

Pukuafu Takes NIL and NTMC to Court

Ditulis oleh David Dwiarto
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PT Pukuafu Indah will send a legal notice to Newmont Indonesia Limited (NIL) and Nusa Tenggara Mining Corporation (NTMC).

The legal notice is aimed for the two foreign stakeholders of PT Newmont Nusa Tenggara (NNT) to immediately relinquish the 7% stake divested under the 2010 period to Pukuafu. Tri Asnawanto, vice president legal external affairs division Pukuafu Indah stated that the position of the administration in accordance with the fourth generation contract of work (CoW) is "lex specialis" and signed in 1986 it explains that NIL and NTMC are required to offer and not to sell to the administration within a time limit of 30 days.

"The 2010 divestment shares were offered to the administration in compliance with the CoW. The time limit has been exceeded by almost one year, effective March 2010. Therefore, the administration no longer has the right to purchase those 2010 divestment shares," he said in Jakarta on Sunday (1/9).

Tri explained that in article 24 clause 3 of the CoW signed between PT NNT and the government of Indonesia, it states that PT NNT has to guarantee that shares owned by foreign shareholders will be offered to be sold or issued first to the government.

Furthermore, in the event the administration declines or not approves that within 30 days since the date of the bid, it is offered to an Indonesian national or Indonesian company run by an Indonesian citizen. Such an offer to the administration or an Indonesian citizen will be referred to as a bid towards an "Indonesian Participant".

Tri reiterated that the sole Indonesian participant in the CoW is Pukuafu Indah. The rationale here is that prior to signing the PT NNT CoW, PT Pukuafu Indah is the owner of seven KP (mining concessions in the PT NNT CoW operation area).

"It seems impossible that PT NNT can emerge without the seven PT Pukuafu Indah KPs (mining concessions). NIL and even NTMC only joined after Pukuafu explored and found the PT NNT CoW ore bodies mining area. As the owner of KP/mining concessions, Pukuafu is also the founder of PT NNT," he reaffirmed.

He added Pukuafu has already prepared funds to pay for the 2010 divestment shares. When required, Tri continued, Pukuafu is prepared to produce evidence of this fund availability through the South Jakarta Court of First Instance after NIL and NTMC have declared their willingness to release those divestment shares by means of the South Jakarta Court of First Instance.

Meanwhile, prior to this Government Investment Center or PIP ensured it was ready to purchase the 2010 PT NNT divestment shares.

PIP head, Soritoan Siregar said that the Minister of Finance, Agus Martowardoyo offered the purchase of those shares to PIP two weeks ago.

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“The Minister (of Finance) told us to prepare ourselves for the purchase of those 7% divestment shares. This instruction was conveyed orally and not yet in writing,” stated Soritoan.

Meanwhile, based on the negotiation process conducted between the Indonesian administration and PT NNT, the price of the 7% divestment shares has been set at US\$271.6 million.

Previously, Finance Minister Agus Martowardoyo stated that the central government will purchase the remainder of the PT NNT divestment shares. It is also a certainty that the central administration will not annex the regional administrations of West Nusa Tenggara in the purchase of these divestment shares.

Source : Investor Daily, January 10, 2011