
LEGAL ASPECTS OF ESTABLISHMENT OF HOLDING OF STATE-OWNED ENTERPRISES

J. Nanang Marjianto^{1*}, Jamal Wiwoho¹, Jadmiko Anom Husodo¹

¹ Faculty of Law, Universitas Sebelas Maret, Indonesia.

Email: nanangmarjianto2020@gmail.com

ABSTRACT

This paper intends to analyze the legal aspects of SOE holding formation, including legislation relating to the establishment of SOE holding, the legal politics that underpin SOE holding policies, and the legal basis and normative implications. The method used is doctrinal research, with a literature study on the legal material laws and regulations in Indonesia. Data are collected by library research, and the analysis data uses deductive. The conclusion is 1) that the challenges in forming BUMN holding in Indonesia are the authority to form a holding, corporate development, efficiency, monopoly potential, spending of control, and the independence of BUMN management; 2) The legal politics of BUMN holding is based on the values that develop in the community to achieve the objectives of the state by Pancasila and the 1945 Constitution; 3) SOE Holding after the issuance of PP No. 72 of 2016 the status of a subsidiary of holding is no longer an SOE but a Limited Liability Company. A shift in the state capital in the form of shares to a holding company in which the claims of a subsidiary previously owned by the state have shifted to being owned by a state-owned company which is made a holding company; 4) The government still has control over the BUMN holding subsidiary through holding whose capital is controlled by the state through the holding Board of Directors and its subsidiary is still elected by the government. So, the government still controls the holding and its subsidiaries.

Keywords: regulatory, holding policy, own state enterprises.

INTRODUCTION

Discourse on the establishment holding of State-Owned Enterprises (SOE) began to strengthen in the 5th debate of presidential and vice-presidential elections in 2019. Presidential Candidate Joko Widodo said that the SOE holding scheme was one of the strategies to make SOE continue to grow and expand overseas.¹ With the great SOE holding power, it becomes easier for SOE to find capital and project access outside so that in the future, SOE will no longer burden the government, especially in terms of financing.

To describe the President's program, the Ministry of SOE is preparing to establish several holding companies based on the business sector. The purpose of the establishment of the holding company is so that SOE can synergize between subsidiaries through coordination, control, and management carried out by the parent company to strengthen financials, assets, and business prospects. Establishing a holding company is considered to produce value creation and efficiency and increase the company's capacity.

The potency of SOE holding in Indonesia is huge. Based on SOE performance reports as of 31 December 2018, the total assets of SOE amounted to Rp. 8,092 trillion, where the SOE assets increased by Rp. 882 trillion of 2017 achievements amounting to Rp. 7,210 trillion. SOE's total profits also experienced growth for Rp. One hundred eighty-eight trillion of 2017 profit of Rp. 186 trillion. This huge real asset will improve SOE's international bargaining position as an Indonesian business entity.²

According to the SOE observer from the University of Indonesia, Toto Pranoto, SOEs in Indonesia still need to be more efficient. SOE holding is necessary, considering the number of SOEs in Indonesia is very large³. Based on data from the Ministry of SOEs, the number of SOEs at the end of 2018 reached 143 companies. However, of the 143 SOEs, only 20 contributed 90% of the total revenue of all SOEs. That is, the Pareto

¹ Bisnis Indonesia, 16 April 2019

² Bisnis Indonesia, 4 April 2019

³ BUMN Track, Januari 2015

condition occurs. Establishing an SOE holding company is a value-creation initiative to change the Pareto composition so that more SOEs are expected to contribute revenue. Establishing a holding is not easy; there are several problems in holding SOE in Indonesia, including legal aspects of having establishment, corporate development, efficiency, monopoly potential, corporate supervision, and the independence of SOE management. In connection with the above matter, this paper examines the legal aspects related to the establishment of SOE holding in Indonesia, namely the legal politics that underlie SOE holding policies and the legal basis and normative implications.

A. METHOD

This type of legal research is normative legal research (doctrinal research), the nature of prescriptive analysis with a statute approach. The data used is secondary data in the form of primary and secondary legal materials. Primary legal materials include Pancasila and the 1945 Constitution, Jurisprudence, PP No. 72 of 2016, the status of a subsidiary of holding is no longer an SOE but a Limited Liability Company, Law No. 40 of 2007 concerning Limited Liability Companies. Secondary legal materials are sourced from legal journals and reference books that study Fiduciary. The validity of the data was done by triangulation of sources and source criticism. Data analysis was done by carrying out legal interpretation, in this case, systematic legal interpretation and grammatical interpretation.

B. THEORETICAL FRAMEWORK

Hans Kelsen said that a legal system is a continuous process that starts from the abstract to the positive and finally becomes real. According to Kelsen, a norm is made according to higher standards and this higher norm is made according to even higher models, and so on, until the highest criteria are not made by bars anymore but predetermined by society (pre-supposed). According to Kelsen, the order of norms starting from Grundnorm (basic models), which are abstract (relative), are translated into Generallennorm (positive examples) and subsequently individualised into Concretenorms (real or concrete examples). From this explanation, it can be understood that basically, Stufenbau theory is a process of concretization (concretizing); therefore, all legal models starting from the highest legal standards to the lowest, constitute a unity in an orderly arrangement (samenhangende eenheid) and logical (logical he stufenbau), so that there is no contradiction or contradiction.⁴

C. ANALYSIS AND DISCUSSION

1. The Normative Concept of SOE Holding

According to Alenia IV of the Preamble of the 1945 Constitution, the Republic of Indonesia's goal is to realize the welfare of the citizens of Indonesia⁵. to achieve this goal, the foundations of the Indonesian economy need to be strengthened by one of them through the proper management of state finances. SOE management regulations regulated in Law No. 19 of 2003 concerning State-Owned Enterprises are derived from the welfare state theory explicitly adhered to in the 1945 Constitution, from the opening to the elaboration in its articles. The constitution of 1945 Constitution, which was coloured by the welfare state theory, thought establishing an Indonesian state government protected the entire Indonesian nation and could advance the general welfare.

SOE is a business entity or economic agent in the national economy whose entire or most of its capital comes from separate state assets. In the national economy, SOE plays a role in producing goods and services needed to realize the greatest prosperity of the people. The part of SOE is increasingly important as a pioneer and pioneer in business sectors that have yet to be interested in private business. SOE also has a strategic role in implementing public services, balancing large private forces, and contributing to developing small businesses or cooperatives. SOE is also a significant source of state revenue in the form of various types of taxes and privatization proceeds. The implementation of SOE's role is manifested in business activities in almost all economic sectors, such as the industrial and trade sectors, food, agriculture, fisheries, plantation, forestry,

⁴ Rosjidi Ranggawidjaja, *Pengantar Ilmu Perundang-Undangan Indonesia*, Mandar Maju, Bandung, 1998, page 26. Hans Kelsen, *General Theory of Law and State*, Russel & Russel, New York 1935, page 35.

⁵ Wiwoho, Jamal, and Wahyudi Sutopo. "Implementation of Javanese traditional value in creating the accountable corporate social responsibility." *International Journal of Law and management* (2017).

manufacturing, mining, finance, pharmacy, post and telecommunications, transportation, electricity, and construction.

Law No. 19 of 2003 concerning State-Owned Enterprises was drafted to make SOEs a development locomotive. The SOE Law is designed to create a management and supervision system based on the principles of efficiency and productivity to improve the performance and value of SOEs and prevent SOEs from exploiting actions outside the principles of good corporate governance. The SOE Law is also designed to organize and reinforce the role of institutions and the position of government representatives as shareholders/owners of SOE capital, as well as to clarify and clarify the relationship of SOEs as business operators with government agencies as regulators.

The provisions of article 1 number 1 of the SOE Law state that SOE is a business entity whose entire or most of its capital is owned by the state through direct participation from separated state assets. Furthermore, in the provisions of article 4 paragraph (2), it is stated that state capital participation in the context of establishment or participation in SOE comes from the State Budget (APBN), capitalization of reserves, and other sources.

SOE can be a Public Company (Perum) or a Company (Persero). The characteristic of a legal entity is the separation of the legal entity's assets from the assets of the owner and its management. Thus, a Legal Entity in the form of a Limited Liability Company has assets that are separate from the help of the Directors (as management), Commissioners (as supervisors), and Shareholders (as owners).

Article 4, paragraph (1) of SOE Law confirms that "SOE capital is and originates from separated state assets". Furthermore, Article 11 states that the company applies all provisions and principles that apply to limited liability companies as stipulated in Law Number 1 of 1995 concerning Limited Liability Companies. SOE is a civil legal entity that does not have public authority. State assets that become capital in the form of shares in the company or capital in public corporations are no longer state assets but have changed their legal status to those of the business entity. The implementation of SOE performance is considered not optimal, one of which is related to many SOEs that have become problems. The idea of downsizing SOEs is a must.

The SOE downsizing program is inseparable from the vision of structuring the number and scale of SOEs and improving the overall business structure. Law Number 19 of 2003 concerning SOEs states that restructuring is carried out to improve the company's internal conditions, improving the performance and value of the company. We can do several structuring methods, as is done by several countries. Among them are the establishment of holding companies, mergers and acquisitions, sale of shares to the public, sales to strategic partners, sales to management managers, management contracts, and other strategic alliances.

The basic idea of establishing a holding is to optimize management. If several SOEs in the same sector are in one holding, it is hoped that they can support each other. For example, production, human resources, distribution, establishment, and technology. Besides, holding will strengthen the capital structure and increase company flexibility. In turn, the subsidiary will move as a pure corporation.

The revision of the SOE Law needs to consider the economic analysis of the law. In terms of value, the holding company encourages SOE companies in similar industries to coordinate and compete healthily. The establishment of SOE holding would provide added value to Indonesia. SOE holding can also improve SOE capability in the era of global competition. In the context of efficiency, the establishment of holding will eliminate party political intervention that has been happening all this time. Given the flexibility to do business, surely the performance of SOE will increase because the professionals who run it will apply business rules and better corporate governance more consistently.

SOE's parents need a strong legal basis to accommodate the SOE Law's revision. The revisions related to the main SOE parent institution will abolish the Ministry of SOE, the position of the SOE parent as an agent of change, aspects of government share ownership, the establishment and dissolution of subsidiaries, competitiveness, and ensuring it does not overlap with other legislation.

The increasingly tighter business competition will encourage Indonesian SOEs to be more competitive, creative, innovative, efficient, and profitable. The support of the main Indonesian SOE in lobbying business and trade between countries will strengthen the expansion of SOE business globally. Ease of funding through banks and capital markets is also expected to boost the financial structure and capital. The increasingly tighter business competition will encourage Indonesian SOEs to be more competitive, creative, innovative, efficient, and profitable. The support of the main Indonesian SOE in lobbying business and trade between countries will

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2. SOE Holding and Best Practice in Other Countries

the idea of holding SOE was started during the 1998 monetary crisis under the leadership of Tanri Abeng. In the SOE blueprint, as an effort to produce value creation, SOEs are clustered into several groups. Then some holding is made so that the spending of control from the government becomes easier. The initial idea of choosing a holding company is management optimization. The holding company is led by a Chief Executive Officer (CEO) who reports the company's performance and reports directly to the President.

Until now, the government has formed six SOE-holding business sectors, namely:

- a. Fertilizer holding held by PT. Pupuk Indonesia is in charge of 10 subsidiary companies;
- b. Mining holding held by PT. Indonesia Asahan Aluminium (Inalum);
- c. Cement holding; the parent is PT Semen Indonesia (Persero) Tbk (formerly PT Semen Gresik (Persero) Tbk), which has subsidiaries of PT Semen Gresik, PT Semen Padang, PT Semen Tomasa, Dynamix and Thang Long Cement;
- d. Plantation holding, whose parent is PT Perkebunan Nusantara III (Persero), with 13 other PTPN subsidiaries;
- e. Forestry holding, whose parent is Perum Perhutani with subsidiary PT Inhutani I to V; and
- f. Oil and gas holding held by PT. Pertamina and PT Perusahaan Gas Negara (Persero) Tbk as subsidiaries.

Recently several business sectors are still holding, such as food, housing, banking, financial services, infrastructure, insurance, surveys, pharmaceuticals, and ports. This will form strategic area management, air transportation, maritime, defence, and national holding and news corporations.

This SOE holding was inspired by the success of holding held by other countries such as Temasek and Singapore.⁶, Khazanah Malaysia⁷, China Investment Corporation⁸, and Kreditanstalt für Wiederaufbau in Germany⁹. These countries give lessons that SOE companies fully implement the principles of the corporation within the holding of SOE. Not bureaucratic and free from outside interference. The holding company will act as a shareholder of the state companies. The process is implemented by setting targets, creating frameworks, and providing necessary corporate resource support.

The success of Temasek, Khazanah, China Investment Corporation, and Kreditanstalt für Wiederaufbau to finally own shares in various countries and record a stable performance each year should be exemplified by the Indonesian SOE holding going forward. In 2018, Temasek gained SGD 26.8 billion in profits from total revenue of SGD 107 billion. The key to success seen from Temasek includes influencing a diversified portfolio

⁶ Temasek is an independent and professional investment management company that manages its assets for commercial purposes. The purpose of establishing Temasek is to maximize profits while replacing the role of the Ministry of Finance, which was previously the asset manager and SOE investment policy maker. The establishment of Temasek is a commitment to manage the shareholders commercially so that the government's role as policymaker and regulations is on the mark. By establishing Temasek, the part of the Minister of Finance was only a shareholder. Et.

⁷ The Malaysian government established the National Khazanah in 1993. The Khazanah is an investment holding owned by the Government of Malaysia that is mandated to manage commercial assets owned by the government and make strategic investments. Besides, Khazanah also played a role in building a strategic industry in Malaysia.

⁸ China Investment Corporation is a Chinese state-owned company founded in 2007. The Beijing-based company is in charge of helping the Chinese government to increase investment and financial markets. CIC manages total assets of US \$ 800 billion. Of the assets under management, as much as US \$ 200 billion came from foreign investment.

⁹ Kreditanstalt für Wiederaufbau (KfW) Development Bank is a state-owned bank owned by the German government. This bank focuses on lending to micro, small and medium enterprises (MSMEs). Previously, this bank was named KfW Bankengruppe, based in Frankfurt. About 80% of KfW shares were owned by the Federal Republic of Germany or West Germany at that time, while the German government held 20% after reunification. This bank finances housing construction or housing loans (KPR), export-import financing, foreign investment financing, and development assistance.

around the world, full autonomy in the investment holding management model, and having the right management.¹⁰

These countries taught that with the holding of SOEs, SOE companies can fully implement corporate principles properly and are not bureaucratic and free from the outside intervention that is non-economic. The holding company will act as a shareholder of the state companies. The process is implemented by setting targets, creating frameworks, and providing necessary corporate resource support.

The increasingly fierce global business competition has pushed Indonesian SOEs to improve to become more competitive, creative, innovative, efficient, and provide optimal benefits. The support of Indonesia's SOE holding in influencing policies and business lobbying between countries will strengthen SOE business expansion globally. Ease of funding through banks and capital markets will strengthen its financial and capital structure. Indonesian SOE holding also has a social responsibility to create jobs and increase state income. Regarding the transition to holding SOEs, The Ministry of SOEs needs to carry out the SOE development with a responsive, fast, easy, transparent, and accountable corporate approach.

3. Political Law of Establishment of SOE Holding

Juridical thinking choices in this writing boil down to theories about the purpose of a country's existence. Some theories about the existence of a well-known state include the concept of the rule of law and the welfare state. In the rule of law concept, the state carries out its activities using various legal instruments. Meanwhile, in the welfare state (welfare state) concept, the state's role becomes dominant in every aspect of people's lives to realize social welfare. Emmanuele Pavaloni and Costanzo Ranci¹¹ They stated that several countries in the western European region have carried out legal reforms over a long period to support the realization of improving the welfare of their people.

The purpose of the state in the concept of the welfare state is for the general welfare. The state organizes the power to control administration and politics, modifying markets for its people's social welfare and economic capacity. Haksoon Kim¹², in his research, said that the political stability created would make the right investment climate (including in the management of SOEs) to attract foreign investors. The management of SOE is an embodiment of state responsibility in managing state finances within the framework of the welfare state. The regulation of SOE management must provide legal certainty in the management of SOE.

The welfare state refers to an ideal model of development that focuses on improving welfare by giving the state an important and greater role in providing comprehensive social services to its citizens. Paul Spicker states, "... stands for developed ideal in which welfare is provided comprehensively by the state to the best possible standards". Economic development greatly influences the level of prosperity of a country. Government policy aims to change the condition of the country for the better.

As part of the management of state finance, SOE management is a form of state participation in efforts to develop the economy to improve the welfare of the community. John Maynard Keynes¹³ stated that state participation is the answer to the condition of market imperfection that demands a better role for the government in its function as an agent of development, including in the management of government investment. However, Rian Duchin and Denis Sosyura¹⁴, stated that government intervention needs to be limited so that it does not interfere with the existing mechanism for implementing government investment.

According to the Chinese economist Shimin Chen.¹⁵, the right government intervention will increase the economic effectiveness, as is the case with the management of SOEs in China, where government intervention in improving the governance of SOEs can improve the efficiency of the company; otherwise, if the intervention is not appropriate, for example entering political interests in managing SOEs will adversely affect company

¹⁰ www.market.bisnis.com, 13 Maret 2019

¹¹ Emmanuele Pavaloni dan Costanzo Ranchi, "Restructuring the welfare state: reform in long-term care in Western European Countries", *Journal of European Social Policy*, Vol.18 (3), Edisi 2008, California: Sage Publications, page 246.

¹² Haksoon Kim, "Political Stability and Foreign Direct Investment", *International Journal of Economics and Finance*, Vol. 2, No. 3, Edisi 2010, Toronto: Canadian Center of Science and Education, page 27.

¹³ Komaruddin Sastradipoera, 2007, *Sejarah Pemikiran Ekonomi*. Bandung: Kappa-Sigma, page 247.

¹⁴ Rian Duchin dan Denis Sosyura, "The politics of government investment", *Journal of Financial Economics*, Vol. 106, Issues 1, Edisi 2012, Rochester: the Simon Business School University of Rochester, page 36

¹⁵ Shimin Chen, dkk, "Government Intervention of Investment Efficiency: Evidence From China", *Journal of Corporate Finance*, Vol. 17, No. 259-271, Edisi 2011, Amsterdam: Elsevier, page 12.

performance. In the context of government investment management, government participation aims to improve the welfare of its people.

According to Freidrich Wu¹⁶, the management of government investment in Singapore carried out by the Government of Singapore Investment Corporation Private Limited (GIC) is a political gamble on economic law in which the government investment management policy is carried out amid the considerable development funding needs. This policy led to the success of government investment in supporting Singapore's long-term economy.

In 2008, Morgan Stanley Financial Authority estimated that GIC assets were around 330 billion USD. The strong participation of the Government of Singapore¹⁷ determining the decision-making mechanism for implementing government investment in the national interest is one of the keys to managing government investment. The Minister of Finance determines investment objectives, risk parameters, and portfolio policies, and the Monetary Authority of Singapore supervises.

Economic policies must be translated into regulations that are oriented toward welfare. Stephen K. Aikins¹⁸ stated that in the global economic crisis, the government must make regulations in the economic field (market protection) that protect people. The policy was also implemented in the management of government investment in Germany by KfW. The composition of ownership of the KfW government investment manager¹⁹ The German Federal Government by 80% and the German State Government by 20% KfW is exempt from corporate tax payment obligations because of its legal status as a public body. KfW can provide lower interest rates than commercial bank interest for the purpose set by the government. KfW may not compete with commercial banks. KfW will only finance a project where commercial banks do not defray the project under government assignments.

In connection with public services and payment of retired civil servants, management of government investment in Australia is carried out by The Australia Government Future Fund (AGFF) to manage government funds independently to meet government obligations in the future. I carry out the mechanism of government investment management) the government determining the investment mandate; ii) The Body of Guardian providing recommendations on investment implementation; iii) Investment Managers carrying out investments; iv) distribution/use of investment proceeds by the relevant Minister, and v) Oversight by the Australian Prudential Regulation Agency (APRA).

From the description above, the framework of the welfare state requires all parties, including legal experts, to prepare regulations oriented to people's welfare and community protection. Regarding the SOE management implementation within the framework of the welfare state, SOE management regulations in Indonesia must provide legal certainty. The objectives of SOE management can realize the welfare of all Indonesian people. According to Paul Rose²⁰, in the management of government investment (SOE management) shows a link between regulations and the politics of a country, where the law provides legal certainty in managing government investment, especially in managing SOEs.

4. Legal Aspects of the Establishment of SOE Holding

Legal arrangements always follow state capital participation in the state or PT. In this case, according to Government Regulation Number 72 of 2016, a change to several Articles of PP No. 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies which government regulation does not yet regulate the concrete mechanism regarding the establishment of holding.

¹⁶ Freidrich Wu, "Singapore's Sovereign Wealth Funds", *Journal of World Economics*, Edisi September 2008, London: World Economics, page 15.

¹⁷ Wilson Ng, "The evolution of Sovereign Wealth Fund: Singapore's Temasek Holding", *Journal of Financial Regulation and Compliance*, Vol. 5, Issues.1, Edisi 2010, Bradford: Emerald Group Publishing Limited, page 17

¹⁸ Stephen K. Aikins, "Global Financial Crisis and Government Intervention: A Case for Effective Regulatory Governance", *Journal of International Public Management Review*, Vol. 10, No. 2, Edisi 2009, St. Gallen: The International Public Management Network, page 23.

¹⁹ <https://www.kfw.de/KfW-Group/About-KfW/Zahlen-und-Fakten/>, diakses tanggal 15 Maret 2015.

²⁰ Paul Rose, "Sovereign Wealth Fund investment in the shadow of Regulation and Politics", *Georgetown Journal of International Law*, Vol. 40, No. 4, Edisi 2009, Washington DC: Law and Policy in International Business, Georgetown University Law Center, page 25.

Before PP No. 72 of 2016, there were no legal arrangements related to the establishment of holding in Indonesia from some literature on group companies, and the law that regulates it is often said to be a holding company. The word holding has only been found in Government Regulation No. 72 of 2016, in Indonesia also needs to recognize the existence of Investment Holding, which is the holding company that only shares in a subsidiary without carrying out supporting activities or operational activities. The parent company receives most of the revenue only from dividends provided by the subsidiary. In operating holding, the parent company carries out business activities and controls subsidiaries. The parent company's business activities will usually determine the type of business that the parent company must fulfil.

Government Regulation No. 72 of 2016 was made because of the previous government regulation, PP No. 44 of 2005, concerning Procedures for the Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies considered insufficient in regulating the initiation of the establishment of sectoral holding in Indonesia. According to PP Number 72 of 2016, several Articles were amended and added related to the participation of state capital in and the implementation of the SOE restructuring process, namely:

a. Provision number 8 Article 1 is amended to:

The administration is a series of activities involving the administration of state participation in SOE and Limited Liability Companies.

b. According to provisions of paragraph (2) and paragraph (3), there is a change where the source of the participation of state capital comes from the State Revenue and Expenditure Budget, which no longer comes from projects financed by the State Budget but comes from state-owned shares in SOEs or Companies limited.

c. Between Article 2 and Article 3 is inserted 1 (one) article, namely Article 2A, namely:

Article 2A

(1) Participation of state capital originating from state assets in the form of state-owned shares in an SOE or Limited Liability Company, as referred to in Article 2 paragraph (2) letter d to another SOE or Limited Liability Company, is carried out by the Central Government without going through the State Budget and Revenue mechanism.

(2) Regarding The state assets in the form of state-owned shares in SOEs, as referred to in Article 2 paragraph (2) letter d, shall be used as state capital participation in other SOEs so that other SOEs own most shares, the SOEs will become SOE subsidiaries with state provisions must have shared with special rights stipulated in the articles of association.

(3) As referred to in Article 2 paragraph (2), state assets are used as state capital participation in an SOE or Limited Liability Company. They are transformed into shares/state capital in the said SOE or Limited Liability Company.

(4) As referred to in paragraph (3), The assets of the transformed state shall become the assets of such SOE or Limited Liability Company.

(5) Ownership of shares/state capital in SOE or Limited Liability Company is recorded as a long-term investment following the percentage of Government ownership in SOE or Limited Liability Company.

(6) As referred to in paragraph (2), SOE subsidiaries' ownership of most shares remains owned by these other SOEs.

(7) As referred to in paragraph (2), SOE subsidiaries are treated the same as SOEs for the following matters :

a. Get the government assignments or carry out public services; and.

b. Get state and government-specific policies, including managing natural resources with certain treatments applied to SOEs.

According to this article, the administration changes from the previous administration that only regulates the recording in the administration framework to determine the amount of state participation in SOE and PT. It Regulating the administration of state capital participation in SOEs or PT is necessary to restructure the establishment of holding companies sectorally. it is the government's strategy in the establishment of an SOE holding by engaging the state capital sourced from a shift in state-owned shares in certain SOEs and PTs to other SOEs and PTs. Provisions in Government Regulation No. 44/2005 need to be amended regarding the inclusion of state capital sourced from shifts in state-owned shares in certain SOEs and PTs to other SOEs and PTs.

State-owned shares in SOE or PT are state assets that have been separated from the State Budget, so the transfer of shares meant to be included in SOE or PT is not done through the mechanism of the Revenue and Expenditure Budget. After restructuring, the subsidiary holding SOE status is no longer an SOE. This issue

clarifies that previously there were still often pros and cons regarding the phrase "direct equity participation" explained in Article 1 of Law Number 19 of 2003 concerning the status of holding subsidiaries as before the establishment of holding companies was still categorized as an SOE.

Article 6 states that most of the shares are still owned by SOEs as holding companies to protect the subsidiary from the possibility of privatization by the state towards SOEs. The majority ownership means that the holding SOE still owns more than 50% of the shares in the former SOE subsidiary. The state can continue exercising control through Parent SOEs related to treating subsidiaries equated with SOEs. The same treatment in the form of state and government-specific policies is the process and licensing, the right to obtain HPL, land expansion activities, and participation in state or government activities involving SOEs.

The state has shares with special rights in a subsidiary of a holding SOE as meant by special rights stipulated in the articles of association, including the right to approve:

- a. Appointment of directors and commissioners;
- b. Changes to the articles of association;
- c. Changes in the structure of share ownership;
- d. Merger, fusion, separation and dissolution, and a takeover by another company.

In a holding subsidiary, the state still has a 10% stake to continue to supervise and control the subsidiary's performance. The holding restructuring activity is intended to improve the capital structure, such as reducing the percentage of share ownership by the state as a result of issuing new shares that are not part of the state (dilution), shifting or transferring state-owned shares to SOEs or PT to SOEs as state capital participation, among others in order to establish a holding company for SOE.

5. Legal Relationship Between SOE Holding Company and Subsidiaries in Establishing SOE Sectoral Holding.

Indonesian law sees the company in the form of a separate legal entity²¹. It has limited liability, where both doctrines are important to see more about the holding company problem. At the beginning of its development, controlling a company against another company was considered to violate the legal principles regarding the legal independence of a company as an independent legal subject because a company could not possibly become an independent legal entity controlled by another company.

The following things cause the relationship between the parent company and subsidiaries in holding company construction.²² :

a. Parent Company Ownership of Subsidiary's Shares

The parent's ownership of a significant number of subsidiary shares gives the parent company the authority to act as the central leader who controls the subsidiaries as a management unit. One of the functions of holding stock in a subsidiary is the control function. The control function of share ownership in a subsidiary gives voting rights to the parent company to control the subsidiary through various existing control mechanisms, such as a general meeting of shareholders to support investment from the construction of group companies as an economic unit.

b. General Meeting of Shareholders (GMS)

The company can implement strategic things to support the goals of the group company as an economic unit by setting the company's long-term goals in the form of a five-year business plan known as a strategic plan (strategic plan). In this strategic plan, the directors of the parent company set the primary policies of the company, which consist of the company's vision, mission, culture, and strategic objectives. All subsidiaries follow the parent company's primary policies to prepare their term plans.

c. Placement of Members of the Directors and Board of Commissioners of Subsidiaries

The parent company has the authority to place the board of directors and board of Commissioners in the parent company concurrently to become directors or commissioners of the subsidiary. The placement of the parent companies in the subsidiaries is a form of indirect control over the operational activities of the subsidiary.

d. Linkage through Voice of Agreement Agreement

²¹ Pujiyono, P., Waluyo, B., & Manthovani, R. (2020). Legal threats against the existence of famous brands a study on the dispute of the brand Pierre Cardin in Indonesia. *International Journal of Law and Management*.

²² Sulistiowati, 2010, *Aspek Hukum dan Realitas Bisnis Perusahaan Grup di Indonesia*, Erlangga, Jakarta. Page : 95-96.

The relationship between the parent and subsidiary companies can also occur because of a voice agreement between the founding shareholders, who agreed that the appointment of directors and the board of commissioners is determined by one of the founding such agreements that occur in group companies or state-Owned Enterprises. These agreements are often referred to as red and white shares and are referred to as series A shares.

e. Linkage Through Contracts

The company can transfer the management control to other companies through company management agreements.

Holding companies in the reality of business law in Indonesia appear and develop due to the holding of shares of the parent company of other companies, which later become its subsidiaries. *Zeggenschapsfunctie's* share ownership or share ownership control function in a subsidiary gives voting rights to the parent company to control the subsidiary through various existing control mechanisms, such as the GMS to support the *Beleggingsfunctie* construction of group companies as an economic unit. As described below:

a. Ownership of parent stock in a subsidiary construction of a group company that is articulated through a parent's control authority over a subsidiary will support the company as an economic entity so that the parent company obtains a better return on investment in the group company than a single company.

The power to control a company needs a clear boundary or meaning, so there is no satisfactory explanation regarding company control. The control supervision design is in the form of the power to supervise every company action, which includes:

1. Internal company relations: When shareholders perform the control function of the company's management, or the auditor performs the control function of the company's annual status and financial statements.

2. External company relations: Control of the company is run by a market mechanism or market for corporate control, applicable laws and regulations or control of corporate conduct.

b. The design of the concept of control dominion is in the form of power to exercise dominance over the actualization of corporate governance and direction on the life and relations of the company. From an economic point of view, independence and control correspond but simultaneously encounter a partial overlap with the two primary institutions that are the media for the coordination and operationalization of economic activity, namely the market and the hierarchy. Group companies are seen as an excellent form of corporate organization with the specificity that results from a mixture of planned and flexible things over market elements and hierarchies considered organized markets.

Based on the principle of independence of a subsidiary as a legal entity, the holding company does not have the legal authority to interfere with the policies and subsidiaries. The holding company involvement is as follows:

a. Directors and commissioners who are appointed by the holding company as shareholders, so far as they do not conflict with the holding company's articles of association.

b. Through contractual relations, as far as not conflicting with the company's articles of association.

Article 52 paragraph (1) governs the rights of shareholders, namely: Shares Give rights to their owners to²³:

a. Attending and issuing votes at the AGM.

b. Receive dividend payments and the remaining assets of liquidation.

c. Exercise other rights under this law.

Thus, as the majority shareholder of a company, the holding company has the majority vote power in the GMS.

²³ Undang-Undang Nomor 40 Tahun 2007 Pasal 52 Ayat 1

D. CONCLUSION

SOE holding scheme is one of the strategies to make a global red plate company. There are several challenges in establishing SOE holding in Indonesia, including the authority to develop holding, corporate development, efficiency, monopoly potential, spending of control, and the independence of SOE management. It needs more effort to face these challenges, including a detailed understanding of the target market, accurate due diligence, cultural adaptation, coordination with KPPU, independence, and handling of pre-merger integration. Political law becomes the outline and basis of the plan for implementing the state in terms of the establishment and implementation of legislation policies based on the values that develop in society to achieve the objectives of the state, according to Pancasila and the 1945 Constitution which also reflected in efforts to renew the management of SOEs.

Establishing an SOE holding by reorganizing the authority of operators, regulators, and supervisors expects SOE management to bring prosperity to Indonesia's people. After the issuance of PP No. 72 of 2016, the status of a holding subsidiary is no longer an SOE but a Limited Liability Company subject to Law No. 40 of 2007 concerning Limited Liability Companies. PP No 72 of 2016 also explained the shift in the state capital in the form of shares to holding companies. The parent company made the shares of a subsidiary previously owned by the state and had shifted to become the property of an SOE. The state controls a subsidiary holding through its parent company. The state shares special rights in a subsidiary of a state-owned enterprise in which the holding company of holding still owns more than 50% of the shares of its subsidiary.

In holding this SOE, establishing a holding company that becomes a holding can synergize well in improving performance and value-added. Once in the form of holding, the consolidated financial statements between the subsidiary and the parent company are consolidated. The government retains control over SOE holding subsidiaries held 100% by the state and the same sector as the subsidiary; then, the state also maintains dichromatic shares in all holding and its subsidiaries, and the government still elects the holding Board of Directors and its subsidiaries. So, the government still controls the holding and its subsidiaries.

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