



APPLICATION OF THE PRINCIPLE OF TEMPUS REGIT ACTUM IN THE ESTABLISHMENT OF A STATE-OWNED ENTERPRISE HOLDING COMPANY ACCORDING TO THE LEGAL CONCEPT OF COMPANIES IN INDONESIA

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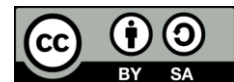
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ABSTRACT

The establishment of a BUMN holding company aims to create synergy between companies, increasing operational and cost efficiency, increasing business scale, strengthening financial position (solvency and liquidity), as well as facilitating coordination, accelerating growth (acquisitions), and increasing contribution to state revenue. The type of research used is normative legal research with a legal synchronization level approach. The nature of the research is descriptive, using secondary data, especially from primary legal materials such as UUBUMN, UUUPT, the next type of research was analyzed qualitatively. Article 10 paragraph (2) of the UUBUMN No. 16/2025 states that the establishment and management of holding companies are carried out in accordance with the provisions governing limited liability companies. However, because specific regulations for the establishment of holding companies have not been regulated, the government applies the principle of tempus regit actum, so that the establishment of holding companies uses the rules for establishing company acquisitions.

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1. INTRODUCTION

Constitutionally, Article 33 of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), particularly paragraphs (2) and (3), indicates that the state has an important role in the economy. This role is of two types, namely as a regulator and as an actor in the form of a State-Owned Enterprise (BUMN). Article (2) emphasizes the role of the state as an actor in the form of a state-owned enterprise. The role of the state as a regulator is not explained in the existing formulation, unless the term "controlled" is interpreted as "regulated", but what is regulated here is natural resources which are directed as much as possible for the prosperity of the people. (Rahardjo, 2003: 242).

Paragraph 4 of the Preamble and Article 33 of the 1945 Constitution of the Republic of Indonesia as the basis and purpose for establishing BUMN, which is one of the economic actors in the national economy based on economic democracy (Insa Ansari, 2017: 556). GArticle 1 number 1 of Law Number 16 of 2025 concerning the Fourth Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises (UUBUMN No. 16/2025), emphasizes that a BUMN is a business entity that meets at least one of the provisions, all or most of

its capital is owned by the Republic of Indonesia through direct participation, or there are special rights owned by the Republic of Indonesia.

Based on this definition, a state-owned enterprise (BUMN) is a business entity whose capital, in whole or in part, comes from the state through direct capital participation from separated state assets. This separation of state assets means that when the state makes capital participation, the BUMN's assets become part of the state's assets (Sandi, Hadin Muhjad & Syaafi, 2023: 182).

Wibisono (2007: 62) said that BUMN is required to function as a tool for national development and play a role as a social (public) institution. This social role indicates that BUMN is not only owned and supervised by the public but also reflects the concept of public purpose (its target is the public) and public interest (its orientation is towards the public interest). Thus, it is realized that the position of state-owned companies is like having two sides of a coin. On the one hand, it acts as a business institution and on the other hand, it acts as a social institution because it is a state apparatus.

In its journey to maximize the potential of BUMN in achieving its economic and social goals, the Ministry of BUMN has formed a BUMN holding company. The strategy implemented by the government is to unify the vision and mission, that the national economy must be played by BUMN in fulfilling national and global demands (Pratama, 2021: 1720).

According to Emmy Simanjuntak holding company (group company) is a combination or arrangement of companies that are legally independent, which are closely related to each other, so as to form an economic unit which is subject to the leadership of a parent company as the central leader, (Sulistiowati, 2013: 19).

The government, through the Ministry of BUMN Enterprises, is consolidating BUMN enterprises that have similar businesses, namely in the mining sector, oil and gas sector, housing sector, toll road sector, financial services sector, plantation sector, fertilizer field, insurance and pharmaceutical fields, with subsidiary structures (BUMN holdings) including the following (Harun, 2019: 79):

- a. Oil and gas business sector, PT. Pertamina (Persero) will be plotted as a holding company or parent company with PT. State Gas Company (Persero) gas business, namely PT. Pertamina Gas, became a subsidiary of PT. Perusahaan Gas Negara (PGN);
- b. Mining sector of PT. Indonesia Asahan Aluminium (Persero) becomes a holding company with PT. Timah (Persero) Tbk, PT. Aneka Tambang (Persero) Tbk (Antam), and PT. Bukit Asam (Persero) Tbk (PTBA) as its subsidiaries;
- c. PT. The Logistics Affairs Agency (Perum Bulog) will become the parent company of several BUMN food companies, such as PT. Sang Hyang Seri (Persero), PT. Pertani (Persero), and PT. Perusahaan Perdagangan Indonesia (Persero);
- d. PT. Dana Reksa (Persero) will become the holding company for BUMN financial services companies, including banking. PT. Hutama Karya will become the holding company for several construction and toll road companies;
- e. PT Perkebunan Nusantara (Persero) III is the holding company for BUMN plantation companies which oversees all subsidiaries of PT Perkebunan Nusantara, starting from PT Perkebunan Nusantara I to PT Perkebunan Nusantara XIV;
- f. PT. Pupuk Sriwidjaja (Persero) is a BUMN fertilizer holding company that oversees 5 (five) subsidiaries, including: PT. Pupuk Kalimantan Timur, PT. Petrokimia Gresik, PT. Pupuk Kujang, PT. Pupuk Iskandar Muda and PT. Mega Eltra and PT. Pupuk Indonesia Logistik;
- g. PT. Bahana Pembinaan Usaha Indonesia (Persero) is a BUMN insurance holding company that oversees subsidiaries including PT. Asuransi Jasa Indonesia (Jasindo), Perum Jaminan Kredit Indonesia (Jamkrindo), PT. Asuransi Kredit Indonesia (Askrindo), PT. Asuransi Jasa Raharja;
- h. PT. Bio Farma (Persero) is the holding company and oversees subsidiaries including: PT Kimia Farma Tbk, and PT Indonesia Farma (Indofarma) Tbk and PT Bio Farma.

Then how is the establishment of this BUMN holding company? Article 10 paragraph (1) of the BUMN Law No. 16/2025 only states that the establishment and administration of BUMN holding companies is carried out in accordance with the limited liability company law. Based on this, the author found interesting things to study which were then included in the problem formulation, including: What is the legal certainty regarding the formation of a BUMN enterprise holding company in Indonesia? What is the principle of *tempus regit actum* as the basis for establishing a holding company in Indonesia?

2. RESEARCH METHODS

The type of research used is normative legal research with a legal synchronization level approach. The normative legal research method is a research method on legal regulations. The approach to the level of legal synchronization, to see to what extent the existing written positive laws (statutory regulations) are in sync (harmonious) with each other. This means whether the BUMN Law is in sync with the PT Law. The nature of

the research used is descriptive research (descriptive legal study) which aims to obtain a complete picture of the current applicable law (between the UUBUMN and UUPT). Furthermore, the data used is secondary data, especially from primary legal materials such as UUBUMN, UUPT. The research analysis uses qualitative analysis where the conclusions are described in the form of sentences related to the establishment of BUMN holdings in Indonesia (Ramlan, dkk., 2023: 65-141. Benuf & Azhar, 2020: 23-27).

3. RESULT AND ANALYSIS

Legal Certainty for the Establishment of BUMN Enterprise Holding Companies in Indonesia

The provisions of Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia concerning "state control" when linked to Van Vollenhoven's opinion, so the state as the highest organization of the nation is given the power to regulate everything and the state, based on its position, has the authority to form legal regulations. (Mawuntu, 2012: 15). This means that the state has the power to regulate all matters related to the state itself through law for the benefit of the people, including establishing BUMN enterprises.

To implement Article 33 of the 1945 Constitution of the Republic of Indonesia, the state issued Law Number 19 of 2003 concerning State-Owned Enterprises (UUBUMN No. 19/2003). BUMN is a corporation formed by the state as a manifestation of the state's moral responsibility to fulfill the need for goods and services that are important for all citizens. In the context of economic management, BUMN plays a strategic role as the main guard in improving the national economy while contributing as a source of state funding to provide public services (Firmansyah, Machmud & Suparji, 2024: 520).

As a corporation, a BUMN is established by the state with a minimum ownership of 51% of shares by the government. The aim of its establishment is to seek profits while supporting state funding through the APBN and strengthening the national economy. In addition, BUMN also plays a role in providing goods and services to meet the vital needs of the community, as well as providing support for the growth of micro, small and medium enterprises (UMKM), cooperatives and entrepreneurs from the lower economic groups (Firmansyah, Machmud & Suparji, 2024: 521).

In order to realize a BUMN enterprise that generates profits, by carrying out expansion that is expected to provide benefits to the wider community, the government's policy of holding BUMN enterprise companies is a necessity. The term holding itself can first be seen in the Explanation of Article 9 paragraph (1) letter d of Government Regulation Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies (PP No. 72/2016), explains that: "... the shift or transfer of state-owned shares in a BUMN or PT to another BUMN and/or PT as state capital participation, including in the context of establishing a "BUMN holding company".

Currently, the term holding company is very firmly regulated in Article 1, numbers 24 and 25 of UUBUMN No. 16/2025, by using the terms "investment holding company, hereinafter referred to as investment holding company", and "operational holding company, hereinafter referred to as operational holding company."

The government's policy in establishing state-owned enterprise holding companies within the legal jurisdiction of companies in Indonesia has not been explicitly regulated. This is because the new holding company regulations are regulated in UUBUMN is good in UUBUMN no. 1/2025 as well as in UU BUMN no. 16/2025. Meanwhile, there are no clear regulations regarding the establishment of a BUMN holding company, Article 10 paragraph (2) of UUBUMN No. 16/2025 only confirms that; The establishment and operation of a Limited Liability Company is carried out in accordance with the provisions of laws and regulations governing limited liability companies.

This means that if the government wants to establish a BUMN holding company, it must refer to the UUPT. Associated with the principle of *lex specialis derogat legi generali* (Nasrullah, Hidayah & Machmud, 2025: 328-329) so it can be said that UUPT is a special legal regulation (*lex specialis*) of UUBUMN which regulates general law (*lex generalis*). So, when there is a similarity in the subjects regulated in this case, corporate law, then the UUPT is used in establishing a BUMN holding company. This aims to provide legal certainty by prioritizing more specific regulations.

Then the question is, does the UUPT regulate the establishment of a holding company? It turns out that the UUPT, which is the *lex specialis* of the UUBUMN, does not yet regulate how to establish and manage a BUMN holding company. UUPT in Chapter VIII Articles 122-136 only regulates mergers, amalgamations, takeovers and separation of PT. According to Nadapdap (2020: 145), mergers, smelting, takeover, and separation of the company is a corporate restructuring, so the UUPT only regulates restructuring, not holding companies.

According to Pranoto and Makaliwe (2013), restructuring and holding companies are not the same, however, the formation of a holding company is one method of restructuring. Restrukturisasi merupakan upaya luas untuk mengubah struktur perusahaan guna efisiensi, there are various method options, for example the formation of a holding company, merger, melting and takeover (mergers and acquisitions), initial public offering (IPO), sales to strategic partners (strategic sale), sales to managing management, management contracts and other

strategic alliances. Meanwhile, a holding company is a parent entity that owns shares in other companies as a result of restructuring (Sumarna & Solikin, 2018: 240).

Based on this explanation, it is clear that the UUPT does not yet regulate holding companies. This is expressly stated in Article 10 paragraph (1) of UUBUMN No. 16/2025, that the establishment and operation of the Limited Liability Company is carried out in accordance with the provisions of laws and regulations governing limited liability companies. So, what is meant here is UUPT, but UUPT itself does not regulate it.

Implementation of the Tempus Regit Actum Principle in the Process of Establishing a BUMN Enterprise Holding Company in Indonesia

So far, the formation of BUMN holding companies has referred to PP No. 72/2016, however, it must be understood that PP No. 72/2016 does not regulate how to establish and form a BUMN holding company, PP No. 72/2016 only regulates how state capital participation (PMN) into BUMN and Limited Liability Companies sourced from the State Revenue and Expenditure Budget, capitalization of reserves, and/or other sources. PMN aims to strengthen the capital structure and business capacity of BUMN. PMN dapat berupa dana segar maupun non-dana segar seperti konversi utang atau hibah saham, and permanent investments to earn dividends or maintain institutional relationships. In practice, PMN is used to support government programs, BUMN assignments, and financial restructuring (Rachmadhika & Solikin, 2025: 22).

According to general opinion, the procedure for establishing a holding company consists of 3 (three) stages, that is residue procedure, full procedure, and programmed procedures, which can be seen in the following description (Asril, 2018: 218-219):

- a. Residue procedure, where a company will be broken down or separated and classified into several business sectors according to their respective business sectors. Where the company that is split up becomes an independent company, meanwhile, the remainder (residue) of the original company is converted into a holding company which is also a shareholder in the spin-off company and other companies, if any.
- b. Full procedure, what can be done if previously there were not too many company splits or independences, but each company with the same ownership or joint relationship is scattered, without being concentrated in a holding company. In this case, which becomes a holding company, not the remainder of the original company as in the residue procedure, but the company is full and independent. Independent companies that are candidates for holding companies can be:
 - 1) Forming a new company;
 - 2) Taken from an existing company but still under the same ownership or related;
 - 3) Acquired by another company that already existed, but with different ownership and no connection to each other.
- c. Programmed procedure, where from the start business actors have been aware of the importance of holding companies, so that from the start of establishing the company, business actors have thought about forming a holding company. So, the company that was founded first in the group is the holding/parent company. Then for every business that is done, will form or acquire another company where the parent company is the shareholder, usually together with other parties as business partners.

However, technically in corporate law in Indonesia, the mechanism for establishing a holding company has not been regulated. In establishing BUMN holding companies, the government has so far referred to the process of establishing companies through takeovers or acquisitions (Luthfia & Hadi, 2021: 452-453) as regulated in PP No. 43/2005. This government step based on the concept of tempus regit actum is indeed justified, where the government can take legal (procedural) action as determined by the laws and regulations in force at the time the action is taken. This principle is to provide legal certainty, where previous actions are not invalidated even if there is a new change in law.

Therefore, based on Indonesian company law, the establishment of a BUMN holding company is subject to the provisions of Articles 6 and 7 of PP No. 43/2005, which in essence to carry out an acquisition must fulfill the following things (Syach, 2021: 42-43):

- a. Obtain approval from the general meeting of shareholders (RUPS);
- b. Taking into account the interests of the company concerned, minority shareholders, and employees of the company concerned;
- c. Paying attention to the principles of healthy business competition and the interests of society; and
- d. Taking into account the interests of existing creditors

The following are the steps for establishing a holding company referring to the UUPT. The first step that must be taken by the directors of each company before establishing a holding company and making one company leader, then what must be done is (Chairan, 2010: 91-92):

- a. Prepare a holding company activity plan that at least contains the following matters (Ramlan, Syafriana & Kartika, 2024: 218-220. Citra Hendardini, 2021: 738):
 - 1) the name and domicile of each company that will carry out the merger;
 - 2) the reasons and explanations of the directors of the company that will carry out the merger and the requirements for the merger;
 - 3) procedures for assessing and converting shares of the merging company into shares of the company receiving the merger;
 - 4) draft amendments to the articles of association of the company accepting the merger, if any;
 - 5) financial reports for the last 3 (three) financial years of each company that will merge;
 - 6) plans for the continuation or termination of business activities of the companies that will carry out the merger;
 - 7) pro forma balance sheet of the company receiving the merger in accordance with generally accepted accounting principles in Indonesia;
 - 8) how to resolve the status, rights and obligations of members of the board of directors, board of commissioners and employees of the company that will merge;
 - 9) method of settling the rights and obligations of the company that will merge with third parties;
 - 10) method of resolving the rights of shareholders who do not agree with the merger of companies;
 - 11) names of members of the board of directors and board of commissioners and salaries, honorariums and allowances for members of the board of directors and board of commissioners of the company accepting the merger;
 - 12) estimated timeframe for implementing the merger;
 - 13) reports on the conditions, developments and results achieved by each company that will carry out the merger;
 - 14) the main activities of each company that carries out the merger and the changes that occur during the current financial year; and
 - 15) details of issues arising during the current financial year that affect the activities of the companies that will carry out the merger.
- b. The holding company plan, after receiving approval from the board of commissioners of each company, is submitted to the respective RUPS for approval.
- c. Announcing in a newspaper about the holding company plan, that the board of directors of a company that will establish a holding company must announce a summary of the plan in at least 1 (one) newspaper and announce it in writing to the employees of the company that will establish the holding company within a period of no later than 30 (thirty) days before the summons for the RUPS.
- d. An announcement containing notification that interested parties can obtain the holding company plan at the company's office from the date of the announcement until the date the RUPS is held.
- e. Creditors may submit objections to the company within a maximum period of 14 (fourteen) days after the announcement regarding the holding company in accordance with the plan. If within 14 (fourteen) days the creditor does not submit an objection, then the creditors are deemed to approve the holding company.
- f. Shareholders who do not agree with the GMS decision regarding the holding company have the right to have their shares purchased at a fair price.
- g. Holding a RUPS to approve the holding company, at least 3/4 (three quarters) of the total number of shares with voting rights are present or represented at the RUPS and the decision is valid if approved by at least 3/4 (three quarters) of the total number of votes cast.
- h. If the holding company plan has been approved by the RUPS, then it is stated in the holding company deed made before a notary in Indonesian, the one that contains the least number of things; terms and conditions of the companies that will merge, changes to the company's articles of association that remain in effect, how to transfer shares to an existing company, and other things required for the agreement to form the holding (Syarif Nurhidayat & Susetyo, 2022: 954).

4. CONCLUSION

Company law in Indonesia, especially the UUPT as a special regulation of the UUBUMN, does not yet regulate the process of establishing a BUMN (Holding Company), meanwhile, Article 10 paragraph (1) of the BUMN Law No. 16/2025 has emphasized that the establishment and management of BUMN Holding Companies is carried out in accordance with the UUPT. Therefore, to provide legal certainty in the establishment of a BUMN (Holding Company) before the government revises the UUPT, the government can apply the principle of *tempus regit actum* where the validity of a legal action can be determined by the laws and regulations in force at the time the action was carried out.

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