this writing is to understand and examine the coherence between legislation in the field of stock divestment and the legal objectives set forth by the government. The theory of the welfare state, the theory of progressive law, and the theory of law as a tool of social engineering will be used as the foundation in examining this paper.The method in this research is a normative legal study with a descriptive-analytical nature and using a statutory approach. The preliminary conclusion shows that there is a disharmony between the central and regional governments in the divestment of PT Freeport's shares. Where the divestment of shares has not yet been clearly regulated in the legislation.

INTRODUCTION

A. Background

Nature is a gift from God given to humans to be managed as an effort to improve the quality of human life. Indonesia is one of the countries in the world that has been endowed with abundant natural resources. From forest resources, sea, and mineral mining materials. One of the things that makes Indonesia rich is its mineral resources. Indonesia's mineral resources are abundant and spread across various regions in Indonesia. Of course, these resources belong to the Indonesian nation and are used for the prosperity of the Indonesian people as mandated by Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

In an effort to manage its natural resources, it turns out that Indonesia is unable to manage those natural resources. In an effort to manage these resources for the prosperity of the people, Indonesia needs skilled personnel to manage them. On the other hand, many foreign countries want to manage Indonesia's natural resources. That's why, in the end, Indonesia opened the door for other countries that want to exploit the mineral mining resources in Indonesia government because we know that all of this is an effort to prosper the people, especially the people of Papua.

We can see mining companies that have long been established in Indonesia, such as Freeport, Inalum, and Newmont. These companies can operate in Indonesia with a profit-sharing arrangement between the central government, local governments, and the companies. In reality, the distribution is not very beneficial to the government as the ruler of natural resources; instead, the companies receive a larger share. In its development, many improvements were made by the government in an effort to protect its natural resource wealth, one of which was the Work

Contract. The Work Contract allows for a more advantageous distribution compared to previous methods.

In the Work Contract, there is an effort by the government to gradually take control of foreign-managed mining companies through share divestment. Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 on Mineral and Coal Mining, makes the divestment provision a standard provision applied generally to foreign share ownership in mining concession companies (Mining Business License/IUP). The definition of divestment according to Antoni K. Muda in the complete economic dictionary states that it is a process or release of investment, such as the sale of shares by the old shareholders, the act of withdrawing capital participation carried out by a venture capital company from its business partner.

The divestment of shares carried out by the central government does not face significant obstacles in terms of funding because it has substantial funds from the state budget and also from the company's profit-sharing. We also know that the mining company does not only operate in Indonesia but more specifically in certain regions that now have special autonomy. The Regional Government areas that are made the object of mining operations certainly have the worst impacts and also the revenue sharing that is not proportional to the damage occurring in their regions. We know that the share divestment carried out by the central government does not involve the regions, such as in the case of the share divestment of PT. Freeport Indonesia, which did not involve the Papua regional government. From the perspective of the region being the object and also the limited economic resources, the local government should be entitled to receive the share divestment pursued by the central.

Article 18 A paragraph (2) of the 1945 Constitution states that financial relations, public services, and the utilization of natural resources and other natural resources between the central government and regional governments are regulated and implemented fairly and harmoniously based on the law. Law Number 23 of 2014 concerning Regional Government Article 14 paragraph (1) states that the administration of government affairs in the fields of forestry, marine, as well as energy and mineral resources is divided between the Central Government and provincial regions. In this case, it is clear that in the management of natural resources, the position of the central government must be fair to the regional governments. Gustav Radbruch stated three fundamental values that are the goals of law, namely justice, legal certainty, and utility. Lawrence M. Friedman states that the legal system consists of structure, substance, and legal culture. Therefore, based on the legal objectives associated with the legal system proposed by Lawrence Friedman, the author is interested in writing a paper titled **"HARMONIZATION OF CENTRAL AND REGIONAL GOVERNMENT RELATIONS IN THE DIVESTMENT OF PT. FREEPORT MINING COMPANY SHARES."**

B. Problem Statement

1. How should the Central Government establish a relationship with the Regional Government in conducting share divestment in an effort to achieve legal objectives?

2. How is the harmonization of the relationship between the central and regional governments in the divestment of shares in the mining company PT. Freeport?

C. Research Objectives

1. To understand how the Central Government should establish a relationship with the Regional Government in conducting share divestment in an effort to achieve legal objectives.

2. To understand how the harmonization of relationships between the central and regional governments in share divestment.

D. LITERATURE REVIEW

Alfred Marshall stated that the welfare state is a part of modern society that is in accordance with the capitalist economic system and the democratic political structure.[1] Meanwhile, John M.

[1] George Soule, 1994. The Opinions of Leading Economists, translated by T. Gilarso, Yogyakarta, Kanisius Press. Pages 136-142.

Keynes stated that the welfare state is closely related to the goal of achieving full employment.[2] Keynes described that the government has a dominant role in all effective demand management through fiscal policy. In principle, welfare has four meanings.[3] First, in general terms, welfare refers to a state of human beings who are in good condition where people are prosperous, healthy, and peaceful. Second, from an economic perspective. According to Spicker, a welfare state is a social welfare system that grants significant authority to the state (government) to allocate part of the public funds to ensure the fulfillment of its citizens' basic needs.[4] The welfare state was conceived in order to provide social services to all its residents as best as possible. The welfare state has a mission to integrate resource systems and organize a service network that can maintain and enhance the welfare of citizens fairly and sustainably.

The welfare state has the consequence that the government bears the responsibility of ensuring the minimum standard of living welfare for every citizen. Social policies cannot be separated from the concept of the welfare state. This is because social policy contains strategies and efforts by the government to improve the welfare of its citizens, particularly through social protection that includes social security in the form of social assistance or social safety nets. Spicker further explains that the concept of welfare at least encompasses five main areas, namely the fields of health, education, housing, social security, and social work.[5] The welfare state is also viewed as a normative concept where this concept emphasizes that everyone should receive social services as their right.

The theory of state sovereignty states that the state is the sole source of law that holds the highest power.[6] James J. Sheehan says that sovereignty is a political concept that does not talk about where power resides, but rather relates to the relationship between politics and other forms of authority.[7] According to Jean Bodin, state sovereignty is stated that the state as a legal entity is considered to bear rights and obligations and has the ability to perform legal actions or deeds while supporting rights and obligations. In human life as members of society, the state plays a role as the holder of the highest authority that creates laws.[8] Thomas Hobbes stated that a state begins or is formed from an agreement among individuals to form a state. This agreement is known as the social contract theory. This agreement is based on the reason of disputes among the society, so they relinquish their rights to the state.[9] Hobbes does not deny that this doctrine or theory, which could potentially lead to absolutism, might be misused by rulers. Therefore, he stated that rulers have an obligation to be accountable to God, considering that power is obtained from God, not from society.[10] Therefore, it can be said that the foundation was established as an effort to prevent the state from acting arbitrarily.

The Theory of Law as a Tool of Social Engineering was presented by Roscoe Pound. Roscoe Pound stated that law is not merely a tool to perpetuate power, but rather a tool for social engineering. The consequence of this view is that law becomes a tool to mobilize society towards the goals to be achieved, and if necessary, the law can be used to eliminate various negative societal habits.[11] The function of law as a tool of social engineering is aimed at accommodating the desire for

[2] *Ibid*.Page.143.

[3] Darmini Roza and Gokma Toni Parlindungan S, 2019. "Community Participation in the Formation of Legislation to Realize a Prosperous Indonesia in the Perspective of Welfare State Theory," *Jurnal Cendikia Hukum*: Volume 5, No. 1: 136.

[4] Paul Spicker, 2002, Poverty and the Welfare State: Dispelling the Myths, London: Catalyst. Page 6.

[5] Darmini*, Op.cit.* Page 137.

[6] Rudy, 2013 "Searching for the Form of Sovereignty in the 1945 Constitution", Fiat Justitia Journal of Legal Studies, Volume 7, No. 3: 256.

[7] James J. Sheehan, 2006, The Problem of Sovereignty, Oxford: Oxford University Press. Page 419.

[8] Hukumonline Team, "5 Theories of Sovereignty: God, King, People, State, and Law", https://www.hukumonline.com/berita/a/teori-kedaulatan-lt62fa0ca6652f6?page=all accessed on February 2, 2023, at 20:01 WIB.

[9] Scott Gordon, 2002. Controlling the State: Constitutionalism from Ancient Athens to Today, Boston: Harvard University Press. Page 25.

[10] *Ibid.*

[11] Satjipto Rahardjo, 1986. Law, Bandung: Alumni. Pages 110-111.

change in society towards a collectively desired goal.[12] Satjipto Rahardjo argues that law as a means of social engineering is not only used to reinforce existing patterns of habits and behaviors in society but also to direct towards desired goals, eliminate habits deemed unnecessary, and create new patterns of behavior.[13] Law as social engineering plays an important role in development, namely as a means of societal development. Nevertheless, law as a tool of social engineering has both positive and negative sides. Law as a tool of social engineering can be used for both good and bad purposes. For example, the law as a tool of social engineering with a positive impact can be seen in the 1954 decision of the United States Supreme Court, which ruled that black people should be treated equally to white people.[14] Meanwhile, the negative impact of law as a tool of social engineering is that it only benefits a small portion of society while harming the majority of the other society.[15] From this understanding, it can be said that the use of law as a tool of social engineering needs to be done with caution.

I.MATERIALS AND METHODS

1. Type of Research

The type of research used by the author is normative juridical legal research. The research conducted on positive or written law, in resolving legal issues from existing legal issues and facts. The normative juridical approach used is an approach that employs rules and regulations related to the issues being studied, namely the Articles in the 1945 Constitution of the Republic of Indonesia that govern state institutions.

2. Research Approach

The approach used in this research is the Statute Approach and the Conceptual Approach, conducted by examining the Legislation related to the issues being studied. The Conceptual Approach is an approach that starts from legislation and doctrines that develop in legal science, which will produce legal understanding, legal concepts, and relevant legal principles.

3. Type of data

1) The type in this research uses secondary data divided into 3 (three) parts, namely: Primary Legal Materials, which are legal materials closely related to the issues being researched, namely:
The Constitution of the Republic of Indonesia 1945.

2) The related legislation is:

a) Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.
b) Government Regulation Number 25 of 2024 concerning Amendments to Regulation Number 96 of 2021 on the Implementation of Mineral and Coal Mining Business Activities.
c) Law Number 23 of 2014 concerning Regional Government.

a. Secondary legal materials, which are legal materials that provide explanations or discuss or address matters that have been researched in primary legal materials, namely:

a) Books that are relevant to the research problem and written data related to the research problem.

b) Various papers, journals, documents, and data from the internet related to the issue being researched.

c) Tertiary legal materials, which are materials that provide explanations for primary and secondary legal materials, such as the Great Dictionary of the Indonesian Language.

[12] Soerjono Soekanto, 2000. Fundamentals of Legal Sociology, Jakarta: Raja Grafindo Persada. Page 79.
[13] Satjipto Rahardjo, 1983. Law and Social Change, Alumni: Bandung. Page 39.
[14] Ashadi L. Diab, 2014. "The Role of Law as Social Control, Social Engineering, and Social Welfare", Jurnal Al-Adl, Volume 7, No. 2: 62.
[15] *Ibid,* Page. 63.

4. Data Collection Techniques

The technique used in data collection is the literature study method, which involves reviewing and tracing relevant legislation related to the research, as well as reading, analyzing, and taking notes from books, regulations, documents, and writings related to the issues that are the subject of the research.

5. Data Analysis Techniques

The data writing technique in this writing uses a Descriptive Approach as a problem-solving procedure that investigates by describing the state of the subjects or objects in the research, which can be people, institutions, communities, and others, based on the visible or actual facts at present. In addition to using the Descriptive Approach, the author employs the Deductive Approach, which is a method of thinking that applies general principles first and then connects them to specific parts. That is a system of organizing previously known facts in order to reach a logical conclusion.

II.RESULT AND DISCUSSION

The case related to the divestment of shares in the mining company PT. Freeport is very closely linked to disharmony. This can be said so, knowing that if we look at the definition of harmonization itself, which Harmonization, as mentioned in the Great Dictionary of the Indonesian Language, is defined as an effort to seek harmony. The word harmonization itself comes from the expression of feelings, actions, ideas, and interests. Harmony in English is called Harmonize, in French it is called Harmonie.[16]

Legal harmonization aims to prevent and address the occurrence of legal disharmony. The prevention of legal disharmony is carried out through legal discovery (interpretation and construction of law), legal reasoning, and the provision of legal arguments.[17] In relation to the case regarding the divestment of PT. Freeport's shares, it can be said that there is a disharmony or what is referred to as disharmonization. Disharmony means a state of overall disharmony that is considered to have a negative value with several aspects of assessment. This disharmony arises because there are conditions where issues occur that cause a lack of harmony between regulations. The consequence of disharmony is the existence of differing interpretations and uncertainty for the community.[18] This was stated knowing that the Central Government did not involve the Papua Regional Government, which in this case is also known that its territory was made an object of mining and there are restrictions related to economic resources in its territory. Knowing the absence of the involvement of the Papua Regional Government as the authority holder within its territorial scope, especially the lack of distribution of mining results operating in its area, is contrary to the understanding and purpose of harmonization itself, which is intended as an effort to seek balance. Therefore, it is necessary for the involvement of the Papua Regional Government, both in terms of authority holders in its territory and in the distribution of results from mining objects in its territory, which is carried out as an effort to prevent and address disharmony or disharmonization between the Central Government and the Regional Government. Furthermore, it is very clear that it will cause losses because, in the end, the regulations regarding the need for the division of authority between the Central Government and the Regional Government are potentially violated, particularly in this case by the Central Government due to non-compliance with the applicable laws and regulations.

Regarding the disharmony between the Central Government and the Regional Government concerning the PT.Freeport Share Divestment case, Article 18 A paragraph (2) of the 1945 Constitution states that financial relations, public services, and the utilization of natural resources and other natural resources between the Central Government and the Regional Government are

[16] Taufik H. Simatupang, 2020. Disharmony of Legislation in the Field of Guardianship Supervision in Indonesia, De Jure Law Research Journal, Volume 20, No. 2, 2020: 222-223.
[17] Moh. Hasan Wargakusumah, 1997. Formulation of Legal Harmonization on Legal Harmonization Methodology, Jakarta: National Legal Development Agency, Ministry of Justice. Page 37.
[18] Suhartono, 2011. Harmonization of Legislation in the Implementation of the State Budget (Solutions for Efficient, Effective, and Accountable State Budget Absorption), Thesis, Jakarta: Universitas Indonesia. Page 39.

regulated and implemented fairly and harmoniously based on the Law. In relation to this matter, it can be seen that there is a need for a relationship between the Central Government and the Regional Government. If we relate this to the PT.Freeport case, then there is a need for financial relations, public services, and the utilization of natural resources, which means that the involvement of the Regional Government is necessary to participate in the management and utilization of non-renewable natural resources such as mining materials. Additionally, there is a need for the distribution of the results from the mining management, which is then directed towards public service efforts for the community in the region. This is to create harmony and justice based on the applicable laws and regulations.

This is also closely related to Article 14 paragraph (1) of Law Number 23 of 2014 concerning Regional Government, which states that the administration of government affairs in the fields of forestry, maritime, as well as energy and mineral resources is divided between the Central Government and Provincial Governments. In relation to the case of PT. Freeport's Share Divestment, it is clear that in the management of natural resources, the position of the Central Government must be fair to the Regional Government, which in this case involves the division of authority in the field of mineral resources.

Related to the Administration of Government Affairs, this is contained in Article 9 paragraph (3) of Law Number 23 of 2014 concerning Regional Government in Chapter IV on Government Affairs, which states that concurrent government affairs as referred to in paragraph (1) are government affairs divided between the Central Government and Provincial and Regency/City Regional Governments.

Similarly, regarding the authority of the Central Government and the authority of the Provincial Regional Government, as stated in Article 13 paragraph (2), which mentions that the Government Affairs under the authority of the Central Government are:

a. Government affairs that are located across Provincial Regions or cross-border;

b. Government Affairs that are used across provincial regions or national lines;

c. Government affairs whose benefits or negative impacts cross provincial regions or national borders;

d. Government affairs whose resource utilization is more efficient when carried out by the Central Government; and/or

e. Government affairs that have a strategic role for national interests.

Next, in Article 13 paragraph (3) it is stated that the Government Affairs that fall under the authority of the Provincial Region are:

a. Government Affairs that span across District/City Regions;

b. Government Affairs used across District/City Regions

c. Government Affairs whose benefits or negative impacts cross District/City Regions; and/or

d. Government affairs whose resource use is more efficient when carried out by the Provincial Region.

In Article 13 paragraph (4), it is also mentioned that the Government Affairs that fall under the authority of the Regency/City Region are:

a. Government Affairs located within the District/City Area;

b. Government Affairs whose users are within the District/City Area;

c. Government affairs whose benefits or negative impacts are only within the District/City area;

d. Government affairs whose resource use is more efficient when carried out by District/City Regions.

Regarding Article 9 paragraph (3), Article 13 paragraph (2), Article 13 paragraph (3), and Article 13 paragraph (4) of Law Number 23 of 2014 concerning Regional Government, the contents of which are mentioned above, if related to this case, it can be seen that it has been regulated concerning governmental affairs that fall under the authority of both the Central and Regional Governments. This division of authority is referred to as concurrent governmental affairs, meaning that governmental affairs are divided between the Central Government and the Provincial and Regency/City Regional Governments. Therefore, the necessity of concurrent government affairs, which are divided into the authority of the Central Government and the Provincial and Regency/City Regional Governments, as explained in Article 13 paragraph (2), is that the government affairs under the authority of the central government are those whose location, use, benefits, or negative impacts cross Provincial regions or cross countries, where in this case, the resources are more efficiently managed by the Central Government and have a strategic role for national interests. Meanwhile, Article 13 paragraph (3) explains that the governmental affairs under the authority of the Provincial Regional Government are those whose location, use, benefits, or negative impacts cross the Kabupaten/Kota regions, where in this case, the resources are more efficiently managed by the Provincial Regional Government. Article 13 paragraph (4) explains that the governmental affairs under the authority of the Kabupaten/Kota Regional Government are those whose location, use, benefits, or negative impacts are only within the Kabupaten/Kota regions, where in this case, the resources are more efficiently managed by the Regency/City regions.

Knowing that the mining company in the case of PT. Freeport not only operates in Indonesia but more specifically in certain regions that now have Special Autonomy, and these areas are the subject of mining and can be said to have the worst impact, the Central Government cannot solely manage its own affairs without involving the Papua Regional Government. This is due to the division of authority because these areas already have Special Autonomy related to the mining object in question, which requires the Papua Regional Government, as the authority holder in its region, to manage its affairs. In relation to several regulations mentioned above concerning governmental affairs, the author believes that in this case, a good relationship is necessary between the Central Government and the Regional Government, particularly the Papua Regional Government.

The relationship that must be well-established in the case of PT. Freeport's Share Divestment is carried out through the division of governmental affairs related to the authority between the Central Government and the Papua Regional Government, which means that the Central Government must involve the Papua Regional Government in the management and utilization of mineral resources in the form of mining materials, especially given the limited economic resources in the Papua region. Therefore, indirectly, with the involvement and equitable distribution of authority, there will be a sharing of the results obtained from the management and utilization of mining in the Papua region, which in turn will increase the income of the area, aimed at improving the economic conditions of the Papua people.

The legislation related to Share Divestment is closely linked to the legal objectives set forth by the government. The legal objective is to create justice, order, and legal certainty for society. Related to the case of PT. Freeport's Share Divestment in terms of natural resource management, there are several principles contained in the state constitution regarding natural resource management, including:

a. The Principle of Benefit is a principle that can be utilized for the greatest prosperity of the Indonesian people.

b. The principle of Participation and Justice is a principle where every citizen, whether a private legal entity or an individual, is given equal opportunity according to their ability to achieve results.

c. The Principle Balance is the principle where the parties have equal or parallel positions.

d. The Principle of Equity is a principle where the fruits of labor can be enjoyed equally by all Indonesian people.

e. The Principle of Security and Safety is a principle that guarantees a sense of security and tranquility.

f. The principle of general certainty is the principle that guarantees the certainty of the rights and obligations of the parties.

g. The principle of environmental awareness is a principle that must consider the sustainability of the environment.[19]

In the management of natural resources, particularly in the mining sector, it is necessary to apply several principles in order to achieve legal objectives. Related to the case, concerning the principle of benefit, in this context, it means that the mining operations are utilized as much as possible for the prosperity of the people, and in this case, they can also have equal opportunities to exploit the results, which is referred to as the principle of justice and participatory. The parties in the PT. Freeport case, namely the Central Government and the Regional Government, have equal standing in the management of these natural resources. It is known that the Papua Regional Government is the authority in its territory; therefore, it cannot prioritize the Central Government in its management and consider the Regional Government as not involved or needed because the principle of balance upholds equal standing and opportunity. Related to this matter, the results can also be enjoyed equally, especially by the regions directly affected by the mining management, which guarantees the rights that must be obtained by the Papua Regional Government as the authority holder in its area, namely receiving a share of the mineral resource management results and also bearing the obligation to participate directly in the utilization and management through the involvement of the Central Government. This is not only directly affected by the damage to its territory but also by the lack of guarantee in the distribution of these results, which subsequently impacts the economic condition in its area, making it inadequate. This needs to be avoided in order to create a sense of security, peace, and prosperity in accordance with the principles of natural resource management, which should be felt by both the Regional Government of Papua as the authority holder and its people.

In relation to this matter, it is also known that INALUM has paid 3.85 billion US dollars to Freeport McMoRan Inc. (FCX) and Rio Tinto to purchase part of FCX's shares and Rio Tinto's participation rights in PTFI, thereby increasing INALUM's ownership from 9.36% to 51.23%, which will later consist of 41.23% for INALUM and 10% for the Papua Regional Government. Regarding the shares of the Papua Regional Government, they will be managed by a special company, PT. Indonesia Papua Metal and Mineral (IPPM), in which 60% of the shares will be owned by INALUM and 40% by the Papua Regional Owned Enterprises (BUMD).[20]

Knowing this, it can be said that the Papua Regional Government only received a total of 4% shares from PT.Freeport. This is not in line with the issuance of Government Regulation Number 25 of 2024 concerning Amendments to Government Regulation Number 96 of 2021 on the Implementation of Mineral and Coal Mining Business Activities (Mining PP) during the Jokowi and Prabowo Administration, especially Article 83A paragraph (1) which serves as the basis for the Government allowing Religious Organizations to obtain Special Mining Business Licenses (IUPK) for Minerals and Coal. Where the Special Mining Business License (IUPK) is obtained by Religious Organizations through the Business Entities they own. In this case, it is already clear that the existence of the Mining Government Regulation serves as the basis for Religious Organizations to have mining concession rights.

In relation to this matter, it can be said that it is not in line and even contradicts the fact that the profits obtained by religious organizations seem to have a larger share compared to the Papua Regional Government, whose regional area is being used as a mining site, which the Papua

[19] Ratnasari Fajariya Abidin, 2017. Harmonization of Foreign Investment Regulations in the Field of Mineral and Coal Mining, Az Zarqa Journal, Volume 9, No. 2, 2017: 347.

[20] Ministry of Energy and Mineral Resources, Freeport Divestment Process Completed, Freeport Contract of Work Converted to IUPK, https://www.esdm.go.id/id/media-center/arsip-berita/proses-divestasi-freeport-tuntas-kontrak-karya-freeport-berubah-menjadi-iupk Accessed on January 30, 2025, at 10:23 PM WIB.

Regional Government should be given a greater opportunity for divestment in acquiring shares of PT. Freeport.

It can also be noted that profit is the main orientation of mining, which in practice often neglects social, moral, and even religious values. Knowing that there are many facts of losses caused by mining and not a few cases of mining that harm the community, the government instead grants mining concessions to religious organizations. On the other hand, the Regional Government Area that is made the object of mining, which certainly has the worst impact, receives a total of 4% of PT. Freeport's shares, which can be said to be a profit-sharing arrangement that is not proportional to the damage occurring in its area.

The policy outlined in Article 83A paragraph (1) of Government Regulation Number 25 of 2024 concerning Amendments to Government Regulation Number 96 of 2021 on the Implementation of Mineral and Coal Mining Business Activities (Mining PP), which serves as the basis for the Government allowing Religious Organizations to obtain Special Mining Business Licenses (IUPK) for Minerals and Coal, can be said to open a wide opportunity for Religious Organizations to gain profits, without considering the long-term environmental impacts of mining activities, such as the environmental damage caused by abandoned mining pits that can even result in fatalities, the lack of attention to the welfare of communities directly affected by these activities, the alignment with the religious values adhered to, and many other complex issues. Also considering that religious organizations are established based on the belief in practicing religion rather than being profit-oriented.

On the other hand, the existence of the policy outlined in Article 83A paragraph (1) of Government Regulation Number 25 of 2024 concerning Amendments to Government Regulation Number 96 of 2021 on the Implementation of Mineral and Coal Mining Business Activities (Mining PP), which serves as the basis for the Government allowing Religious Organizations to grant Special Mining Business Licenses (IUPK) for Minerals and Coal, contradicts Article 75 paragraphs (2) and (3) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 on Mineral and Coal Mining, which prioritizes the granting of IUPK to State-Owned Enterprises and Regional-Owned Enterprises. And Article 74 paragraph (1) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 on Mineral and Coal Mining, which also states that the granting of Special Mining Business Licenses (IUPK) must consider the interests of the region. It is evident from the provisions outlined in Law Number 3 of 2020 concerning the Amendment to Law Number 4 of 2009 on Mineral and Coal Mining that the Papua Regional Government should have a greater opportunity for divestment in acquiring shares of PT. Freeport compared to Religious Organizations through the Mining Concession Rights granted by the Jokowi and Prabowo administrations.

In addition, based on the provisions of the 1945 Constitution, the authority to manage or conduct mining activities can be carried out by the Central Government and/or the Regional Government. The policy allowing religious organizations to also manage mining activities makes it increasingly difficult to clearly delineate the division of authority related to this matter. Looking at the situation before the establishment of religious organizations that allow for Special Mining Business Licenses (IUPK) for Minerals and Coal, it was already evident that there was no clear division of authority between the Central Government and the Regional Government, especially the Papua Regional Government. There are still conditions where the Central Government does not allocate authority for managing these mining activities, especially the lack of clear and proportional revenue sharing given to the Papua Regional Government as the authority holder in its territory and the party directly affected by these mining activities.

In relation to this matter, there are theories that should be considered in this regard. Like the Welfare Theory, Alfred Marshall proposed that the welfare state is a part of modern society that is compatible with the capitalist economic system and the democratic political structure.[21] Meanwhile, John M. Keynes stated that the welfare state is closely related to the goal of achieving full employment.[22] Keynes described that the government has a dominant role in all management

[21] George Soule, *Op. cit.*
[22] Ibid, Page 143.

of effective demand through fiscal policy. In principle, welfare has four meanings.[23] First, in general terms, prosperity refers to a state of human beings who are in good condition where people are prosperous, healthy, and peaceful. Second, from an economic perspective. According to Spicker, a welfare state is a social welfare system that grants significant authority to the state (government) to allocate part of the public funds to ensure the fulfillment of its citizens' basic needs.[24]

The welfare state has the consequence that the government bears the responsibility of ensuring the minimum standard of living welfare for every citizen. Social policies cannot be separated from the concept of the welfare state. This is because social policy contains strategies and efforts by the government to improve the welfare of its citizens, particularly through social protection that includes social security in the form of social assistance or social safety nets. Spicker further explains that the concept of welfare at least encompasses five main areas, namely the fields of health, education, housing, social security, and social work.[25] The welfare state is also viewed as a normative concept where this concept emphasizes that everyone should receive social services as their right.

Speaking of the welfare state, in this case, the welfare state is conceived to provide social services for all its residents as best as possible. The welfare state has a mission to integrate resource systems and establish a service network that can maintain and enhance the welfare of its citizens fairly and sustainably. This, when related to the case of PT. Freeport, means that in managing natural resources for the prosperity of the people, the Indonesian state requires manpower to manage these natural resources. Therefore, Indonesia opens opportunities for other countries to participate in the management of natural resources in its territory. In managing these natural resources, there are also mining companies that have long been established in Indonesia, such as Freeport, Inalum, and Newmont. These companies can operate in Indonesia with a profit-sharing arrangement between the central government, local government, and the companies. However, in practice, the profit-sharing is more beneficial to the companies compared to the government, especially the Regional Government, which is not at all involved in the management and utilization of the natural resources in its region.

Experts say that the welfare state also refers to a condition of people who are in good circumstances where individuals are prosperous, healthy, and peaceful, and it can also be viewed from an economic perspective. Additionally, in the concept of the welfare state, significant authority is also placed on the state (government) to allocate part of the public funds to ensure the fulfillment of its citizens' basic needs. If related to the case of PT. Freeport's Share Divestment, it can be said that the Papua Regional Government, despite having a prosperous, healthy, and peaceful region and society, has not been involved in building the region and improving the living standards of its people through the utilization and management of the natural resources in its territory. Knowing that in this case, the welfare state can also be viewed from an economic perspective, it can be said that the state in this case cannot yet be fully considered prosperous with its society being prosperous, healthy, and peaceful because there is still a sense of lag experienced by the people of the Papua region due to the lack of involvement and the absence of power-sharing with the Central Government. Therefore, according to the welfare state theory, if a region and its society are to be prosperous, healthy, and peaceful, it is necessary for the Central Government to involve the Regional Government in the management of mining, aimed at improving the living standards of its people.

The theory of law as a tool of social engineering was presented by Roscoe Pound. Roscoe Pound stated that law is not merely a tool to perpetuate power, but rather a tool for social engineering. The consequence of this view is that law becomes a tool to mobilize society towards the goals to be achieved, and if necessary, the law can be used to eliminate various negative societal habits.[26] The function of law as a tool of social engineering is aimed at accommodating the desire for

[23] Darmini Roza and Gokma Toni Parlindungan S, *Op. cit.*
[24] Paul Spicker, *Op. cit.*
[25] Darmini, *Op.cit*, page 137.
[26] Satjipto Rahardjo, *Op. cit.*

change in society towards a collectively desired goal.[27] Satjipto Rahardjo argues that law as a means of social engineering is not only used to reinforce existing patterns of habits and behaviors in society but also to direct towards desired goals, eliminate habits deemed unnecessary, and create new patterns of behavior.[28]

Law as social engineering plays an important role in development, namely as a means of societal development. Nevertheless, law as a tool of social engineering has both positive and negative sides. Law as a tool of social engineering can be used for both good and bad purposes. For example, the law as a tool of social engineering with a positive impact can be seen in the 1954 decision of the United States Supreme Court, which ruled that black people should be treated equally to white people.[29] Meanwhile, the negative impact of law as a tool of social engineering is that it only benefits a small portion of society while harming the majority of the rest.From this understanding, it can be said that the use of law as a tool for social engineering needs to be done carefully. From this understanding, it can be said that the use of law as a tool for social engineering needs to be done with caution.[30]

Regarding the case of PT. Freeport's Share Divestment, if viewed from the Theory of Law as a tool of social engineering, it is necessary to eliminate various negative societal habits. In this case, it means that it is necessary to eliminate the habit of not considering or involving the authorities within their respective areas, and it is also necessary to eliminate the notion that only certain authorities benefit from the management and utilization of these mineral resources in the form of raw materials. Knowing that if the habits of the higher authority bearers are already negative, it will also affect or impact their society, so in legal theory as a tool of social engineering, this is aimed at bringing about change in society towards a desired common goal, eliminating unnecessary habits, and creating new behavior patterns in accordance with applicable laws and regulations. This is related to the efforts made by the Central Government and the Regional Government, which need to harmonize the division of governmental affairs according to the authority held within their respective areas, as well as the efforts in the utilization and management of natural resources carried out together to achieve the desired common goal and create harmony among the authority bearers.
To fulfill its function as a tool of social engineering, Roscoe Pound then classified the interests that must be protected by the Law as follows:

1. Public Interest, it is the public's need by individuals that comes from the politics of life, where each individual in society has a responsibility towards one another and utilizes goods that are opened for public interest.

2. Social Interest, The demands in social life involve meeting the needs of the entire community as a whole, so that it can function and be well-maintained.

3. Individual Interest, Individual interests, claims, or demands come from the perspective of individual human life, consisting of personal interests, domestic or household relationships, and substantive interests.[31]

According to Pound, legal progress occurs when there is a balance of interests in society. Roscoe Pound divided the interests protected by law into three main categories. First, the public interest. Including the interests of the state as a legal entity in the obligation to protect the essence of the state and the interests of the state as the guardian of the interests of society. Second, personal interests in Pound are further distinguished into three interests, namely personal interests (body, free will, honor, privacy, beliefs, and opinions), family relationship interests, and property

[27] Soerjono Soekanto, *Op. cit.*

[28] Satjipto Rahardjo*, Op. cit.*
[29] Ashadi L. Diab, Op. cit.
[30] Ibid, page 63.
[31] Nata Sundari, Fasya Zahra Luthfiyah. 2024. The Role of Law as a Tool for Social Engineering According to Roscoe Pound, Journal of Contemporary Law and Society Studies, Volume 24 No.1: 8.

interests. Third, social benefits include public safety, the security of social institutions, public morality, the security of community resources, social progress, and individual life.

Related to the function of law as a tool of social engineering, in this case concerning the divestment of PT. Freeport shares, there are several interrelated interests that are protected by law. Regarding the public interest in this matter, the Papua Regional Government, as the authority in its region, has the responsibility to protect the community in its area and to utilize and manage the natural resources available in its region for the benefit of the community, which in this case means meeting the community's needs and increasing income to improve the inadequate economic aspects in its region. Therefore, in relation to this matter, the Central Government and the Regional Government need to cooperate and share responsibilities according to their respective authorities so that the function of law as a tool of social engineering can be fulfilled.

The theory of state sovereignty states that the state is the sole source of law that holds the highest power.[32] James J. Sheehan says that sovereignty is a political concept that does not talk about where power resides, but rather has a connection with the relationship between politics and other forms of authority.[33] According to Jean Bodin, state sovereignty is stated that the state as a legal entity is considered to bear rights and obligations and has the ability to perform legal actions or deeds while simultaneously supporting rights and obligations. In human life as members of society, the state plays a role as the holder of the highest power that creates laws.[34] Thomas Hobbes stated that a state begins or is formed from an agreement among individuals to form a state. This agreement is known as the social contract theory. This agreement is based on the reason of disputes among the society, so they relinquish their rights to the state.[35] Hobbes does not deny that this doctrine or theory, which has the potential to lead to absolutism, could be misused by the ruler. Therefore, he stated that rulers have an obligation to be accountable to God, considering that power is derived from God, not from society.[36] Therefore, it can be said that the foundation is used as an effort to prevent the state from acting arbitrarily.

Knowing that a state is a legal entity considered to bear rights and obligations and has the ability to perform legal actions or deeds, as well as supporting rights and obligations as part of the theory of state sovereignty, it can be said that in the case of the PT. Freeport Share Divestment, the rights and obligations of the Papua Regional Government are not fulfilled due to the lack of profit-sharing from the utilization and management of mineral resources, namely the mining materials found within its territorial scope (rights), and the lack of authority-sharing that should be conducted by the Central Government transparently or as an effort for openness from the Central Government, which requires the authority of the Papua Regional Government in this case as the authority holder in its territory (obligations). Seeing the failure to fulfill the rights and obligations by the Papua Regional Government as one of the causes of the lack of transparency from the Central Government, the Government has made efforts to distribute results that are more beneficial than other efforts and as an effort to protect natural resource wealth, which in the case of PT. Freeport Share Divestment can be said to be claimed by the Central Government and Mining Entrepreneurs who have long managed this natural wealth, namely by entering into a Work Contract. In this work contract, there are efforts by the Government to gradually take control of foreign-managed mining companies through share divestment, which is stipulated in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, making the divestment provision a standard provision applied generally, against foreign share ownership in mining concession companies (Mining Business License/IUP).

The definition of divestment according to Antoni K. Muda in the complete economic dictionary states that it is a process or release of investment, such as the sale of shares by the old shareholders, the action of withdrawing capital participation carried out by a venture capital company from its business partner. However, regarding Share Divestment itself, it has not been

[32] Rudy, Op.cit.
[33] James J. Sheehan*, Op.cit.*
[34] Tim Hukumonline, *Op.cit*.
[35] Scott Gordon, *Op.cit.*
[36] *Ibid.*

clearly regulated in the Legislation. This causes uncertainty for both the authorities, in this case, the Central Government and the Regional Government, for the mining companies that assist in the management of this mining, and for the community, especially for the communities directly affected by the management of this mining within their territorial scope. This is certainly not in line with the goals of the law, which are to create justice, order, and legal certainty. It is also said so, knowing that in the case of Share Divestment which has not been clearly regulated in the Legislation, which causes it to also not clearly regulate who needs to be involved as the authority bearers in this matter, related to the division of government affairs based on the authority possessed according to the scope of their region, and related to the mechanism of profit sharing for the mining managers. Regulations related to share divestment that have not been clearly defined in this legislation have led to arbitrary actions by the Central Government as the highest authority holder, as seen in the case of PT. Freeport. In this case, it can also be clearly stated that it will create legal uncertainty for both the authorities and the public. Therefore, if we review the case, it is necessary to have legislation that clearly and detailedly regulates this share divestment, which includes provisions regarding who needs to be involved as the authority bearers in this matter, the division of government affairs based on the authority possessed according to their territorial scope, and the mechanism for profit-sharing among the mining operators. This would minimize arbitrary actions by the authority bearers and create legal certainty for both the government and the society.

In addition to reviewing the Welfare State, the Theory of Law as a Tool of Social Engineering, and the Theory of State Sovereignty, it is also necessary to review the Paradigm in Progressive Legal Theory, which states that law is an institution aimed at leading humans to a just, prosperous life and making humans happy. In other words, the paradigm of progressive law states that law is for humans. Progressive law pays great attention to the role of human behavior in law. This is diametrically opposed to the belief that law is merely a matter of regulations. The role of humans here is a consequence of the recognition that we should not cling absolutely to the formal text of a regulation.[37]

Knowing that in this case, the progressive legal theory emphasizes social change and justice to serve the community and bring the community to welfare and happiness, this means that in this case, the law must change in accordance with developments. If this is related to the PT. Freeport Share Divestment case, it can be said that the law must change, and in this case, the change involves harmonization. Regarding its practice, there is still a lack of transparency and distribution of authority, which from an economic standpoint is still considered inadequate, especially in meeting the needs of the community. If we consider the still inadequate economic aspect, there is a need for stability in state revenue, which, in addition to increasing state revenue, should also be a commitment of the Government to create harmony between the Central Government and Regional Governments regarding the division of authority and the distribution of results from the utilization and management of these natural resources. Knowing that the majority ownership of PT. Freeport's shares will be used to the fullest for the benefit of the people.

In addition to the mentioned theory, Article 2 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Minerals and Coal also states that mineral and coal mining must be managed based on the principle:

a. Benefits, justice, and balance

b. Partisanship towards the interests of the nation

c. Participatory, transparency, and accountability

d. Sustainable and environmentally conscious

In addition, the need for the management of mineral and coal mining is based on the principles mentioned above, so in this case, an agreement is required between the Government of Indonesia, the Provincial Government of Papua, and the Mimika Regency Government, where the Regional Government will receive shares from the ownership of PT. Freeport shares, in addition to the

[37] Afrohatul Laili and Anisa Rizki Fadhila, 2021. Progressive Law Theory, SINDA Journal, Volume X No.10: 3.

need for transparency and participation from the authorities regarding the division of governmental affairs based on the authority obtained within their respective areas. This is intended to prioritize national interests, the interests of the Papuan people, and state sovereignty in the management of natural resources in accordance with the principle of prioritizing the interests of the nation, while also considering sustainable development by maintaining a conducive and environmentally aware environment. This can create legal certainty with clear regulations regarding share divestment and harmonization between the Central Government and Regional Governments in terms of governance, which is divided into the authority of the Central Government and the Regional Governments of Provinces and Districts/Cities, as well as efforts to distribute the results of the management and utilization of mining based on utility, justice, and balance for both the government and the community.

III.CONCLUSION AND RECOMMENDATION

The regulation regarding the divestment of shares in the case of PT.Freeport, which has not been clearly and detailedly regulated in the applicable legislation, has led to a condition of disharmony between the Central Government and the Regional Government, as well as the failure to achieve the legal objectives themselves, which guarantee justice, order, and legal certainty. However, in this case, it is necessary to emphasize that based on the provisions of the 1945 Constitution, the authority in the management or administration of mining can be conducted by the Central Government and/or the Regional Government, while still prioritizing that the State remains the highest authority. In relation to this matter, the management and implementation of natural resources are carried out by the Central Government through policy functions, regulation, policy, and supervision. In this case, it does not mean that the administration carried out by the Central Government eliminates the rights or authority of the Regional Government in the administration of mining activities, which means that there still needs to be a division of authority between the Central Government and the Regional Government.

In relation to this matter, it is necessary to address the division of governmental affairs based on the authority possessed according to the scope of the region, as well as the mechanism for a clear and equitable distribution of results for the mining operators, particularly the Papua Regional Government, which is affected by environmental damage due to these mining activities.

Knowing the absence of the involvement of the Papua Regional Government as the authority holder within its jurisdiction, especially the lack of distribution of mining results operating in its area, is contrary to the understanding and purpose of harmonization itself, which is aimed at seeking balance. Therefore, it is necessary for the involvement of the Papua Regional Government, both in terms of authority holders in its territory and in the distribution of results from mining objects in its territory, which is carried out as an effort to prevent and address disharmony or disharmonization between the Central Government and the Regional Government. Furthermore, it is very clear that this will cause losses because, in the end, the regulations regarding the need for the division of authority between the Central Government and the Regional Government are potentially violated, especially in this case by the Central Government due to non-compliance with the applicable laws and regulations. This effort is carried out in accordance with Article 18 A paragraph (2) of the 1945 Constitution.

In Article 14 paragraph (1) of Law Number 23 of 2014 concerning Regional Government, it is also stated that in the management of natural resources, the position of the Central Government must be fair to the Regional Government, in which case there is a division of authority in the field of mineral resources. In relation to this matter, it is further explained in Article 9 paragraph (3), Article 13 paragraph (2), Article 13 paragraph (3), and Article 13 paragraph (4) of Law Number 23 of 2014 concerning Regional Government, which contains government affairs that fall under the authority of both the Central Government and the Regional Government. This division of authority is referred to as concurrent government affairs, meaning that the government affairs are divided between the Central Government and the Provincial and Regency/City Regional Governments.

In this case, it is also necessary to establish a good relationship, which is done through efforts to divide governmental affairs related to the authority between the Central Government and the Papua Regional Government. This means that the Central Government must involve the Papua

Regional Government in the management and utilization of mineral resources in the form of mining materials, especially given the limited economic resources in the Papua region. Therefore, indirectly, with the involvement and equitable distribution of authority, there will be a sharing of the results obtained from the management and utilization of mining in the Papua region, which will ultimately increase the income of the area, aimed at improving the economic conditions of the Papuan people.

Knowing that mineral and coal mining activities play an important role in providing real added value for national economic growth and sustainable regional development, the implementation of these activities is still hindered by the authority between the Central Government and the Regional Government, especially with regulations allowing Religious Organizations to participate in management, licensing constraints, protection for affected communities, and supervision. This results in the practice of mineral and coal mining being said to be less effective and not yet able to provide optimal added value to the national economy.

This is certainly not in line with the welfare state theory, which emphasizes that in the effort to have its territory and society in a prosperous, healthy, and peaceful state. Therefore, to realize this, it is necessary for the Central Government to involve the Regional Government in the management of this mining, aimed at improving the living standards of its people.

Next, regarding legal theory, specifically the theory of law as a tool of social engineering that emphasizes the need for change in society towards a common desired goal, eliminating unnecessary habits, and creating new patterns of behavior in accordance with applicable laws. In this case, the efforts made by the Central Government and Regional Governments highlight the need for harmonization in the division of governmental affairs according to the authority held within their respective areas, as well as the joint utilization and management of natural resources to achieve the desired common goals and create harmony among the authorities involved.

Related to the theory of state sovereignty which states that the state is a legal entity considered to bear rights and obligations and has the ability to perform legal actions or deeds as well as support rights and obligations. To realize this, efforts can be made to distribute authority by the Central Government through transparency or as an effort of openness from the Central Government, indicating that the authority of the Papua Regional Government is also needed in this case as the authority holder in its region (obligation).

In this case, if we review it from the legal theory perspective, namely the Progressive Legal Theory paradigm, which states that law must change, and in this context, it changes through harmonization. Regarding its practice, there is still a lack of transparency and distribution of authority, which from an economic perspective is still considered inadequate, especially in meeting the needs of the community. If we look at the economic aspect, which is still inadequate in this regard, there is a need for stability in state revenue. In addition to increasing state revenue, it should also be the government's commitment to create harmony between the Central Government and the Regional Government regarding the distribution of authority and the sharing of benefits from the utilization and management of these natural resources.

These theories must develop in line with the mining activities of PT. Freeport, with their implementation efforts divided between the Central Government and the Regional Government, in terms of protection for the affected communities with profit-sharing efforts commensurate with the damage caused by the mining activities, supervision related to the authority granted to the authorities, namely the Central Government and the Regional Government, especially with the existence of Religious Organization Concessions which require supervision and control in conducting these mining activities. This is to understand that the purpose of these religious organizations is not focused on profit or gain and also to ensure that they do not obstruct the activities, especially to the extent of causing environmental damage and the unmet rights of the communities affected by the mining activities. This is done with the aim of supporting sustainable national development to achieve the welfare and prosperity of the people justly.

As for the recommendations regarding this matter, from the Government's perspective, it is necessary to establish a good relationship between the Central Government and the Regional Government, which can be achieved through efforts to divide governmental affairs related to the

authority between the Central Government and the Regional Government of Papua. In this regard, clear regulations are also needed concerning the divestment of shares related to the division of governmental affairs based on the authority held according to the scope of their regions, as well as related to the mechanism for profit-sharing among the mining operators, thereby minimizing arbitrary actions by the government and creating legal harmonization. This is done through transparency or openness from the Central Government itself as the holder of the highest authority. In this regard, the Central Government must also involve the Papua Regional Government in the management and utilization of mineral resources in the form of these mining materials. Moreover, given the limited economic resources in the Papua region, efforts to distribute the results to the Papua Regional Government obtained from the management and utilization of this mining are necessary. This is aimed at improving the economic conditions of the Papuan people based on utility, justice, and balance for both the government and the community. In this case, it is also to continue the efforts of this work contract in order to gradually take control of the foreign-managed mining companies. More specifically, in this case, an agreement is also needed between the Government of Indonesia, the Provincial Government of Papua, and the Mimika Regency Government, where the Regional Government will receive shares from the ownership of PT. Freeport shares while still paying attention to sustainable development and maintaining a conducive and environmentally aware environment aimed at prioritizing national interests, the interests of the Papuan people, and the sovereignty of the state in the management of natural resources. In addition, the Government is also required to supervise the activities of religious organizations, particularly in the management of mining profits, which must be closely monitored. The Government can also adjust and improve legislation related to mining concessions by religious organizations. This can be done by creating specific and separate regulations regarding the limitations on mining businesses owned by religious organizations.

From the community's perspective, it is known that the regional government area designated for mining has the worst impact and also a profit-sharing that is not proportional to the damage occurring in the area. Therefore, in this case, the community can review and take reporting actions related to the damage occurring in their area as a result of the area being used as a mining site. In this case, the Papuan community can also work together to maintain environmental damage that occurs again later and can help promote its territorial rights to improve the economy in the region.

AUTHOR`S CONTRIBUTIONS

Demson Tiopan developed the main idea and explored the issues related to the topic to be addressed. Agus Setiawan is related to the aspect of using the appropriate research method. Siti Syahida is related to the aspect of governance. Marsya Shalviera helped to review the raised topic.

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