

**THE ESTABLISHMENT OF HOLDING COMPANY FOR INDONESIAN
STATE-OWNED ENTERPRISES
(OPTION OR REQUIREMENT)**

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ABSTRACT

Sometimes, a big company that has developed business broadly needs to be divided based on their business categories. However, it will be effective if the divided, independent companies, hereby called as subsidiaries, are controlled and managed by certain central leader. Therefore, those subsidiaries and other former companies with the same owner or correlated by particular relation are managed and owned by an independent parent company. This parent company is what is defined as holding company. Holding company or parent company is a company that aims to own the shares of one or more other companies and to control them. Usually, a holding company owns many subsidiaries focusing in different field of business. Generally, there are three procedures available in the process of establishing a holding company. They are (1) residue procedure, (2) complete procedure, and (3) structured procedure.

Keywords: Company, Business, Business Owner, Holding Company, Shares.

A. INTRODUCTION

1. Background of the Study

A discussion about state-owned enterprises barely can be preceded by understanding what a company or an enterprise is. Concerning this, there is plenty of books giving similar yet distinguish definition about. An enterprise is an economic term used in Indonesian Commercial Code. In this case, someone who owns a company is called as entrepreneur/ businessman. Nevertheless, there is no exact definition or authentic interpretation concerning the term of company stated in the Indonesian Commercial Code. In this case, the law makers tend to give the definition of such term up to the existing doctrine in the field of science and jurisprudence.¹

¹ C.S.T. Kansil, *Pokok-Pokok Pengetahuan Hukum Dagang Indonesia*, (Jakarta: Sinar Grafika, 2010), hlm. 32.

Therefore, there are several definitions of company in the field of science. They are:

- a. Definition from the government of Netherlands: In a parliamentary meeting, *Minister van Justitie Netherlands* stated that a company can be formed when the related stakeholders continuously, overtly involve in certain position in order to gain profit.
- b. Molengaraaff defined that the definition of company used in the Law of 1934/347 is the economic one. Molengaraaff stated, "A company is defined so when there are continuously actions conducted to gain profits by promoting or selling things or making trade agreements." This definition, actually, is in accordance with the definition given by The Minister of Justice of the Netherlands. Moreover, Prof. Sukardono also agrees with this.²

Besides talking about company, a discussion concerning enterprise is something that is supposed to understand. People tend to perceive that company and enterprise are two same things. However, the fact is that both terms are definitely different. Enterprise is established for profit entity. In establishing it, adequate financial support, building, raw material, skillful employee, machinery equipments, etc are required.³

Nevertheless, any further differentiation between company and enterprise is no longer necessary, especially in the field of legal study. Particularly in term of trade law and corporate law, both company and enterprise have similar characteristic based on who establish it. In this case, a company or an enterprise may be in form of self-owned enterprise, organization-owned enterprise, or government-owned enterprise. Furthermore, the government-owned enterprise can be classified into private companies and state-owned enterprises.

This current discussion explains first concerning state owned enterprises. It is not merged with the explanation concerning regional owned enterprises. Formerly, state owned enterprises are known as state enterprises.

² *Ibid*, hlm. 33.

³ <http://sapakabar.blogspot.co.id/2014/11/pengertian-perbedaan-badan-usaha-dan-perusahaan.html> diakses tanggal 23 Februari 2018, pukul 10:07 WIB.

Regulation concerning state enterprises is regulated as the Government Regulation in Lieu of Law Number 19 of 1960 and Number 3 of 1983 are issued.

In the Government Regulation in Lieu of Law Number 19 of 1960 article 1, it is mentioned that state enterprises are:

Any companies that the capital comes from the wealth of the Republic of Indonesia, unless otherwise determined by the law. Thus, the term state owned enterprises has not been used yet in this regulation. The term state owned enterprises is drawn on the article 58 of Government Regulation in Lieu of Law Number 3 of 1983. It is mentioned that:

- a. In nurturing and supervising the Corporate Bureau, Public Company, and Partnership, the minister is assisted by a form of secretariat called as Administrative Bureau of State-Owned Enterprises.
- b. Administrative Bureau of State-Owned Enterprises is responsible to the general secretary of concerned department.

Moreover, according to the Law Number 19 of 2003 on state owned enterprise article 1 paragraph 1, state owned enterprise is an enterprise that the venture capital is owned by the state partly or as a whole in a direct involvement of separated state assets.⁴

Recently, there are several companies that are included in the different ministries. Concerning the development and the objective of the establishment of state enterprise as referred to in Law number 19 of 2003, state enterprises can be in form of Corporate Bureau, Public Company, and Partnership depend on its vision and mission.

As for the Partnership that is established to gain certain profit, it has been a duty for the Ministry of State Owned Enterprise to manage it so that all the enterprises can develop and grow bigger, particularly in gaining its operational profits. Therefore, this condition may contribute to the increase of the foreign exchange.

. Distinguishing each enterprise as explained above is part of management and development strategies conducted by the ministries. Besides using such strategies, another thing that can be done by the government, in this case is the

⁴ Farida Hasyim, *Hukum Dagang*, (Jakarta: Sinar Grafika, 2010), hlm. 162.

ministry of State Owned Enterprise to managing the companies is by forming the holding companies of state owned enterprises.

The current trend in business field affects the intense competition between private and state owned enterprise. This condition has triggered the government to find the solutions to make state owned enterprises have high competitiveness with high quality products. One of the solutions taken by the government is by forming holding company for some state owned enterprises in several ministries.

2. Problem of the Study

From the description of background study that have been explained before, the problems of this study are formulated as follows:

- a. How is the regulation of holding companies for state owned enterprises in Indonesia?
- b. What is the urgency of forming holding companies for state owned enterprises in Indonesia?

HOLDING COMPANY FOR STATE OWNED ENTERPRISE

1. Term and Definition

a. Holding Company

Holding company sometimes is called as parent company or controlling company. Munir Fuady defines holding company as a company that its aim is to own shares of other companies and control such certain companies⁵

In holding company, there is a characteristic called as concentration of shares. The objective is to influence and control certain companies and its branches, or known as subsidiaries. The term holding company is also referred to corporate group.

The desired concentration can be achieved with the involvement of foreign capital. In this case, holding company is a company that is established on its own behalf; tend to own outstanding stocks and dividend of other companies. The parent company that owns 40% - 50% of the shares is able to control the subsidiaries. In this case, the parent company as the biggest shareholders may dominate other companies as its subsidiaries.

⁵ Munir Fuady, *Hukum Perusahaan Dalam Paradigma Hukum Bisnis*, Bandung: Citra Aditya Bakti, 1999, hlm. 84.

Corporate group, or generally known as conglomerate, has currently become a debatable topic discussion in public. The condition of uncontrolled development of the corporate companies may result in the domination of certain business network. However, in the other hand, conglomerate is considered necessary to accelerate the economic development of a country.

The relationship of subsidiaries can be considered as same as the relationship of its legal entity called as limited liability company. Such relationship can be formed due to the the amount of share ownership. Therefore, it may result in close association among each other in term of conducting the policies or in controlling the financial and the organizational relation. In other words, it can be said that the companies managed by a central management of corporate group is controlled in the same style of management as the conglomerate does.⁶

Nevertheless, companies that involved in one corporate group are those that have legal entity, such as Limited Liability Company. However, there is still a possibility that subsidiaries that have not any legal entity are able to join in one corporate group or conglomerate. The examples of such subsidiaries are firm or commanding company. Those subsidiaries may be included in one corporate group with certain legal entity.⁷

Furthermore, another reason that urge the division of certain company is that the high development and wide range of such company. Thus, it is necessary to divide it based on the business categories. What should ne noticed is that the subsidiaries of certain companies shall be owned by single owner as the parent company. It is aimed to ease the control and management process to keep it in the right track. Therefore, such subsidiaries and former similar several companies owned by the same person or closely related persons should be owned and controlled by an independent company. This independent company is what is defined as holding company or parent company.⁸

⁶ Emmy Simanjuntak, *Seri Hukum Dagang; Perusahaan kelompok (Group Company/Concern)*, (Jogyakarta: Universitas Gajah Mada, 1997), hlm. 5.

⁷ Ibid, hlm. 7.

⁸ Ibid

Holding company or parent company is a company that aims to own the share or outstanding stocks of other companies and even control or manage them. Usually, a holding company owns several subsidiaries that concentrating on different field of business. Generally, there are three procedures in establishing or forming a holding company, namely: 1) residue procedure; 2) complete procedure; and 3) programmed procedure.⁹

Group Company or concern is the merger of several companies that judicially they stand on their own behalf but economically they are legally obedient to a holding company. Concern might occur due to the merger process, consolidation, and acquisition (formerly stated in Article 102 – 109 of Act Number 1 of 1995 on Limited Liability Company, and then stated in Article 122 – 134 of Act Number 40 of 2007 on Limited Liability Company). Besides, it also may occur due to the joint venture and establishment of new company.

In this case, what is meant by merger as referred to in Article 1 of Act number 40 of 2007 is stated as follows:

Merger is legal action performed by one or more companies to integrate or incorporate their companies. The result is that the company in which the other companies are merged will get assets and liabilities from the merged companies. Thus, the legal status of the former ones is automatically dismissed. Meanwhile, the term consolidation as referred to in Article 1 of Act number 40 of 2007 is defined as:

A legal action performed by one or more companies to consolidate themselves by establishing a new company. This new company will get assets and liabilities from former consolidated companies. Thus, the legal status of the former ones is automatically dismissed.

As for the term acquisition as referred to in Article 1 of Act number 40 of 2007 is defined as:

A legal action performed by a legal entity or individual to take over the stocks of certain companies. The result is that the former companies is

⁹ Ibid

controlled and managed by the new owner.¹⁰ The legal relations created in a concern may result a condition in which the leader, as the stakeholder of the whole group in this case, tend to ignore the interest of third party concerning their companies. It usually occurs in the group as a whole. Thus, it is difficult for them to prove that what is conducted by the group leader make such disadvantageous for their companies.

From legal point of view, it is not right to make the third party disadvantageous only due to the fact that those companies are managed generally as a whole in a group. Moreover, the definition of parent company is not regulated in the Act Number 40 of 2007. Thus, R. Murjiyanto defines parent company as a big, developed company that form several subsidiaries. In this case, such certain big company is the main or the parent company.¹¹

b. State Owned Enterprise

Enterprise has become the pillars of state's economy. Generally, concerning the legality, there are two types of enterprises, namely non-legal entity enterprise and legal entity enterprise. Particularly in Indonesia, the most influential enterprises in the economic field are private enterprise and state owned enterprise. Private enterprise is company that all the capital is owned by private parties. Meanwhile, according to the Decree of Finance Minister of the Republic of Indonesia Number 740/KMK00/1989, state owned enterprise is company that the capital is owned by the state (as referred to in article 1 paragraph 2a), or enterprises that the capital is not owned fully by the state by the status is the same as the state owned enterprise (as referred to in article 1 paragraph 2b). They are:¹²

- 1) State owned enterprises that become the joint venture between central government and local government.

¹⁰ Gunawan Widjaja, 2008, *Resiko Hukum Sebagai Direksi, Komisaris & Pemilik*, (PT. Jakarta : Forum Sahabat, 2003), hlm. 9.

¹¹ R. Murjiyanto, *Pengantar Hukum Dagang: Aspek-Aspek Hukum Perusahaan Dan Larangan Praktek Monopoli*, (Yogyakarta: Liberty, 2002), hal. 66.

¹² Pandji Anoraga, *BUMN, Swasta dan Koperasi Tiga Pelaku Ekonomi*, hlm. 1.

- 2) State owned enterprises that become the joint venture between central government and other state owned enterprises.
- 3) State owned enterprises that become the joint venture between national or foreign private companies in which the state owns at least 51% of the shares.

In the other hand, Article 1 paragraph 1 of Act Number 19 of 2003 on State Owned Enterprise defines the state owned enterprise as:¹³

State Owned Enterprise, hereafter is called as SOE, is an enterprise that the venture capital is owned by the state partly or as a whole in a direct involvement of separated state assets

State owned enterprise is also known as Public Enterprise, in which in this term, there are two essential elements. They are the element of government (public) and the element of business (enterprise).¹⁴ In this case, state owned enterprise is not 100% purely governmental related matter nor business related matter. The involvement of those two elements is the point that distinguishes state owned enterprise from the private enterprise or other types of enterprise. This what makes it interesting to be analyzed.

State owned enterprise has special characteristic that other types of enterprises do not have. The special point is formulated as: “A corporation clothed with the power of government but possessed the flexibility an initiative of a private enterprise”.¹⁵

The establishment of state owned company is aimed to achieve certain objectives concerning the economic development and the national welfare. Such objectives are stated in Article 4 paragraph 1 Act number 19 of 2003.¹⁶ According to this Act, the objectives of establishing the state owned enterprise are:

- 1) to give contribution to the national economic development in general and particularly to the state revenue;

¹³ Indonesia, *Undang-Undang Badan Usaha Milik Negara (BUMN)*, UU No. 19 Tahun 2003, Pasal 1 Butir 1.

¹⁴ Pandji Anoraga, *BUMN, Swasta dan Koperasi Tiga Pelaku Ekonomi*, hlm. 1.

¹⁵ *Ibid*, hlm. 2.

¹⁶ *Ibid*, Pasal 4 Ayat (1).

- 2) to earn profits;
- 3) providing benefit for public by providing high quality, adequate goods or services for public;
- 4) to be the pioneer of any business activity that cannot be accomplished by private sector or cooperation;
- 5) to give active guidance and assistance to the economically weaker section entrepreneur, cooperation, and people in general.

b. The Regulation of Holding Company

In the Act Number 1 of 1995 on Limited Liability Company, the term holding company is not explicitly mentioned. However, the term acquisition is mentioned in article 103. According to this, acquisition can be conducted by taking all parts or most parts of the shares that affects the acquisition process of the limited liability company. This Act Number 1 of 1995 does not explain concerning how much the share can be taken so that it can be considered as transfer of control.

In Article 103 paragraph (1) and (2) of Act Number 1 of 1995, it is stated that:

- (1)The acquisition of the company can be conducted by a legal entity or by individual.
- (2)Acquisition as what is referred to in paragraph 1 can be conducted by acquiring the whole or a part of the shares that may affect the transfer control toward the company.

In the history of the business development in Indonesia, holding company has been known in the sector of private enterprises, such as Bakrie Group, Astra Group, and many more. The development of company group in Indonesia is relatively good. It is remarked by the establishing of group of Limited Liability Company. Generally, most of holding company is in form of Limited Liability Company.¹⁷ The rapid growth of the group companies in Indonesia is influenced by several reasons. They are the additional of added value through the synergy of several companies, company's attempts the

¹⁷ Ahmad Yani dan Gunawan Widjaja, *Perseroan Terbatas*, (Jakarta: PT. Raja Grafindo Persada, 2003). Hlm. 155.

competitive excellence more than other companies have, long-term objective to use the collected fund, and the legitimation of legislation that triggers the establishment of Group Company.

In Act Number 40 of 2007 on Limited Liability Company, the term of group companies is not mentioned. However, there is a meaning limitation for term “subsidiaries” in Act Number 1 of 1995 as referred to in Article 29 that has been explained before. From the explanation of the Article 29 of Act Number 1 of 1995, some syllogisms can be drawn, namely:¹⁸

- a. Group Company is the organization of several companies that judicially stand on their own behalf yet closely related to each other. Thus, an economic unity that is obedient to the leader of the parent company as the central leader can be formed.
- b. Subsidiaries are companies that have particular relation to each other due to the ownership of more than 50% of the shares by their parent company; due to the ownership of more than 50% votes in the General Meeting of Shareholders by their parent company; and/ or due to the control towards the company management, the appointment and the dismissal of directors and commissioners that given by and depend on the parent company.
- c. Therefore, Group Companies is the organization of the parent company and its subsidiaries that judicially independent yet closely related due the ownership of more than 50% of the shares and votes in the General Meeting of Shareholders, and the control towards the management, the appointment, and the dismissal of directors and comissoners to create an economic unity towards the leadership of one central leader.

2. The Establishment Of Holding Company Of State Owned Enterprise

The concept idea of holding company for simplifying the state owned enterprises has been issued since 1998. This idea of categorizing state owned enterprises based on the type of industry has been started on the period of the first ministry of state owned enterprise, Tanri Abeng. At that time, the minister perceived that the holding company concept shall enhance the state owned

¹⁸ Sulistiowati, *Aspek Hukum Dan Realitas Bisnis Perusahaan Grup Di Indonesia*, hlm. 35.

enterprise to grow bigger. This governmental-related business is expected to expand its business top-down, narrowly.

During this era, Tanri Abang proposed 5 areas of company holding for state owned enterprise. They are holding company in the field of mining and energy; holding company in the sector of infrastructure such as harbor, airport, transportation and communication; holding company in the finance sector, such as merging all banks; fourth, holding company in the sector of cement and construction; and the fifth is holding company on the sector of fertilizer and plantation.

. Recently, the Ministry of State Owned Enterprise is attempting to establish a holding company of state owned enterprise in mining industry. It is conducted by appointing PT Indonesia Asahan Aluminium (Persero) as the parent company. It leads three subsidiaries, namely PT Timah (Persero) Tbk, PT Aneka Tambang (Persero) Tbk (Antam), and PT Bukit Asam (Persero) Tbk (PTBA). Later, the legal status of those subsidiaries is dismissed during the Extraordinary General Meeting of Shareholders that is conducted on November 29, 2017. The dismissal of such legal status is conducted by taking over the shares owned by government in those subsidiaries to PT Indonesia Asahan Aluminium (Persero) as the parent of the holding company of mining state owned enterprise.¹⁹

Therefore, it can be depicted that the establishment of holding company can be a rational alternative for state owned enterprise being in the same sector yet having different products of target market, having high competitiveness, having good business prospect, or dominantly being owned by the government.²⁰ Thus, here are some categories of state owned enterprises in which a holding company may be established in:²¹

- i. It must be in the same sector;
- ii. It must have different type of business and segmented target;

¹⁹ <http://bisnis.liputan6.com/read/3127458/3-alasan-pembentukan-holding-bumn-sangat-penting> diakses tanggal 23 Februari 2018 pukul 12:04 WIB.

²⁰ Dea Claudia, "Aspek Hukum Holding Company Dalam Perusahaan Dengan Status Badan Usaha Milik Negara," (Skripsi Sarjana Fakultas Hukum Universitas Indonesia, Jakarta: 2012), hlm. 65.

²¹ *Ibid.*

- iii. It must have high competitiveness;
- iv. It must have adequate business prospect;
- v. It must be majorly owned by the government.

Generally, the establishment of holding company is aimed to create a strong Company Group with major single shares owner. Therefore, the activities of the subsidiaries can be controlled and managed in an advanced way. In his book *Hukum Perusahaan Dalam Perspektif Hukum Bisnis* (Corporate Law in the Perspective of Business Law), Munir Fuady explained that a holding company may have some advantageous and disadvantageous. Some of them are:

1. Risk independent. Each subsidiary of a holding company is a legal entity that legally independent. Thus, any duty, risk, and claim given by the third party to a certain particular subsidiary cannot be charged to other subsidiaries, even though they are in the same company group.
2. Bigger right of supervision. Particularly, a holding company has a bigger right to control its subsidiaries, even though the shares owned by the holding company are less than 50%. It might be occur due to several conditions, such as:
 - a. The existence of the holding company is highly expected by its subsidiaries. It is possible since the holding company or the company owner is a well-known company or figure.
 - b. There are other separated parties as the shareholders besides the holding company.
 - c. The holding company got veto right.
3. An Effective and easier Management. The holding company can control all the subsidiaries in the same, single business group. Therefore, the connection will be easier to manage and control.
4. A more efficient work. When the holding company proposes the idea of corporation, subsidiaries may help and corporate with each other. Besides, the subsidiaries activities will not be overlapping. As the result, the company's efficiency can be improved.²²

²² *Ibid.*

Concerning the establishment of the holding company of state owned enterprise, it is considered that this concern also result in other new problems. This is due the indistinguishable regulation of the establishment of holding company for state owned enterprise in the legislation. This condition can be seen from the attempts of government in establishing such holding company.

During her service period as the current Minister of State Owned Enterprise, Rini Soemarno tends to establish the holding company shortly yet it will not be easy for her to realize it. This is due to the condition in which the government is trying to harmonize the regulations on business sector of each state owned enterprise to be issued as the main regulation.

Separately, the Minister of Law and Human Rights of the Republic of Indonesia, Yasonna Hamonangan Laoly, stated that the government will gradually solve the problems concerning the establishment of holding company for state owned enterprise. The objective is to avoid further problems once the policy of holding company establishment is issued.

Besides, it is necessary to conduct further analysis concerning the legal aspects of such establishment. The legal aspects mentioned here include the legislation on government and the laws of holding company establishment. Therefore, the process of holding company establishment requires more additional times.²³ Before, the main problem of this concern is that there is no particular procedure of holding company establishment in the Government Regulation Number 44 of 2005 on the Involvement and the Management of State Share in State Owned Enterprise and Limited Liability Company. Thus, it is significantly necessary for the government to revise this regulation.

Concerning the attempts of establishing the holding company for state owned enterprise, there are other regulations besides what is mentioned before that need to be revised. One of them is the regulation of State Finance. This regulation is considered obstruct the management of state owned enterprise to dynamically participate in the business competitiveness. This is due to the

²³ <http://www.perumnas.co.id/pembentukan-holding-bumn-masih-terganjal-aspek-hukum/>
diakses tanggal 10 Februari 2018 pukul 21:02 WIB.

condition that this regulation strongly considers the incorrect decision made by the company that possibly makes loss as the state's loss.

In this case, the state owned enterprises tend to take the risk-free decision. This condition makes them lost to private enterprises. As the result, state owned enterprises lost to the private ones in term of business competitiveness²⁴

The difficulties encounter during the efforts for solving the problem concerning the legal drafting on holding company for state owned enterprise can be gradually handled by the government. In this case, the government finally enacts the regulation Number 72 of 2016 concerning the change of former regulation Number 44 of 2005 on the Involvement and the Management of State Share in State Owned Enterprise and Limited Liability Company.

This regulation later will be a strong legal basis to support the establishment of the holding company for state owned enterprise that currently being attempted by the government. According to the legal copy of Ministerial Decree of State Secretary Number B-03/Kemensetneg/D-1/Ekon/HK.02.02/01/2017 enacted on January 9, 2017, the Governmental Regulation Number 72 of 2016 had been legally enacted since December, 30, 2016.²⁵

5. The Significance of Holding Company Establishment for State Owned Enterprise

The government's enthusiasm in establishing the holding company is surely based on some significant reasons. Besides the reasons concerning profit achievement from the holding company, the government also considers the economic value of state owned enterprise as the governmental company, particularly concerning its vision and mission. In some occasions, the decision makers and the policy makers in Ministry of State Owned Enterprise and other related companies often issue the concept of holding company for state owned enterprise and the necessity of doing it. The reason is that state owned enterprise has an important role in the economy and foreign exchange. It is considered that 20% of Gross Domestic Product in Indonesia depends on the state owned

²⁴ <https://www.jawapos.com/read/2017/11/22/169993/pembentukan-holding-bumn-butuh-penyempur-naan-regulasi> diakses tanggal 12 Februari 2018 pukul 22:37 WIB.

²⁵ <https://finance.detik.com/berita-ekonomi-bisnis/d-3393124/pp-aturan-holding-bumn-sudah-terbit> diakses tanggal 23 Februari 2018 pukul 10:34 WIB

enterprise. In this case, the condition of the state owned enterprise will influence the profit.

Besides, the establishment of holding company also shows that Indonesia has lots of resources that can be explored through state owned enterprise. However, the situation may not be the same if those enterprises are stand independently.

“Why is holding company important? It is because the state owned enterprise as expected to be the sovereign wealth bank of the country. If in Singapore they have Temasek and in Malaysia they have Khazanah, and in Norway they make the state owned enterprise as the biggest sovereign, it will not be a big deal to make US\$ 150 billion-US\$ 180 billion from such enterprise. Theoretically, the market value of all 118 state owned enterprises is about US\$ 330 billion. It is already higher than of that Temasek that is about US\$ 290 billion.

Finally, it can be said that the government’s objective in establishing a holding company is to dominate the natural resources like mineral, oil, gas, and other resources for the sake of Indonesian people. Recently, the natural resources of Indonesia are dominated by foreign parties. However, the question is that why it should be the state owned enterprise that needs to take over the dominance. The answer is when the private enterprise takes over it, only the owner that gets the benefits and only several people may get it. However, if the state owned enterprise does, it is considered fair for all parties, particularly the Indonesian people since such enterprises are governmental, public companies, “said the Minister of State Owned Enterprise.

For example, if formerly state enterprises like Bukit Asam and Antam are dominant, recently the private enterprises have become more dominant. It seems that the state owned enterprise lost to private enterprise and can only dominate the small amount of resources. If formerly Bukit Asam is the biggest, now it seems that Adaro is the biggest. As for mining industry, Newmont and Freeport have

beated Antam. Generally speaking, Indonesia is a rich country and this condition is supposed to be utilized by Indoensian people for generations.²⁶

6. The objective of Holding Company Establishment

The government through the Ministry of State Owned Enterprise continuously pursues the complete establishment of holding company for state owned enterprises. In this case, there are at least 7 holding companies in which the establishment is being pursued by the government.

Abra Talattov, an economist from Institute for Development of Economics and Finance (Indef) stated that there are at least 3 benefits that can be achieved from holding company. They are:

- a. First, it can support the coordination among corporations to be more efficient. In this case, the objective of holding company is no other but to increase the capacity of state owned enterprise. To make it more efficient, the long process of decision making in state owned enterprise should be cut off since it makes such enterprise lost to private ones.
- b. Secondly, the holding company may support the subsidiaries to more explore the potential to improve the corporation.
- c. Thirdly, and most importantly, the holding company may assist and provide solution concerning the financial problem as well as assist the government's program.

Another reason is to provide additional leverage so that the state owned enterprise can increase the capital for supporting the government's program. One of them is the infrastructure sector. To solve the limited financial encountered in this sector, establishing holding company is considered as the best strategy to make state enterprise fulfil the infrastructure sector through the holding company.²⁷

Then, what is the urgency of such establishment for state owned enterprise? As what is cited in several sources, in the meeting conducted before, the President of the Republic of Indonesia Joko Widodo instruct his ministries to shortly establish

²⁶ <http://bisnis.liputan6.com/read/3127458/3-alasan-pembentukan-holding-bumn-sangat-penting> diakses tanggal 23 Februari 2018 pukul 12:04 WIB.

²⁷ <http://bisnis.liputan6.com/read/2842588/ini-3-manfaat-pembentukan-holding-bumn> diakses tanggal 23 Februari 2018 pukul 11:09 WIB.

holding company in several sectors, such as bank, infrastructure, high way, housing, reconstruction and artificial services, and mining and energy sector.

To realize such instruction, the Minister of State Owned Enterprise Rini Soemarno urge to establish the holding company for state owned enterprise. It will be started from the energy sector. She even has been decided the target of this holding company that was launched on June 2016.

In this case, the ministry of State Owned Enterprise establish a holding company in energy sector by appointing Pertamina as the holding, while the subsidiary is PT Perusahaan Gas Negara (PGN) Tbk. Actually, the establishment of holding company of the energy sector cannot be simplified by letting Pertamina acquiring PT PGN. It is supposed to do by making all the enterprises in the same energy sector synergy in one holding company.

The merger of PGN and Pertamina. Due to the tendention of price of oil and gas that getting lower and the tight competitiveness of oil and gas industry, there is an urgency to establish a holding company for state owned enterprises of energy sector in Indonesia. Such establishment is considered be able to support the business in energy sector to be stronger. In addition, this holding company establishment is the synergy of enterprises of energy sector that later, it will take impact to the assets enhancement and work efficiency.

However, if the objective of the holding company establishment is only to make Pertamina as the holding by acquiring PGN as its subsidiaries, the result may occur unexpected since it may be a blunder for both Pertamina and PGN. The acquisition of PGN by Pertamina is potentially a high risk, not only for PGN but also for Pertamina. Moreover, it is not a simple thing for Pertamina to acquiring PGN in which about 45% of its shares is owned by public (government). In this case, Pertamina should pay in a big amount to buy the shares of PGN. Recently, the capitalism of PGN's shares in capital market is predicted to reach Rp 115 trillion. Therefore, Pertamina should prepare at least Rp 70 trillion to buy 56.97% of the total shares of PGN. Even if Pertamina is able to fulfil the required fund to acquiring PGN, it will be productive if that huge fund is used to support the establishment of oil refinery. As the result, it can reduce the import of oil and gas.

The most realistic synergy is the merger of PGN and Pertamina, subsidiary of Pertamina in the sector of gas. The process of merger can be initiated partially in the stage of development, improvement, and the operation of gas pipelines. If this partial merger is succeeded in developing the gas pipelines, in that same time the total merger of PGN and Pertamina should be conducted. To strengthening the business, the merger company should stay focus on the sector of gas energy in downstream scope. Meanwhile, Pertamina should keep its business on gas sector in upstream scope and oil sector in downstream and upstream scope.²⁸ Simply, this is the explanation of the procedures conducted by the government to make the governmental companies synergy.

By considering the economic condition of Indonesia with such intense competitiveness between state and private enterprises, the formation or establishment of holding company is no longer an option. Moreover, it has become a requirement to make the state owned enterprise can compete in the business perspective. Of course, the concept of holding company should not step aside the vision and mission carried by the state owned enterprise. They are the mobilisator in the Indonesian economy as mentioned in the objective of its establishment discussed before. With further development of technology, politics, and global business, it is expected that state owned enterprise can compete globally. Therefore, building a synergy among state owned enterprises is a requirement to accomplish.

B. CONCLUSION AND SUGGESTION

a. Conclusion

Based on the description and explanation given above, the conclusions that can be drawn are:

- 1) The regulation concerning the holding, whether conducted by private or state owned enterprise has not been covered by proper law. Thus, the government still encounters difficulties to solve the problems concerning the holding company for state owned enterprise since it has regulation related problem.

²⁸ <http://eksplorasi.id/urgensi-holding-bumn-energi/> diakses tanggal 23 Februari 2018 pukul 12:16 WIB.

- 2) Furthermore, the government gradually contributes to give solution so that the holding establishment can be conducted shortly. It is expected that the state owned enterprise can catch its loss in competitiveness with private enterprise that has priorly created the synergy within the company group. Some companies that categorized as settled companies are Astra Group, Sinar Mas Group, Salim Group, and other well-known groups established formerly in Indonesia.
- 3) The holding company for state owned enterprise is no longer an option to choose from. By considering the aspects of economy, politic, and other aspects concerning the vision and mission of state owned enterprise, the establishment of holding company has become a requirement. Therefore, thos governmental companies can compete with other companies in an advance quality.

b. Suggestion

Have a look at certain problems concerning the efforts of government in establishing a holding company for state owned enterprise, it is expected that this present article may give contribution to the enhancement of legal knowledge, particularly for commercial and business law. Moreover, it can be used as an additional reference for the government to regulate the regulation to trigger the establishment of the holding company.

Besides the bureaucrat, another important aspect that takes part in this governmental issue is the legislative as the legislation maker in Indonesia. In this case, it is expected that the legislative could help the executive to realize the establishment of holding company for state owned enterprise.

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