

Reorganization Of PT Pertamina (Persero) And Its Impact On Status Holding Company From The Viewpoint Of Beneficial Ownership Of The Business

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Abstract : *Corporate restructuring is a common thing to do in favor of performance efficiency. But what if it is State Owned Enterprises undergoes a restructuring? Internal restructuring of State-Owned Enterprises is actually not a new thing, an inefficient organizational structure certainly requires an update, but what if the restructuring of a State-Owned Enterprises resulted in the formation of a Holding Company? What are the juridical implications about the status of the Holding Company? The juridical basis for the formation of a State-Owned Enterprises Holding Company used so far is Government Regulation No. 72 of 2016 concerning procedures for state capital participation in State-Owned Enterprises and Limited Liability Company. Because of this background, the researcher will examine the regulation of State-Owned Enterprises Holding Company in Indonesia and its impact on the status of subsidiaries incorporated in PT Pertamina as a StateOwned Enterprise in the oil and gas sector.*

Keywords : *Holding Company, State-Owned Enterprises, PT Pertamina (Persero)*

Abstrak : Restrukturisasi korporasi merupakan hal yang lumrah dilakukan demi efisiensi kinerja. Namun bagaimana jika yang mengalami restrukturisasi adalah Badan Usaha Milik Negara? Restrukturisasi internal Badan Usaha Milik Negara sebenarnya bukanlah hal yang baru, struktur organisasi yang tidak efisien tentu memerlukan pembaharuan, namun bagaimana jika restrukturisasi Badan Usaha Milik Negara berujung pada pembentukan Perusahaan Induk? Bagaimana implikasi yuridisnya terhadap status Perusahaan Induk tersebut? Landasan yuridis pembentukan Perusahaan Induk Badan Usaha Milik Negara yang selama ini digunakan adalah Peraturan Pemerintah Nomor 72 Tahun 2016 tentang Tata Cara Penyertaan Modal Negara pada Badan Usaha Milik Negara dan Perusahaan Terbatas. Oleh karena latar belakang tersebut, maka peneliti akan mengkaji tentang pengaturan Perusahaan Induk Badan Usaha Milik Negara di Indonesia dan dampaknya terhadap status anak perusahaan yang tergabung dalam PT.Pertamina sebagai Badan Usaha Milik Negara di sektor migas.

Kata kunci : Perusahaan Induk, Badan Usaha Milik Negara, PT.Pertamina (Persero)



I. INTRODUCTION

A state based on law is a state whose government is able to ensure the welfare of its citizens. In carrying out business law, we must know the theories of the law itself, namely what is meant by the definition of law. In legal sociology, legal history and comparative law, it is proven that law varies according to place and time.¹ Government employment opportunities will increase due to the active participation of the state in social activities, claims E. Utrecht. This is in accordance with the fundamental idea of fundamental idea of the purpose of the state as stated in the Preamble of the 1945 Constitution of the Republic of 1945 Constitution of the Republic of Indonesia, which is to promote general welfare or in other words, to realize social justice for all Indonesian people. in other words, realizing social justice for all Indonesian people. As required by the 1945 Constitution, Indonesia established State-Owned Enterprises (hereinafter referred to as SOEs) to fulfill the needs of the community in the fields of public welfare. (hereinafter referred to as SOEs) to fulfill the needs of the community in important areas such as gas, oil, water, social justice, and the environment. such as gas, oil, water, and electricity.²

State-owned enterprises (SOEs) are major commercial players in many developing countries, including Indonesia. To drive economic growth, APBN revenues from SOEs will be used for capital and operational expenditures; therefore, SOEs need to monitor and improve their performance. According to Law No. 19/2003 on SOEs, Article 1 point (1) which serves as the normative basis for the organization, SOEs are defined as business entities whose capital is wholly or partially owned by the State through direct investment sourced from divided State assets.³

Today, the global corporate and business environment is characterized by increasing rigor and dynamism. Corporate structures that once functioned as conservative entities have now evolved into entities that are more adaptable, innovative and flexible in responding to change. A similar phenomenon has also occurred among SOEs in Indonesia. Since the beginning of Tanri Abeng's tenure as Minister of SOEs, the concept of restructuring SOEs through the establishment of "holding companies" has been proposed. This was triggered by the increasing number of SOE entities that reached hundreds and mostly operated in the same industry. The concept began to fade at that time. However, it reappeared during the 2019 presidential debate when Joko Widodo questioned the holding and super holding of SOEs, seeing it as a step to ensure survival and expand international horizons.⁴

Referring to Law No. 9 of 1969, there is a division of the SOE sector, namely: limited liability company (persero), labor company (perjan), and public company (perum).⁵ After the enactment of Law No. 19/2003 on State-Owned Enterprises, the classification was simplified into two categories: Public Companies (Perum) and Company Companies

¹ Noviriska, Solusi Konflik Hukum Bisnis Dalam Kontrak Kerjasama Antara Agency Model Dan Talent Dengan Para Pihak Pada Industri Entertainment, JURNAL KRTHA BHAYANGKARA, Vol 13 No. 1 (2019)

² Ratna Januarita. *Equal Opportunities between SOEs and Private Companies*, OECD: 5th meeting of the OECD Network on Corporate Governance of State-Owned Enterprises in Asia. (2010). hlm. 1

³ UU Nomor 19 Tahun 2003 tentang Badan Usaha Milik Negara

⁴ Lisnawati. *Tantangan Pembentukan Holding Badan Usaha Milik Negara di Indonesia*. Pusat Penelitian Badan Keahlian DPR RI: Vol .XI,No.01/Puslit/Januari/2009. (2009). hlm.19

⁵ 7 UU Nomor 19 Tahun 2003 tentang Badan Usaha Milik Negara

(Persero). Each type of SOE is governed by specific regulations; for example, an SOE with a Limited Liability Company structure must adhere to Law No. 40/2007 on Limited Liability Companies. In essence, an SOE is a legal entity included in the category of State-Owned Enterprises, in which the definition of “state” means:⁶

- i. Onderneming, refers to the legal structure of a company, such as a PT, Firm, or Limited Partnership (CV). This means that there are legal classifications for legal entities and non-legal entities.
- ii. Bedrijf, which denotes a unit of production methodology, includes concepts such as Huisvlij (household or domestic industry) and Nijverheid (specialized craft or skill).

The establishment of a “holding company” is expected to result in a corporate structure that is more organized and aligned with their respective business domains. Historically, many state-owned enterprises have subsidiaries engaged in business sectors that are not related to the core activities of the parent organization. This event prompted President Joko Widodo to initiate the restructuring of SOEs through a holding framework. The phrase “holding company” comes from United States law. A holding company refers to the main entity that oversees other companies in the same corporate group. A holding company, as defined in Black's Law Dictionary, is an entity that primarily invests in subsidiaries and oversees their management operations. A holding company is an entity that owns shares in several subsidiaries to improve overall performance and facilitate the generation of market value.

M. Manullang defines a “holding company” as a legal entity that owns some shares in many business entities.⁷ Munir Fuady describes a “holding company” as an entity whose purpose is to own shares in one or more other companies and/or supervise one or more of these companies.⁸

II. RESEARCH METHOD

Research methods are described as a systematic approach to conducting research. Methods are defined as scientific activities that involve a methodical approach to understanding the subject or purpose of an investigation, which aims to find answers that can be accounted for.⁹ Methods act as an initial framework that leads to key propositions in a particular domain of knowledge. Research is characterized as a methodical approach to advancing research by seeking scientific solutions to existing problems, using established methodologies aligned with certain theories, concepts and assumptions. The research approach used is normative juridical research, which focuses on testing legal norms through secondary data analysis.¹⁰ Normative research is conducted through literature studies by examining various laws and regulations and other documents as secondary legal materials contained in books, scientific works, journals, and articles in

⁶ R.T. Sutantya, R. Hadikusuma, S.H. dan Dr. Sumantoro. *Pengertian Pokok Hukum Perusahaan*. Jakarta: PT Raja Grafindo Persada. (1996). hlm.3.

⁷ M. Manullang. *Pengantar Ekonomi Perusahaan*. Yogyakarta: BLKM. (1984), hlm.70

⁸ Munir Fuady. *Hukum Perusahaan Dalam Paradigma Hukum Bisnis*. Bandung: Citra Aditya Bakti. (2008). hlm 83.

⁹ Jonnaedi Effendi dan Johnny Ibrahim. *Metode Penelitian Hukum Normatif dan Empiris*. Jakarta: Penerbit Kencana. (2018) hlm. 2

¹⁰ Rosady Ruslan. *Metode Penelitian Public Relations dan Komunikasi*. Jakarta: Rajawali Press. (2003). hlm.24

newspapers, magazines, and online media.¹¹

This article examines the process of establishing the “Holding Company” PT Pertamina (Persero) from the perspective of Corporate Law. This research utilizes primary data sources, specifically laws, regulations, ministerial decrees, and similar documents. Secondary data refers to documents that explain primary legal sources, including draft laws, research results, and scholarly works in the legal community. Tertiary data can shed light on the understanding of primary and secondary legal documents, including legal dictionaries, the Big Indonesian Dictionary (KBBI), and encyclopedias. The data obtained is then evaluated and articulated to strengthen this investigation. The discussion is conducted comprehensively and methodically, using legal materials (primary, secondary and tertiary). This investigation uses a qualitative methodology, which summarizes and then compares the facts with the laws and regulations and the perspectives of legal experts.

III. DISCUSSION

1. Corporate Restructuring

Corporate Restructuring when freely translated from the writings of Espen Eckbo and Karin S. Thornburn can be interpreted as “Initiatives to improve and optimize corporate performance, which include restructuring ownership, operational frameworks, or legal and financial processes. The purpose of corporate restructuring is to align the company's organizational structure with current or future needs”¹² The restructuring of PT Pertamina (Persero) as a state-owned enterprise is also expected to produce a corporation that responds accurately and comprehensively to developments in the business world, resulting in the development of the nation as a whole. According to Wang & Judge (2012), “The history of state-owned enterprise (SOE) reforms has primarily focused on privatization. Nonetheless, the experience of State-Owned Enterprise reforms indicates that privatization can be arduous, as merely replicating the privatization processes of developed nations would not yield significant success in transitional circumstances.”¹³

Menurut Birdsall & Nellis (2005), “Furthermore, unsuccessful endeavors may provoke opposition to the process, heightening the dangers associated with reform.”¹⁴ This led Moreno de Avecedo Sanchez (2016) to conclude that “This may elucidate why, despite widespread privatization in various nations, state-owned enterprises continue to endure in global economies. Worldwide, over 2000 state-owned businesses (SOEs) are present in OECD nations, and SOEs represent 10% of the top global enterprises by

¹¹ Jonathan Sarwono. *Metode Penelitian Kuantitatif dan Kualitatif*. Yogyakarta: Graha Ilmu. (2006). hlm.15

¹² B. Espen Eckbo & Karin S. Thornburn. “*Corporate Restructuring*”. Foundations and Trends® in Finance: Vol. 7: No. 3, pp 159-288. (2013)

¹³ Wang, L., & Judge, W. Q. (2012). *Managerial ownership and the role of privatization in transition economies: The case of China*. Asia Pacific Journal of Management, 29(2), 479–498.

¹⁴ Birdsall, N., & Nellis, J. (2005). *Privatization reality check: distributional effects in developing countries*. In Preface vii (pp. 1).

market value.”¹⁵ Despite the considerable risks, according to Hyungon Kim & Kee Hoon Chung (2018),¹⁶ Holding-ization process can provide great benefits, namely:

- i. Distinguishing the state's ownership functions from its policymaking and regulatory roles to reduce conflicts of interest.
- ii. Reducing political interference and enhancing professionalism in the state's ownership responsibilities.
- iii. Enhancing coherence and consistency to meet corporate governance standards and effectively exercise the state's ownership role across all state-owned enterprises.

2. Concrete Examples of State-Owned Company Restructuring Abroad

The restructuring of PT Pertamina (Persero) into its own Holding and Sub-Holding Companies is not a new precedent. Long before Indonesia, other countries have established holding companies for their State Owned Enterprises, for example Temasek (Singapore, 1974), Austrian Industry-Holding Stock Corporation (Austria, 1986), Khazanah Nasional Berhad (KNB) (Malaysia, 1994), The State Capital Investment Corporation (Vietnam, 2006), Druk Holdings and Investments (Bhutan, 2007), Samruk Kazyna (Kazakhstan, 2008) and the Hungarian National Asset Management (Hungary, 2008).

Temasek Holdings Limited is a prime example of the most successful SOHC (State-Owned Holding Company) formation. During the 1980s and early 1990s, Temasek's main role was to privatize the country's domestic assets. As a result, THL successfully divested more than 60 companies, either partially or fully by 2001. In a government-SOH relationship, Temasek is free from government control, allowing THL to pursue profitability and efficiency in the same way as private companies. Temasek has a team that handles management issues of its companies in which it has at least a 20% ownership stake.¹⁷

Malaysia has Khazanah Nasional Berhad (KNB) which was established as the investment arm of the Malaysian Government in 1993 and is wholly owned by the Ministry of Finance. From its inception, Khazanah was mandated with two main objectives: to manage commercial assets owned by the federal government and to make 'strategic investments' on behalf of the government.¹⁸ By 2013, its assets had increased from US\$2.14 billion in 1994 to US\$41.3 billion, with investments in more than 50 companies both in Malaysia and overseas. KNB is wholly owned by the government and reports directly to the prime minister (chairman of the board) who provides investment direction to the organization.

¹⁵ Moreno de Acevedo Sánchez, E. (2016). *State-owned enterprise management: advantages of centralized models*. Washington D.C: Inter-American Development Bank

¹⁶ Hyungon Kim & Kee Hoon Chung (2018). *Can state-owned holding (SOH) companies improve SOE performance in Asia? Evidence from Singapore, Malaysia and China*. *Journal of Asian Public Policy*, 11:2, 206-225, DOI: 10.1080/17516234.2018.1450624

¹⁷ Ang, J. S., & Ding, D. K. (2006). Government ownership and the performance of government-linked companies: The case of Singapore. *Journal of Multinational Financial Management*, 16(1), 64–88.

¹⁸ Hyungon Kim & Kee Hoon Chung, loc. cit

Although Khazanah publicly states that it does not intervene in the management of SOEs, a report states otherwise and states that Khazanah has been 'actively involved in the restructuring' of SOEs.¹⁹ For example, Tenaga Nasional, the national electricity generation and distribution company (in which Khazanah had a 36% stake in 2011), has not been able to raise the price of electricity, which is a key determinant of Tenaga's revenue. This case illustrates the control of inputs by the government when they deem necessary, as social concerns trump Khazanah's commercial interests.

China has never approved full privatization of state-owned enterprises (SOEs)).²⁰ Why? Because in addition to other influential holdings such as families, and institutional investors, government-owned organizations also wield great influence. State-Owned Enterprises (SOEs), in this case, represent an important aspect of the world economy.²¹ which makes up about 10 percent of global gross domestic product (GDP),²² and contribute more than 20 percent of the total number of companies and their revenues as listed in the Fortune Global 500.²³ Studies also show that SOEs contribute to 15 percent of GDP in Asian countries.²⁴ Because of the importance of SOEs, the Chinese government essentially decided to take on a dual role, with the government-as the shareholder of the privatized SOEs and the regulatory authority of the corporate sector..²⁵

3. Rationale for PT Pertamina (Persero) Restructuring Policy

Seeing the success of other countries, Indonesia decided to create a SOHC (State Owned Holding Company). Indonesia's State-Owned Enterprises (SOEs) have become a driver of the national development strategy. The current administration actively uses SOEs to implement development projects based on the belief that SOEs are capable of correcting market failures and supporting fiscally constrained governments. In order to strengthen the role of SOEs, the Government of Indonesia is pursuing a medium-term plan to create sector-based holding companies by establishing holding companies. The government hopes that these SOHC companies will enable SOEs to expand investment and benefit from synergies.²⁶

The performance of SOEs is currently not optimal. State-owned enterprises (SOEs) continue to incur losses, hindering the ideal realization of SOEs' purpose for social welfare. Therefore, the Government of Indonesia has prioritized the restructuring of SOEs to improve efficiency and increase enterprise value. This restructuring involves a

¹⁹ Lai, J. (2012). *Khazanah Nasional: Malaysia's treasure trove*. Journal of the Asia Pacific Economy, 17 (2), 236–252

²⁰ Choon-Yin Sam, 2013. *Partial privatisation and the role of state owned holding companies in China*. Journal of Management & Governance, Springer;Accademia Italiana di Economia Aziendale (AIDEA), vol. 17(3), pages 767-789, August. 3

²¹ Lin, K.J., Lu, X., Zhang, J. & Zheng, Y. (2020). *State-owned enterprises in China: A review of 40 years of research and practice*. China Journal of Accounting Research, 13, 31-55. <http://dx.doi.org/10.1016/j.cjar.2019.12.001>

²² Bruton, G.D., Peng, M.W., Ahlstrom, D., Stan, C., & Xu, K. (2015). *State-owned enterprises around the world as hybrid organizations*. Academy of Management Perspectives, 29(1), 92-114. <http://dx.doi.org/10.5465/amp.2013.0069>

²³ Lin, K.J., Lu, X., Zhang, J. & Zheng, Y, loc. Cit.

²⁴ Budiman, A., Lin, D., & Singham, S. (2009). *Improving performance at stateowned enterprises*. McKinsey Quarterly,10(3), 22-52

²⁵ Choon-Yin Sam, loc. cit

²⁶ Kim, Kyunghoon. *Matchmaking: Establishment of state-owned holding companies in Indonesia*. Asia Pac Policy Stud. 2018; 5: 313–330. <https://doi.org/10.1002/app5.238>

major program directed by Article 33 of the 1945 Constitution of the Republic of Indonesia, specifically the reorganization of SOEs through more precise mapping, which aims to achieve a more optimal number and scale of SOE companies. The government is improving the performance of State-Owned Enterprises (SOEs) by restructuring through the establishment of Holding Companies.²⁷

Examining the methodologies used in different countries, several restructuring techniques are apparent, including mergers, consolidations and acquisitions, initial public offerings (IPOs), strategic sales, management buyouts (MBOs), management contracts and the establishment of holding companies. Consolidation of multiple SOEs in the same industry into a Holding Company will increase corporate flexibility, allowing subsidiaries to operate as distinct corporate entities.²⁸ A Holding Company is an entity that owns shares in several subsidiaries to improve company performance and facilitate market value creation.²⁹ A “holding company” also has advantages including:³⁰

i. **Control through partial shareholding**

A holding company may acquire 5, 10, or 50% of the shares of another company. Fractional ownership is sufficient to manage the operations of the acquired company. Effective control often requires ownership of more than 25% of the common stock. However, such ownership may be as little as 10%. In addition, control can be maintained by a minimal margin through affiliation with substantial owners outside the parent company group.

ii. **Risk Segregation**

The operating companies within the holding company structure are distinct legal entities, with the liabilities of each unit independent of the other units. As a result, fatal losses incurred by a unit of the “parent company” cannot be attributed as a liability against the assets of other units. Despite having no legal obligations, a parent business may feel compelled to settle a subsidiary's debts to maintain its reputation and retain customers.

In addition to the above advantages, “holding companies” also have disadvantages including:

i. **Partial double taxation**

The application of partial double taxation reduces the benefits of a parent company exercising control over a subsidiary with minimal ownership; however, the magnitude of the tax disadvantage relative to other benefits of the parent company should be assessed on an individual basis.

²⁷ Pratiwi, Putri Ayu. (2019). *Analisis Hukum Terhadap Restrukturisasi BUMN Sektor Minyak dan Bumi*. Sumatera Utara : USU Law Journal

²⁸ J. B. C. Widjoseno, S. Mahmudah, and A. A. Musyafah, "KAJIAN YURIDIS TERHADAP PEMBENTUKAN HOLDING COMPANY PADA PT PERTAMINA," *Diponegoro Law Journal*, vol. 11, no. 3, Jul. 2022. <https://doi.org/10.14710/dlj.2022.32182>

²⁹ Chairan, A. Tenripadang. (2010). *Tinjauan Hukum Holding Company Dalam Kaitannya Dengan Perseroan Terbatas*. Jurnal Hukum Diktum STAIN.

³⁰ Diana Tobing, "Strategi sinergi untuk memberdayakan BUMN di Indonesia". Surabaya: Jurnal Masyarakat, Kebudayaan, dan Politik UNAIR. Vol. 22/No.2/2009-04.

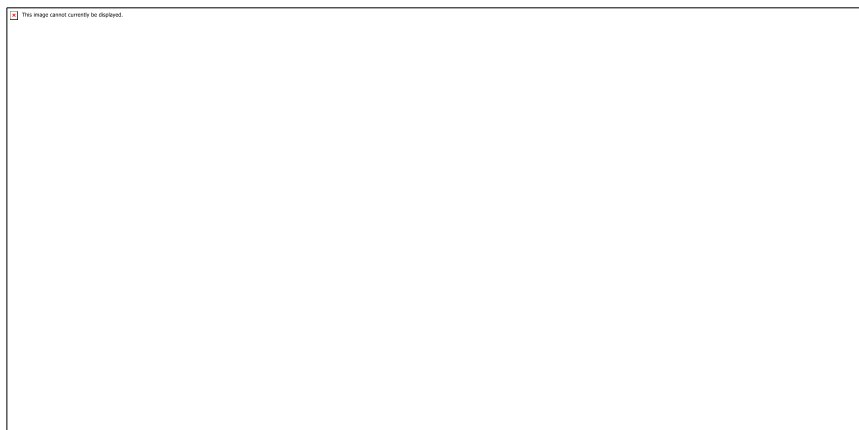
ii. **Easily forced to divest shares**

Demanding divestment of a subsidiary from a parent company is very easy to do if the shareholding is deemed to violate antitrust laws. However, once operational cohesiveness is established, it becomes much more difficult to separate the two companies after years of association, making forced divestment less likely.

4. **Formation Process of Holding Company PT Pertamina (Persero)**

Indeed, Indonesia still has a legal vacuum that regulates in detail the holding company of BUMN. Reinforced by Agus Pambagio's opinion³¹, that the legislation should have more regulation on the establishment of SOE holding. Including Law Number 19 of 2003 concerning State-Owned Enterprises, Law Number 40 of 2007 concerning Limited Liability Companies, and Law Number 17 of 2007 concerning State Finance. The legal basis for the establishment of BUMN holding is Government Regulation Number 72 of 2016 which amends Government Regulation Number 44 of 2005 concerning Procedures for the Participation and Management of State Capital in BUMN and PT.

The Ministry of SOEs in accordance with its program also restructured PT Pertamina (Persero). On September 10, 2021, PT Pertamina (Persero)-PERTAMINA as one of the SOEs officially inaugurated the formation of a Holding Company and Sub-Holding Company, namely:³²



The formation of Sub Holding is decided through SOEs, then changes in the organizational order are determined at the General Meeting of Shareholders of the Persero by referring to the results of the decision of the Minister of SOEs. This means that the Decree of the Minister of SOEs Number SK 198 / MBU / 06/2020 is the cornerstone regarding changes in the structural order of the Persero organization.³³

5. **Holding Company Status PT Pertamina (Persero)**

The definition of a subsidiary of a State-Owned Enterprise (SOE) is set out in Regulation of the Minister of State-Owned Enterprises No. PER03/MBU/2012, which provides guidelines for the appointment of members of the Board of Directors and Board

³¹ J. B. C. Widjoseno, S. Mahmudah, and A. A. Musyafah, loc.cit

³² Pertamina. Tersedia pada <https://www.pertamina.com/id/struktur-grup-perusahaan> . Diakses pada tanggal 18 Desember 2023

³³ Media Internal PT Pertamina (Persero), PERTAMINA Energia Weekly Edisi 15 Juni 2020No.24 Tahun LVI Hal. 1. Tersedia pada <https://www.pertamina.com/id/digital-media/energia-weekly> . Diakses pada tanggal 18 Desember 2023

of Commissioners of SOE subsidiaries. Article 1 paragraph 2 of Permeneg BUMN 3/2012 explains that a SOE Subsidiary is a limited liability company whose shares are mostly owned or controlled by SOEs.³⁴ Subsidiaries of State-Owned Enterprises (SOEs), including Persero SOEs, are not classified as SOEs because their shares are not directly owned by the state, but by the parent SOE. Although subsidiaries of parent companies are not classified as SOEs, they are still under the supervision of their parent business, which implicitly signifies government supervision.

According to Government Regulation No. 72/2016 Article 2A paragraph (7)³⁵, subsidiaries of SOEs are treated the same as SOEs for the following matters:

- a.) obtaining contracts to perform public services; and/or
- b.) securing state or government regulations, particularly for natural resource management with special treatment for state-owned enterprises (SOEs).

However, in practice in the field there are contradictions that cause obstacles to the performance of the Holding Company PT Pertamina (Persero). For example, MEMR Opinion No. T1776/MG.03/SJN.H/2022 states that Article 2A paragraph 7 cannot be applied because: “The provision that subsidiaries can be treated the same as SOEs to receive Government assignments only applies to SOEs that have transferred their state-owned shares to other SOEs, so that most of their shares are owned by other SOEs. Thus, the provision only applies to subsidiaries of SOEs that were previously SOEs.”³⁶ This certainly hinders the purpose of the establishment of Holding and Sub-Holding Company PT Pertamina (Persero).

6. Status of Holding Company PT Pertamina (Persero) according to the concept of Beneficial Owner

Beneficial Owner is a concept that starts from the beneficiary, namely the assignment of certain work to other parties. Beneficial Owner according to FATF is “A beneficial owner is the individual(s) who ultimately possesses or governs a customer and/or the one on whose behalf a transaction is executed. It also include those who exert ultimate effective authority over a legal entity or arrangement.”³⁷ The concept of Beneficial Owner itself in Indonesia is known as “Beneficial Owner” and is regulated in Presidential Regulation 13/2018. Beneficial Owner is an individual who has the authority to appoint or dismiss directors, members of the board of directors, management, or supervisors of the Corporation, has the ability to exercise control over the Corporation, is entitled to and/or receives benefits from the Corporation, either directly or indirectly, is the actual owner of the funds or shares of the Corporation, and/or meets the criteria

³⁴ Peraturan Menteri Negara BUMN No. PER-03/MBU/2012 Tahun 2012 tentang Pedoman Pengangkatan Anggota Direksi dan Anggota Dewan Komisaris

³⁵ PP Nomor 72 Tahun 2016 Tentang Perubahan Atas Peraturan Pemerintah Nomor 44 Tahun 2005 Tentang Tata Cara Penyertaan Dan Penatausahaan Modal Negara Pada Badan Usaha Milik Negara Dan Perseroan Terbatas

³⁶ Pendapat KESDM No T1776/MG.03/SJN.H/2022

³⁷ FATF. Guidance on Transparency and Beneficial Ownership. Tersedia pada <https://www.fatfgafi.org/content/dam/fatf-gafi/guidance/Guidance-transparency-beneficial-ownership.pdf.coredownload.pdf>. Diakses pada 18 Desember 2023

as referred to in this Presidential Regulation.³⁸ Therefore, subsidiaries of SOEs, in this case the Holding Company and Sub-Holding Company Pertamina, should be considered the Beneficial Owner of PT Pertamina (Persero), so that it should be facilitated in carrying out operational activities. Without having to refer all the way to the concept of Beneficial Owner³⁹ even though it should still be done, because it is in accordance with PP No. 72/2016 which states that SOE subsidiaries are owned by other SOEs.⁴⁰ Therefore, Pertamina Holding and Sub-Holding Company should be treated the same as other SOEs, which is also in accordance with Article 2A paragraph (7) of Government Regulation No. 72/2016.⁴¹

IV. CLOSING

1. Conclusion

Although there are no specific regulations for the establishment of SOE Holding Companies, the relationship of the UUPT to PT Pertamina, a Persero SOE, suggests that Article 84 deals with subsidiaries and holding companies, and Article 125 of the UUPT implicitly reinforces this idea. Holding companies can be formed through acquisitions and spin-offs. The procedure for establishing holding companies of state-owned companies in Indonesia is detailed in Government Regulation No. 43/2005, which addresses the merger, consolidation, acquisition and dissolution of state-owned companies.

Regarding the legal status of PT Pertamina's subsidiaries in relation to the establishment of SOE Holding, based on Law No. 19/2003 on State-Owned Enterprises, SOE subsidiaries are not categorized as SOEs, but can be considered as SOEs in accordance with Article 2A paragraph (7) of Government Regulation No. 72/2016. This does not contradict the 1945 Constitution, particularly Article 33, which mandates that national strategic assets be managed by the state, as PT Pertamina, as an SOE, owns more than 50% of the shares in its subsidiaries. This indicates that indirectly, national strategic assets managed by PT Pertamina's subsidiaries are under state control. This is reinforced by looking at the status of PT Pertamina (Persero)'s subsidiaries through the lens of the Beneficial Owner principle.

³⁸ Peraturan Presiden No. 13 Tahun 2018 tentang Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi Dalam Rangka Pencegahan & Pemberantasan TPPU & TPPT

³⁹ Hal ini dilakukan karena adanya Pendapat KESDM No T1776/MG.03/SJN.H/2022 yang menyatakan bahwa Pasal 2A ayat 7 tidak dapat diterapkan.

⁴⁰ PP Nomor 72 Tahun 2016 Tentang Perubahan Atas Peraturan Pemerintah Nomor 44 Tahun 2005 Tentang Tata Cara Penyertaan Dan Penatausahaan Modal Negara Pada Badan Usaha Milik Negara Dan Perseroan Terbatas.

⁴¹ PP Nomor 72 Tahun 2016 Tentang Perubahan Atas Peraturan Pemerintah Nomor 44 Tahun 2005 Tentang Tata Cara Penyertaan Dan Penatausahaan Modal Negara Pada Badan Usaha Milik Negara Dan Perseroan Terbatas

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