

## The position of state-owned enterprises: Towards a health sector super holding company paradigm

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### Abstract

*Purpose:* In Indonesia, the State-Owned Enterprises holding in the healthcare sector operates under the mandate of Article 33 of the 1945 Constitution, consisting of two main holding companies: PT. Bio Farma (Persero), which includes PT Kimia Farma, PT Indofarma, and PT Inuki, as well as Pertamedika IHC that manages SOE hospitals nationwide. The overlap in business activities between PT. Bio Farma and Pertamedika IHC suggests the potential for establishing a super healthcare holding.

*Method:* This research, conducted normatively, evaluates the principles and legal norms for creating such a super holding, referencing the legislative framework and Constitutional Court decisions.

*Result:* The proposed super holding would adopt a modern corporate structure led by a Chief Executive Officer, akin to Temasek in Singapore or Khazanah in Malaysia. The establishment of a super healthcare holding company involves PT. Bio Farma with its 410 healthcare clinics and Pertamedika IHC as the parent holding of SOE hospitals, which manages 75 hospitals and 143 healthcare clinics throughout Indonesia.

*Conclusion:* However, legal challenges, including the state's financial status and the legal relationships between parent and subsidiary companies, necessitate amendments to Law No. 19 of 2003 on SOEs to provide a stronger legal foundation for the formation of the super holding.

**Keywords:** *state-owned enterprises; health sector; super holding company*

### INTRODUCTION

That the existence of the Unitary State of the Republic of Indonesia cannot be interpreted solely as a goal, but also as a tool to achieve the goals of the state as formulated in the Preamble of the 1945 Constitution. Only by viewing the state as a tool to achieve its goals, can the true essence of the state be understood (Budiardjo, 2003). Therefore, the existence of the Unitary State of the Republic of Indonesia should be a means to achieve the goals as stated in the Preamble of the 1945 Constitution, rather than the other way around (Harun, 2019).

From the perspective of a welfare state aimed at providing guarantees for welfare (a just and prosperous society), equitable development, and introducing values of justice in the relationship between the state and the people, especially in the national economic system, the government establishes state-owned enterprises or State-Owned Enterprises (BUMN) (Harun, 2019).

Law Number 19 of 2003 concerning State-Owned Enterprises explains that the category of State-Owned Enterprises consists of two forms, namely Persero and Perum. Persero is a State-Owned Enterprise organized as a limited liability company, with capital divided into shares, of

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which a minimum of 51 percent or more of its shares are owned by the state. This entity's main goal is to make a profit.

Minister of State-Owned Enterprises Decision Number SK-16/MBU/01/2016 regarding the Strategic Plan of the Ministry of State-Owned Enterprises for the Year 2015-2019 on pages 47-48 explains that the concept of a National Holding Company within the State-Owned Enterprises environment will play a major role in overseeing and controlling various entity companies or parent companies within the modern corporate structure. The Chief Executive Officer (CEO) will lead this parent company entity, which is responsible for reporting performance to the head of state. The management of state-owned entity companies like this can be observed in the management of the Temasek Group (Singapore) or Khazanah (Malaysia). The basic idea of the National Holding Company Concept, first proposed by Tanri Abeng, has become a significant basis for the restructuring of State-Owned Enterprises. This restructuring effort involves various factors such as funding, management, and integration. Under the leadership of Sofyan Djalil, this concept continues to be implemented, with the belief that establishing a holding company is a strategically important step to improve the performance of State-Owned Enterprises. Indonesia has currently implemented sectoral BUMN holdings in sectors such as hospitals, pharmaceuticals and clinics, mining, and energy. The pharmaceutical sector holding designates PT Bio Farma as the parent company holding in this structure, where the government still holds 100% of the shares of this parent holding company. This parent holding company has members such as PT Kimia Farma, Tbk and PT Indofarma, Tbk. The decision to designate PT Bio Farma as the parent holding company for pharmaceutical State-Owned Enterprises is based on the approval letter issued by the Minister of State-Owned Enterprises as the General Meeting of Shareholders approving the transfer of all series B shares owned by the Republic of Indonesia in Kimia Farma and Indofarma to PT Bio Farma (Persero) (Group, 2022).

The discourse of the Ministry of State-Owned Enterprises (BUMN) will soon declare the management of hospitals, which have been handled by BUMNs, into a single state-owned hospital business entity, namely PT Pertamina Bina Medika Indonesia Healthcare Corporation (Pertamedika IHC) (IHC, 2022). Furthermore, considering the core businesses of these two BUMN holdings are essentially similar in the healthcare sector, it is legally possible to form a super holding BUMN in the healthcare sector aimed at creating downstream companies and avoiding overlapping business activities between PT. Bio Farma and Pertamedika IHC.

However, the formation of a BUMN holding company in Indonesia still encounters several legal issues, such as the state's control over BUMNs, the legal relationship between subsidiaries and parent companies, and the state's financial status. This is because the paradigm of managing Indonesian BUMNs is still based on a governance paradigm. Therefore, the following will discuss the paradigm of forming a BUMN holding and the idea of forming a super holding among BUMN holdings.

## **METHOD**

This research, conducted in a normative manner, evaluates the principles and legal norms to create the super holding, referring to legislative frameworks such as Law Number 19 of 2003 concerning State-Owned Enterprises and Government Regulation (PP) Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Procedures

for State Capital Participation and Management in State-Owned Enterprises and Limited Liability Companies, as well as decisions of judicial institutions such as Constitutional Court Decision Number 12/PUU-XVI/2018 and Number 14/PUU-XVI/2018 and Supreme Court Decision Number 21 P/HUM/2017.

## **RESULT AND DISCUSSION**

### **Pharmaceutical Sector State-Owned Enterprises (SOEs) Holding Company**

As a business entity organized as a Limited Liability Company, the establishment of SOEs is not only carried out solely for economic purposes. Besides managing strategic economic sectors to prevent them from falling into the hands of other entities, the purpose of establishing SOEs also includes a social dimension. In this regard, SOEs have a responsibility to meet the needs of the public (public services). This is what distinguishes SOEs from the private sector, as the obligations of SOEs are not limited to seeking profit alone (Estanto, 2018). With the increasing role of SOEs in national development, it is necessary to enhance their value, strengthen competitiveness, expand business networks, and promote self-reliance.

The government has designed strategies to achieve these goals, including through restructuring and privatization. The restructuring of SOEs aims to restore the spirit within SOEs. Thus, it is expected that SOEs can operate more efficiently, professionally, and transparently. In the effort to develop SOEs, the Ministry of SOEs implements restructuring through a rightsizing program. This step involves various corporate action scenarios that can be taken by SOEs, such as independent operations, mergers/consolidations, establishment of sectoral parent companies (holding), divestment, and liquidation.

The goal behind the establishment of SOE holdings is to optimize the role of SOEs through collaboration among SOEs, downstream sector development, and increased use of local resources. By forming SOE holdings, the aim is to strengthen the financial capacity and competency of SOEs. In the period from 2020 to 2024, it is planned that there will be nine SOE holdings in different sectors, such as pharmaceuticals, insurance, surveys, food industries, manufacturing, defense, port services, media, and tourism (Peraturan Menteri Badan Usaha Milik Negara Nomor PER-08/MBU/08/2020 Tahun 2020 Tentang Rencana Strategis Kementerian Badan Usaha Milik Negara Tahun 2020-2024, 2020). The formation of SOE holdings is carried out by transferring state-owned shares in the target SOEs to the parent SOE. SOEs are expected to have independence in terms of capital.

Furthermore, a stronger capital base can have a cascading effect on SOEs, which in turn can enhance their competitiveness and ultimately attract investment. The issuance of Government Regulation Number 72 of 2016 is intended to clarify and affirm the legal basis and guidelines regarding the formation of SOE holdings. The detailed regulations in this regulation include the following:

1. The process of forming SOE holdings is done through the transfer of shares from other SOEs to the capital participation in the SOE; and
2. The government's control over the subsidiary of the SOE holding company, which was previously an SOE, is done through the ownership of Class A Two-Tone shares. Through this ownership, the government retains special rights in the subsidiary, which was previously an SOE. These special rights include specific authorities such as the

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appointment of directors and commissioners, changes to the Articles of Association, share ownership restructuring, and approval of acquisitions by other companies.

In Government Regulation Number 72 of 2016, it is important to note that the mechanism for forming SOE holdings is different from the privatization mechanism. Restructuring of SOEs through a holding involves the formation of a group of companies where one SOE becomes the parent company. Meanwhile, privatization of SOEs involves the sale of shares, transferring the ownership of SOEs to other parties. Through SOE holdings, the state's share value in the companies included in the holding remains intact (not reduced).

Based on the experience of SOE holdings in the cement and fertilizer sectors, as observed by Toto Pranoto and Willem A. Makaliwe (Pranoto & Makaliwe, 2013), several valuable lessons can be learned:

1. PT Semen Indonesia implemented a synergy strategy among holding members by organizing a marketing system based on areas, integrating marketing systems, and applying synergy in sales.
2. PT Semen Indonesia transformed into a strategic holding and is no longer involved in operations. With the holding model, the parent company can optimize its position by utilizing the Group's financial balance sheet, where previously each company individually applied for credit from banking institutions.

After the issuance of Government Regulation Number 72 of 2016 (PP 72/2016), all SOE holdings are managed by SOEs that are 100% owned by the Government, except for ultra-micro holdings led by PT Bank BRI (Persero), Tbk. The formation of four SOE holdings before PP 72/2016 also apparently adopted the mechanism of transferring state shares from one SOE to another, similar to the mechanism regulated in PP 72/2016. The considerations of the government regulation regarding the establishment of mining SOE holdings are based on Government Regulation Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Procedures for State Capital Participation and Management in State-Owned Enterprises and Limited Liability Companies. Government Regulation Number 72 of 2016 regulates the transformation of shares in SOE holdings. The transformation of shares refers to when state wealth in the form of fresh funds, state-owned goods, state receivables in SOEs or PT, state shares in SOEs or PT, and/or other state assets are converted into state capital participation in SOEs or PT. As a result of state capital participation in SOEs or PT, state wealth is transformed into the wealth of those SOEs or Privat Companies (Widyantoro, 2019).

**Table 1**

*Comparison of Subsidiaries of SOEs that are SOEs and Subsidiaries of SOEs that are not SOEs*

Subsidiaries of SOEs that are SOEs	Subsidiaries of SOEs that are not SOEs
A business entity in which all or part of the capital is owned by the state through direct participation.	There is no direct state capital participation in the subsidiaries of SOEs.
The Minister of SOEs acts as the General Meeting of Shareholders (RUPS) or shareholder in SOE subsidiaries.	The Minister of SOEs does not have the authority to act as the General Meeting of Shareholders (RUPS) or shareholder in the subsidiaries of SOEs.
The state, through the government, holds preferred shares (diamond shares) or Class A two-tone shares in SOE subsidiaries as a	The state does not have two-tone shares in the subsidiaries of SOEs, so the state does not have direct control over the subsidiaries of

Subsidiaries of SOEs that are SOEs	Subsidiaries of SOEs that are not SOEs
<p>form of state control over the SOE subsidiaries. Holders of preferred shares (diamond shares) or Class A two-tone shares have the authority to:</p> <ol style="list-style-type: none"> <li>1. Appoint members of the Board of Directors and members of the Board of Commissioners;</li> <li>2. Amend the Articles of Association;</li> <li>3. Change the ownership structure of shares; and</li> <li>4. Merge, consolidate, split, and be acquired by other companies.</li> </ol>	<p>SOEs.</p>

Source: Processed by the author.

The formation of SOE holding companies basically aims to strengthen and control the wealth of national natural resources through SOEs. However, on the contrary, it raises new legal issues related to the legal status of SOE subsidiary entities and the financial status of SOE subsidiaries. The formation of SOE holdings based on government regulations is considered to have norm conflicts with provisions in the State Finance Law as well as decisions of the Supreme Court and decisions of the Constitutional Court, and the formation of SOE holdings based on government regulations is considered to not have a strong legal basis from Law No. 19 of 2003.

#### **Challenges and Opportunities of the Health Sector SOE Super Holding**

Legal issues related to the formation of holdings or the constitution of SOE subsidiaries are the main focus in Constitutional Court Decision Number 12/PUU-XVI/2018 and Number 14/PUU-XVI/2018 as well as Supreme Court Decision Number 21 P/HUM/2017. Judicial review of Government Regulation Number 72 of 2016 concerning the revision of Government Regulation Number 44 of 2005 regarding Procedures for State Capital Participation and Management in State-Owned Enterprises and Limited Liability Companies, has a similar background to the interpretation of the petitioners. The petitioners argue that the formation of holding companies is in line with a new privatization model for State-Owned Enterprises and also reduces the supervisory role of the People's Representative Council, because the holding approach is not dependent on the State Budget system.

The legal consequences of the implementation of the Government Regulation of the Republic of Indonesia Number 80 of 2020 concerning the Addition of State Capital Participation of the Republic of Indonesia in the Share Capital of PT Bio Farma will result in a change in the legal status of the subsidiary. Previously in the form of a Persero legal entity, it will change into a limited liability company legal entity that is fully subject to the provisions of Law Number 40 of 2007 concerning Limited Liability Companies.

The impact of this change in legal status will also affect the governance and financial audit of the state in the subsidiary, whether it will be conducted in accordance with the corporate financial supervision rules outlined in Law Number 40 of 2007 concerning Limited Liability Companies.

The transition of the business entity status of subsidiaries owned by State-Owned Enterprises will also bring up other legal issues. In this context, on one hand, State-Owned Enterprise subsidiaries are considered State-Owned Enterprises (Peraturan Pemerintah Nomor 72 Tahun

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2016, 2016), however, on the other hand, subsidiaries of State-Owned Enterprises are considered not to be State-Owned Enterprises (*Putusan Mahkamah Konstitusi Nomor 01/PHPU-PRES/XVII/2019.*, 2019).

Related to the change in legal status of subsidiaries owned by State-Owned Enterprises (SOEs), this can be assessed through the content of Government Regulation Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Procedures for State Capital Participation and Management in State-Owned Enterprises and Limited Liability Companies. This government regulation has been subject to judicial review by the Supreme Court in the context of Decision Number 21 P/HUM/2017 related to the Law on State-Owned Enterprises (SOEs).

However, legal challenges, including the state's financial status and the legal relationship between the parent company and its subsidiaries, require an amendment to Law Number 19 of 2003 concerning SOEs to provide a stronger legal basis for the formation of a super holding.

The SOE holding began during the 1998 monetary crisis under the leadership of Tanri Abeng. In the SOE blueprint, as an effort to generate value creation, SOEs were clustered into several groups. Several holdings were then created to make the government's span of control easier. The initial idea behind the selection of a holding company was management optimization. The parent holding company is led by a Chief Executive Officer (CEO) who reports the company's performance and is directly accountable to the President (Lisnawati, 2019).

The SOE holding was inspired by the success of holdings in other countries such as Temasek in Singapore and Khazanah in Malaysia. Temasek is an independent and professional investment management company that manages its assets for commercial purposes. The purpose of establishing Temasek is to maximize profits while replacing the role of the Ministry of Finance, which previously managed SOE assets and determined investment policies. The formation of Temasek is a commitment by shareholders to the investments that have been made to be managed commercially, thereby reducing the government's role as a policy maker and regulator in the market. With the establishment of Temasek, the role of the Minister of Finance is only as a shareholder (Lisnawati, 2019).

The legal concept of forming a super holding in the healthcare sector between PT. Kimia Farma and PT Pertamina Bina Medika Indonesia Healthcare Corporation (IHC) is based on the discourse of forming a hospital holding of PT Pertamina Bina Medika Indonesia Healthcare Corporation (IHC) SOE. In the initial stage, there were 15 hospitals involved in the merger initiative, with 14 of them being Pertamina hospitals and one being PT. RS Pelni. Then, the next stage involved 7 BUMN hospital management companies with a total of 20 hospitals. Among these companies are PT Krakatau Medika (owned by Krakatau Steel), PT Rumah Sakit Pelabuhan (owned by Pelabuhan Indonesia II), and PT Pelindo Husada Citra (owned by Pelabuhan Indonesia III). Furthermore, the third stage involves another 23 hospital management companies, such as PT Prima Husada Cipta Medan and PT Cut Meutia Nusantara. In total, this merger project will involve 70 hospitals with 6500 beds and 32 subsidiaries. The Ministry of SOEs will transfer the management of hospitals currently managed by SOEs to one parent entity, namely PT Pertamina Bina Medika Indonesia Healthcare Corporation (Pertamedika IHC) (IHC, 2022).



*Figure 1. Super holding scheme chart for State-Owned Enterprises (SOEs) in the health sector.*

Based on the discourse of forming a SOE Hospital holding, it would be more comprehensive to also establish a Healthcare sector SOE holding between Kimia Farma and IHC, thus creating a comprehensive SOE in the Healthcare sector, from the provision of healthcare equipment to hospital healthcare referrals.

From a legal perspective, the collaboration between Kimia Farma and IHC has significant implications in the healthcare services field. This collaboration includes cooperation between Kimia Farma's 410 health clinics with 75 hospitals and 143 health clinics owned by IHC throughout Indonesia. It is hoped that this synergy will improve public access to quality healthcare services.

Furthermore, this collaboration is also in line with the role of SOEs as development agents, as stated by the President Director of Kimia Farma. This indicates that this cooperation is not only beneficial for both companies but is also expected to provide significant benefits to the public in terms of integrated and comprehensive healthcare services.

This collaboration will also expand open provider services for First Level Health Facilities (FKTP) and open priority referral access from Kimia Farma clinics to IHC network hospitals. This will simplify the process of referring patients between these two types of healthcare facilities. The collaboration between IHC hospitals and Kimia Farma Diagnostika laboratories in the laboratory examination referral program will also be an important part of this collaboration.

From an operational aspect, it is expected that there will be alignment of business processes to be more competitive at the regional and global levels. This will lead to the integration of the supply chain from upstream to downstream that was previously not well connected. Preventing duplication, improving SOE operational efficiency. Creating synergy both internally and cross-sectorally, both across SOEs and between SOEs and the private sector (Arifin, 2020).

## **CONCLUSION**

The conclusion of the discussion is that legal issues related to the formation of holding or the constitution of SOE subsidiary companies have been a major focus in several legal decisions,

including judicial reviews of related regulations. The implementation of Government Regulation Number 80 of 2020 concerning the Addition of the Republic of Indonesia State Capital Participation in the Share Capital of PT Bio Farma will change the legal status of the subsidiary company, with consequences for governance and financial audits. The transition of the legal status of SOE subsidiary companies also presents legal issues, including whether the subsidiary is still considered an SOE or not. The legal challenges faced, including the state's financial status and the legal relationship between the parent company and the subsidiary, require amendments to the SOE Law. The idea of forming a super holding in the Healthcare sector is a comprehensive step in optimizing management and healthcare services, in line with the role of SOEs as development agents. The collaboration between Kimia Farma and IHC has a significant impact in the healthcare services field, which is expected to improve public access to quality healthcare services.

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