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**RESEARCH ARTICLE**

## Regulation of the Synergy of Holding Company State-Owned Enterprises (BUMN) In the Effort to Contribute to the Development of the National Economy

Alfonsus Andrew<sup>1</sup> ✉ and Anna Maria Tri Anggraini<sup>2</sup>

<sup>1</sup>Student of the Doctoral Study Program in Law, Faculty of Law, Trisakti University, Jakarta

<sup>2</sup>Permanent Lecturer at the Faculty of Law, Trisakti University, Jakarta, and Commissioner of the National Consumer Protection Agency of the Republic of Indonesia

**Corresponding Author:** Alfonsus Andrew, **E-mail:** [alfon\\_racer@yahoo.com](mailto:alfon_racer@yahoo.com)

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**ABSTRACT**

Holding Company has been carried out from 1995 to 2022 and will be implemented by the Government in the future. Holding a company is the Government's way of incorporating the ownership of several SOEs into those selected to become holding companies. The holding company arrangement still needs to reflect the existence of a synergy goal that is the mark of the holding Company, so it is not optimal to contribute to the development of the national economy, which is one of the aims and objectives of BUMN.

**KEYWORDS**

BUMN synergy, Holding Company.

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**1. Introduction**

The Government has established the planning and governance of bureaucratic reform in a planning document that can be understood and implemented by all interested parties and stakeholders. In this regard, the Government has issued Presidential Regulation Number 81 of 2010 concerning the Grand Design of Bureaucratic Reform 2010-2025 which is divided into three periods of the national bureaucratic reform road map in order to lead to world-class governance, namely:

1. Road map for bureaucratic reform in 2010-2014, namely strengthening the government bureaucracy to realize a clean and free government of KKN, capacity, and accountability of bureaucratic performance, and improving public service quality to the community.
2. Road map, namely the implementation of the results that have been achieved in the first five years, also continues the efforts that have not been achieved in the first five years on various strategic components of the government bureaucracy.
3. Road map of bureaucratic reform for 2020-2024, namely continuous improvement of bureaucratic capacity as a continuation of bureaucratic reform in the second five years to realize world-class Government.

The President set five main directions for implementing the Nawacita mission and achieving Indonesia's 2045 vision targets. The five directives include human resource development, infrastructure development, simplification of regulations, simplification of the bureaucracy, and economic transformation.

The Ministry of State-Owned Enterprises (BUMN), as one of the executive executives in charge of SOEs, has also set five priorities for the Ministry of SOEs, namely (Sandra & Kim, 2022):

- a. Economic and social value for Indonesia.

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Increase economic value and social impact, especially food security, energy, and health.

b. Business model innovation.

We are restructuring the business model through ecosystem development, collaboration, developing stakeholder needs, and focusing on core business.

c. Technology leadership.

We are leading globally in strategic technology and institutionalizing digital capabilities such as data management, advanced management, big data, artificial intelligence, and others.

d. Increased investment.

We are optimizing asset value and creating a healthy investment ecosystem.

e. Talent development.

Educate and train the workforce, develop quality human resources for Indonesia, and professionalize governance and HR selection system.

The strategic role of SOEs in the national economy through the Ministry of SOEs has set KPIs for SOEs<sup>1</sup>.

1. Profitable Business

Ensuring the Company can still increase or maintain market share and a positive financial position.

2. Sustainable Business

Companies need to have sustainable long-term planning to respond to an increasingly competitive business world.

3. Agent of Development

SOEs remain at the forefront of the Government's strategic initiatives.

Holding company State-Owned Enterprises (BUMN) is one of the embodiments of strategic legal issues related to the management of SOEs, which is the implementation of the Government's road map, where SOE synergy is transformed into a holding parent relationship with holding members.

Ray August stated that a holding company is owned by the parent company or several holding companies whose duties are to supervise, coordinate, and control the business activities of its subsidiaries. Garner states that a holding company, namely a holding company, is a company formed to control other companies, usually limiting its role to controlling shares and regarding managerial<sup>2</sup>.

The definition of holding Company above refers to holding company investment because the parent company only carries out the functions of supervising, coordinating, and controlling the subsidiaries' business activities. Ratnawati Prasodjo stated that the Limited Liability Company Law does not recognize share ownership or investment in other companies as a form of business.

Another definition of a holding Company is that the holding Company is placed as the central leader who controls and coordinates the subsidiary companies in a collective economic unit, while the subsidiary company is a limited liability company whose shares are mostly owned by a BUMN or a limited liability company controlled by a BUMN<sup>3</sup>.

There are two control models of group companies in terms of the parent company's business activities, which are as follows:

Investment Holding Company

In an investment holding company, the parent company only invests in shares in the subsidiary without carrying out supporting activities or operational activities. The parent company earns income only from dividends given by the subsidiary.

Operating Holding Company

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<sup>1</sup> Loto Srinaita Ginting. *SOE Monopoly and Synergy: Two Decades of Enforcement of Competition Law*. (Jakarta: Business Competition Supervisory Commission, 2021). p. 258

<sup>2</sup> Sulistiowati. *Legal Aspects and Business Reality of Group Companies in Indonesia*. (Jakarta: Erlangga, 2010). h.25

<sup>3</sup> Reply Harun, *State-Owned Enterprises in the Viewpoint of Privatization, Holding, Control and Supervision of State Administration*. (Jakarta: Balai Pustaka, 2019), p.75.

The parent company carries out business activities or controls the subsidiary in an operating holding company. The parent company's business activities will usually determine the type of license the parent company must fulfil.

The implementation of BUMN synergy in the form of a holding company is interpreted as a unification of strengths and capabilities, as well as to avoid duplication of investment and the development of a harmonious partnership between BUMN, subsidiaries, and affiliated companies, which the Government then selects to overcome the dynamics of BUMN in order to contribute to the national economy as one of the aims and objectives of the establishment of SOEs.

The direction of the holding company policy that will come is still in formulation by the Ministry of SOEs. The documentary will form 18 (eighteen) holding companies. However, the super holding discourse is in the planning stage, then related to holding companies, the holding Company used to be closed, but currently, the holding Company is not related to benchmarks; the first approach used was a cluster approach or business activity. However, currently, there is an activity model, namely the potential that will emerge if there is collaboration and synergy of different SOEs, namely ecosystems from various sectors<sup>4</sup>.

About BUMN synergy in the form of holding companies, in practice, it is also found that BUMN, whose shares are classified as blue-chip stocks or ordinary shares of a company that has a high reputation as a leader in similar industries, has a stable and consistent income in paying dividends.<sup>5</sup> which in 2022 suffered a loss and had relatively high debt like Pertamina with a loss of Rp. 191.2 trillion, which the Government chose as one of the holding companies and vice versa. In practice, there are SOEs that get profits, such as Pegadaian, where in 2021, they will earn a profit of Rp. 2.4 trillion<sup>6</sup>As a member of the holding Company.

This condition shows that the BUMN holding company synergy policy does not yet have benchmarks, or standards regarding implementation criteria, considering that holding company implementation has been carried out since 1995, where initially holding companies were implemented in BUMNs with similar industries and recently implemented in cross-sector BUMNs so that the performance of holding companies cannot be compared in the early days with the current holding Company that has crossed sectors.

The accuracy of holding company implementation is known to provide added value, especially to SOEs that still need to improve and optimal performance due to limited capital, human resources, and other factors that make SOEs less able to empower themselves.<sup>7</sup>There are still legal uncertainty factors, mainly caused by the development of the political economy<sup>8</sup>.

Apart from implementing state-owned holding companies that require restructuring, SOEs are still seen as playing a strategic role and having significant values. This is reflected in the following:

Economically, in 2021-2022 SOEs will contribute a large and significant contribution to the state, namely the total revenue of SOEs is Rp. 1,983 trillion, equivalent to 99 percent of APBN revenues, profits in 2021 are Rp. One hundred twenty-six trillion, and the total assets managed by SOEs reach Rp. 8,998 trillion<sup>9</sup>, and in contributions to cooperative products and small and medium enterprises until April 2022, it was recorded at Rp 20 trillion<sup>10</sup>.

Politically, Government, both executive and legislative, BUMN is under the guidance and supervision of the Minister of BUMN. Several bumps are specifically under the guidance and supervision of the Minister of Finance, where BUMN is also a working partner of Commission VI of the House of Representatives of the Republic of Indonesia. (DPR RI).

Juridically, SOEs carry out the mandate of Article 33 of the 195 Constitution, which is to promote welfare for all the people. BUMN has the principle of BUMN synergy in carrying out business activities and is currently transforming into a holding company.

<sup>4</sup> Interview with Mr Anas Puji Istanto (Coordinator of Corporate Law I Ministry of SOEs) on August 31, 2022.

<sup>5</sup> Gatot Supramono, *Stock Business Transactions & Dispute Resolution through the Courts*. (Jakarta: Prenadamedia Group, 2014), p.6.

<sup>6</sup> Success in Doing Efficiency, Pawnshop Profits Grow 20%. Available at: [https://www.pegadaian.co.id/berita/detail/361/hasil-laku-elektron-laba-pegadaian-tumbuh-20#:~:text=Jakarta%2C%2010%20Februari%202022%20%2D%20PT,year%202021%20or%20grow%2020%25](https://www.pegadaian.co.id/berita/detail/361/hasil-laku-elektron-laba-pegadaian-tumbuh-20#:~:text=Jakarta%2C%2010%20Februari%202022%20%2D%20PT,year%202021%20or%20grow%2020%25.). (07 July 2022).

<sup>7</sup>Wawan Zulmawan. *Utilization of BUMN Assets and Establishment of Subsidiaries*. (Bekasi: Permata Aksara, 2014). h.3.

<sup>8</sup> Mardjono Reksodiputro. *Legal Reform: A Collection of FHUI Alumni Thoughts*. (Jakarta: Iluni Press, 2004). h.195

<sup>9</sup> Press Release Number PR-61/S.MBU.B/06/2022 Regarding Erick: 2021 BUMN Net Profit Reaches Rp 126 T, This is Extraordinary. Available at: <https://bumn.go.id/media/press-conference/erick-laba-net-bumn-2021-reach-rp-126-t-ini-luar-besar>, (20 June 2022)

<sup>10</sup> Press Release Number PR-48/S.MBU.B/05/2022 About Erick Thohir and Teten Masduki Optimizing SOE Spending for KUMKM Products, Rp20 Trillion Has Been Realized. Available at: <https://bumn.go.id/media/press-conference/erick-thohir-dan-teten-masduki-optimalkan-jual-bumn-untuk-produk-kumkm- already-rp20-triliun-realisasi> (22 June 2022).

The formulation of the Chapter on the National Economy and Social Welfare Article 33 has been a concern since the first amendment to the 1945 Constitution, which continued until the second amendment to the 1945 Constitution and the third amendment with the same formula and only being able to formulate the fourth amendment to the 1945 Constitution, namely at the plenary session of the MPR annual session. 2002 6th, August 10, 2002 <sup>11</sup>.

The definition of the sentence “must be controlled by the state” in Article 33 of the 1945 Constitution, it can be concluded that the state’s right to control (control) does not have to be the state directly participating in organizing the relevant production branches by forming a state business, but can be by making regulations or economic policy whose main purpose is to safeguard the interests of the state and the interests of the people at large.

The right to control (control) the state does not mean having production branches that are important for the state and that control the livelihood of many people. However, the state’s right to control (control) is only limited to the business power of the organizers of these production branches for the welfare of the people. <sup>12</sup>.

The position of SOEs with significant values puts SOEs in a different position from private companies and requires special handling, especially since SOEs are state tools in achieving the goals of the state’s interest so that SOEs receive policies from the state as the owner, one of which is a holding company.

The purpose of SOE Synergy is to increase added value to the Company (financial and non-financial aspects), including for the benefit of the state and society. <sup>13</sup>.

According to the Big Indonesian Dictionary, Synergy is a joint activity or operation and synergism. <sup>14</sup>Moreover, according to the Black’s Law Dictionary, Synergism is a combination of known elements or functions that create a result greater than the sum of individual elements or functions. <sup>15</sup>.

The state’s steps through the Ministry of SOEs in improving performance and added value are part of streamlining and improving the portfolio of the number of SOEs through corporate restructuring, one of which is by holding a company <sup>16</sup>holding company arrangements and implementing BUMN synergies requires a strategy about BUMN being an organ that corporations legally protect.

Holding companies that the Government has formed to date are 14 (fourteen) state-owned holding companies, namely:

- Holding SOEs in the cement sector.
- Holding BUMN in the fertilizer sector.
- Holding SOEs in the plantation sector.
- Holding SOEs in the forestry sector.
- Holding BUMN in the mining sector.
- Holding SOEs in the energy sector (oil and gas).
- Holding BUMN in the pharmaceutical sector.
- Holding SOEs in the insurance and guarantee sector.
- Holding BUMN Certification Services.
- Ultra micro SOE holding.
- Holding of tourism and supporting SOEs.
- Food SOE Holding.
- Holding BUMN Defense Industry.
- Holding SOEs across sectors.

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<sup>11</sup> Susanto Polamolo, Elnino M. Husein Mohi. *Article 33 Debate in the 1945 Constitution Amendment Session*. (Yogyakarta: Kunca Wacana, 2019), p.xl

<sup>12</sup> Aminuddin Ilmar. *The Right to Control the State: In the Privatization of State Owned Enterprises, First Edition*. ( Jakarta: Kencana Prenada Media Group, 2012). H. 58.

<sup>13</sup>Hambra, *SOE Synergy Policy*. Delivered at the *Focus Group Discussion* in Jakarta on October 31, 2019.

<sup>14</sup> KBB Online is available at <https://kbbi.kemdikbud.go.id/entri/sinergi> (June 22 2022).

<sup>15</sup> Bryan A. Garner. *Black’s Law Dictionary Ninth Edition*. (Thomson Reuters: USA, 2009).

<sup>16</sup> “Overview” (online), available at <https://bumn.go.id/portfolio/overview> (February 9, 202). at 10:55 pm,

Implementation of holding companies is currently only carried out on SOEs under the Ministry of SOEs and not for SOEs under the Minister of Finance with special mission vehicle (SMV) status, which serves as the Government's <sup>17</sup>Fiscal tool or an instrument that can be used at any time by the Government in moving and maintaining the national economy <sup>18</sup>, as many as 4 (four) companies, including PT Sarana Multi Infrastruktur (Persero), PT Indonesia Infrastructure Guarantee Fund (Persero), PT Sarana Multigriya Financial (Persero) and PT Geo Dipa Energi.

It is undeniable that the implementation of BUMN synergy in the form of holding companies is influenced by the existence of economic interests in its implementation. Economics and law not only have the same substance as the science that studies human behaviour (scientific theories of behaviour), but both complement each other. Therefore, various economic approaches to law enforcement practices are relevant to be developed. <sup>19</sup>.

The operational complexity of SOEs, whether incorporated in holding companies or those with status as SOEs, is also influenced by the following:

Restrictions on SOEs in carrying out operations, namely:

Appeal for SOEs not to participate in the public auction of construction works with a value below 100 billion Rupiah as stated in the Letter of the Minister of Public Works and Public Housing of the Republic of Indonesia Number KU.03.01-Mn/731 dated May 28, 2018, to the Minister of State-Owned Enterprises (BUMN) of the Republic of Indonesia Regarding Efforts to Move the National Economy through Business Opportunities for National Construction Services Business Entities (BUJK), with the contents:

- a. Delivering an appeal to service providers of construction work originating from State-Owned Enterprises (BUMN) not to participate in the procurement of construction works carried out by public auctions with package values below 100 billion Rupiah;
  - 1) The above provisions can be excluded for national strategic projects or special ones set by the Budget User (PA).
- b. The temporary suspension of the establishment of subsidiaries and subsidiaries as stipulated in the Decree of the Minister of State-Owned Enterprises Number SK-315/MBU/12/2019 dated December 12, 2019, concerning Structuring Subsidiaries or Joint Ventures within State-Owned Enterprises, which contains:
  1. Arrange for Subsidiaries or Joint Ventures within the State-Owned Enterprises as follows:
    - a. Temporarily suspend (moratorium) the establishment of Subsidiaries/Joint Companies within BUMN until the Minister of BUMN revokes the policy.
    - b. The Ministry of SOEs conducts a review of the going concern of Subsidiaries and Joint Ventures whose performance is not good and makes the best decisions based on the assessment involving the SOE Directors.
    - c. The moratorium and review, as referred to in the First Dictum number 1 and 2, applies to affiliated companies consolidated into BUMN, including the Company's grandchildren and their derivatives.
  2. The decision, as referred to in the First Dictum, is excluded for the establishment of a Subsidiary/Joint Company, as follows:
    - a. In order to participate in tenders and to implement projects for SOEs that have a construction service business sector and toll road concessions.
    - b. In order to implement government policies or programs.
    - c. Article 22 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, "Business actors are prohibited from conspiring with other parties to regulate and determine tender winners to result in unfair business competition." The Constitutional Court Decision No., 85/PUU-XIV/2016 regarding the Testing of Law Number 5 of 1999 expands the meaning of "other parties" in unfair business competition to include "parties related to business actors, with legal subjects: 1. Business Actor, 2. Related Party Actor Effort."

The disharmony of views related to the wealth of SOEs between the wealth of SOEs is state wealth and separated state assets. Whereas state money participates in state-owned enterprises that are subject to the limited liability company law, participation in state shares with shares of other parties is the same, meaning that in a company, there is a mixing of assets originating from the

<sup>17</sup>"BUMN, BLU, PTNBH, and Sui Generis Institution" (online), available at: [https://www.djkn.kemenkeu.go.id/article/baca/12783/BUMN-BLU-PTNBH-dan-Lembaga-Sui-Generis.html#:~:text=BUMN%20yang%20berada%20di%20Bawah%20coaching%20and%20supervision%20Minister%20Finance%20is,Means%20Multigriya%20Finacial%20\(SMF\)\(February%2014%202022\)](https://www.djkn.kemenkeu.go.id/article/baca/12783/BUMN-BLU-PTNBH-dan-Lembaga-Sui-Generis.html#:~:text=BUMN%20yang%20berada%20di%20Bawah%20coaching%20and%20supervision%20Minister%20Finance%20is,Means%20Multigriya%20Finacial%20(SMF)(February%2014%202022)).

<sup>18</sup>"Inaugurate the Directors of Two SVM's, Director General of KN: Not Only Profit Oriented, but BUMN Must also Become Government Fiscal Tools" (online), available at: <https://www.djkn.kemenkeu.go.id/berita/baca/20984/Inaugurating-Directors-Two-SMV-Dirjen-KN-Not-Only-Profit-Oriented-BUMN-Must-So-Fiscal-Tools-Government.HTML> (February 15 2022).

<sup>19</sup>Asep N. Mulyana. *Deferred Prosecution Agreement in Business Crimes*. (Jakarta: PT. Grasindo, 2019), p.189

shareholders into a single entity which is declared as company assets. . If the state enters as equity participation in the form of shares in a company, then the money can no longer be referred to as state money that stands alone without any legal ties to the money of other parties because the money has turned into company assets. Consequently, if the Company suffers a loss, it cannot be said there has been a loss to the state's finances.<sup>20</sup>.

These provisions are as follows:

- a. Regulations related to SOE assets are state assets:
  1. Law of the Republic of Indonesia Number 17 of 2003 concerning State Finance, article 2.
  2. Law of the Republic of Indonesia Number 15 of 2006 concerning the Supreme Audit Agency, article 6, paragraph 1.
  3. Law Number 1 of 2004 concerning the State Treasury, article 1, paragraph 1.
  4. Constitutional Court Decision Number 48/PUU-XI/2013.

The Constitutional Court's decision Number 62/PUU-XI/2013, according to the Court: the separation of state assets, viewed from the perspective of the transaction, is not a transaction that transfers a right, so as a legal consequence, there is no transfer of rights from the state to BUMN, BUMD or other similar names. Thus, the separated state assets will remain state assets.

- b. The laws and regulations that state the assets of SOEs are separate state assets, including the following:
  1. BUMN Law, Article 1 point 1.
  2. The decision of the Constitutional Court Number 77/PUU-IX/2011 states that BUMN is a business entity that has assets separate from state assets. Hence, the authority to manage wealth, and business, including the settlement of BUMN debts, is subject to the law of limited liability companies based on Law Number 40 of 2007 concerning Limited Liability Companies (from now on referred to as UUPT)".
  3. The fatwa of the Supreme Court of WKMA/Yud/20/VIII/2006" states that the special law on BUMN clearly states that BUMN's capital comes from state assets that have been separated from the APBN and further development and management are not based on the APBN system but are based on the State Budget. Sound principles".

State finances as the legal substance of state finances can be viewed from the following aspects: a) state finances in a broad sense means based on the approach used in formulating the definition of state finances as stated in the general explanation of Law Number 17 of 2003 concerning State Finances, and b) state finances in a narrow sense is the state budget for revenues and expenditures or the state budget.<sup>21</sup>.

The foundation of BUMN as a business actor or economic actor in the form of a legal entity is expressly stated in the existing regulations so that the role of BUMN in business must be treated the same as other business actors in the form of a legal entity.<sup>22</sup>.

Implementation of synergy as the basis for implementing holding companies needs to be observed because SOE synergy is only regulated through the regulation of the Minister of SOEs, namely: SOE Minister Regulation No. PER-08/MBU/12/2019 concerning General Guidelines for implementing Procurement of Goods and Services for State-Owned Enterprises.

Article 3 point i "The purpose of this regulation regarding the Procurement of Goods and Services is: to increase the synergy between BUMN, Subsidiaries, and BUMN Affiliated Companies."

Article 4 paragraph (4) "Users of goods and services can perform synergies between SOEs/Subsidiaries/SOE Affiliated Companies."

Article 5 point h, "Procurement of goods and services must implement policies including providing opportunities for subsidiaries and synergies between BUMN/Subsidiaries/SOE Affiliated Companies."

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<sup>20</sup> HP Panggabean. *Recovery of Assets Corruption Crime Theory and Practice and Jurisprudence in Indonesia*. (Jakarta: Popular Science Bhuana, 2020). p.109.

<sup>21</sup> Muhammad Djafar Saidi, Eka Merdekawati Djafar. *State Finance Law: Theory and Practice*. (Depok: Rajawali Press, 2011). p.15.

<sup>22</sup>Isis Ikhwanayah, *The Development of Business Law in the Era of Globalization in the context of 80 years of Prof. Djuhaendah Hasan, SH* ( Bandung: Corleone Books, 2017), p. 327.

SOE Minister Regulation No. PER-07/MBU/04/2021 concerning the Second Amendment to the Regulation of the Minister of State-Owned Enterprises Number PER-03/MBU/08/2017 concerning Guidelines for Cooperation of State-Owned Enterprises, Article 2 point c " Cooperation prioritizes synergy between SOEs and between SOE subsidiaries and between SOE affiliated companies ...."

The regulation of BUMN synergy, which is the basis for implementing the holding Company, which is only in the form of a Ministerial Regulation, implements the holding company relationship that lacks a strong legal basis if the synergy is implemented—carried out directly in the holding Company.

The Ministry of SOEs Government has confirmed that the Ministry of SOEs has not planned to strengthen the said Minister of SOEs Regulations either through Government Regulations or the SOE Law.<sup>23</sup>

SOE Ministerial Decree has caused controversy in terms of Law Number 5 of 1999, as stated by Anna Maria Tri Anggraini, namely<sup>24</sup>: (Minister) directly requested by law or legislation. No single law or regulation is higher than the SOE Ministerial Regulation Number 15 of 2012, which gives a direct mandate/delegation to the Minister of SOEs to issue regulations in the procurement of goods/services. Therefore, even though the form of regulation is a regulation, this regulation is not one of the exceptions from Article 50 letter of Law Number 5 of 1999, so a review of its existence is needed.

The function of the Ministerial Regulation is to follow the duties and functions of a Minister following Article 17 of the 1945 Constitution (Amendment).<sup>25</sup>:

1. They are organizing general arrangements in the context of administering government power in their fields.
2. Implementing this function is based on Article 17, paragraph (1) of the 1945 Constitution (amendments) and existing customs. Each Minister owns this function following his field of duty.
3. Carry out further regulation of the provisions in the Presidential Regulation.
4. Because the function of this Ministerial Regulation is delegated from the Presidential Regulation, the Ministerial Regulation here is a further regulation of the President's policies as outlined in the Presidential Regulation.
5. We are carrying out further regulation of provisions in the Act which expressly mentions it.
6. Carry out further regulation of the provisions in the Government Regulation, which expressly mentions it.

## 2. Methodology

The type of research used is normative legal research. This research related to the synergy of BUMN holding companies is further categorized as normative-empirical research, which is translated into legal research equipped with empirical data; Not empirical research because it is still based on legal science, not in social science disciplines. It is a type of research that uses secondary data (from the library) and is supported by primary data based on field research, such as observation. Legal research is within the scope of this normative-empirical type of research, especially those carried out by law enforcement institutions in reviewing and evaluating a norm's effectiveness in enacting and working the norm in society. Between the two major currents of thought in legal research methods, namely normative research and empirical research, normative-empirical legal research is seen as a middle way, namely legal research that is still normative with a strong influence from sociological jurisprudence, so it can be concluded that normative- This empirical type of normative legal research is supported and equipped with empirical data.<sup>26</sup>

The nature of the research used is descriptive-analytical because it describes something following the actual situation associated with cases that occur within the BUMN environment.

### 2.1 Data source

- a. Primary Legal Material
  - i. 1945 Constitution
  - ii. Law Number 8 of 1995 concerning Capital Market
  - iii. Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition
  - iv. Law of the Republic of Indonesia Number 17 of 2003 concerning State Finance
  - v. Law Number 19 of 2003 concerning State-Owned Enterprises
  - vi. Law Number 1 of 2004 concerning the State Treasury a
  - vii. Law of the Republic of Indonesia Number 15 of 2006 concerning the Supreme Audit Agency
  - viii. Law Number 40 of 2007 concerning Limited Liability Companies

<sup>23</sup> Interview with Wahyu Setiawan, Assistant Deputy for Legislation at the Ministry of State-Owned Enterprises. September 7 2022.

<sup>24</sup> Anna Maria Tri Anggraini. *SOE Synergy in the Procurement of Goods and Services in the Perspective of Business Competition*. (Journal of the Legal Pulpit Volume 25, Number 3, 2013). p.458

<sup>25</sup> Maria Farida Indrati S. *Legislation 1 Type, Function and Content*. (Yogyakarta: Kanisius, 2020). h.274-276

<sup>26</sup> Irwansyah. *Legal Research, Choice of Methods & Article Writing Practice*. (Yogyakarta: Mitra Buana Media, p.42), 2021.

- ix. Law Number 19 of 2003 concerning State-Owned Enterprises, and Law Number 40 of 2007 concerning Limited Liability Companies

b. Secondary Legal Material

Consists of all publications on the law which are not official documents. Publications on law include textbooks, legal dictionaries, legal journals, and law lecture materials, namely about BUMN and Persero and corporate law and other related books.

c. Tertiary Law Material

These materials provide instructions and explanations of primary and secondary legal materials such as dictionaries, encyclopedias, etc.

1. Data Collection Method

The data collection method is through library research and interview techniques with expert sources related to BUMN and company law.

2. Data analysis

Analysis of the data used is qualitative. The data collected for further research is accompanied by interviews with resource persons related to BUMN and company law.

**3. Results and Discussion**

1. Government Regulations regarding the Establishment of Holding Companies

In corporate control, the relationship between the *holding Company* and its subordinate subsidiaries refers to the actualization of the parent company's authority through policies or instructions to direct the subsidiary's business activities in supporting the economic interests of the group companies as an economic unit. Therefore, the legal relationship between the parent company and subsidiaries in the group company (*holding Company*) is a relationship between shareholders.

Currently, there are at least 14 (fourteen) state-owned *holding companies* where the explanations for each *holding Company* are as follows:

- a. Holding SOEs in the cement sector, based on the Decree of the Minister of Finance of the Republic of Indonesia Number S-326/MK.016/1995 dated June 5, 1995, concerning the Consolidation of State-Owned Cement Plants, states that the state is consolidating 3 (three) cement SOEs, namely PT Semen Padang (Persero), PT Semen Gresik (Persero) and PT Semen Tonasa (Persero). The decree also stipulates that PT Semen Gresik (Persero) Tbk change its name to PT Semen Indonesia (Persero) Tbk to remain a State-Owned Enterprise and be the holding Company for PT Semen Padang and PT Semen Tomasa, which are subsidiaries of SOEs.
- b. Holding BUMN in the fertilizer sector, based on Government Regulation Number 28 of 1997. Considering: Whereas in order to increase the efficiency and productivity of state-owned enterprises in the fertilizer sector, it is deemed necessary to coordinate control between the Company (Persero) PT Pupuk Kalimantan Timur, the Company (Persero) ) PT Pupuk Kujang, the Company (Persero) PT Pupuk Iskandar Muda and the Company (Persero) PT Petrokimia Gresik.
- c. Holding BUMN in the plantation sector, based on Government Regulation Number 72 of 2014. Considering: To improve the capital structure and increase the Company's business capacity, PT Perkebunan Nusantara III.
- d. Holding BUMN in the forestry sector, based on Government Regulation Number 73 of 2014. Considering: Whereas to increase the business capacity of the State Forestry Public Company (Perum).
- e. Holding BUMN in the mining sector, based on Government Regulation Number 47 of 2017. Considering: To strengthen the capital structure and increase the Company's business capacity, PT Indonesia Asahan Alumunium.
- f. Holding BUMN in the energy sector (oil and gas), based on Government Regulation Number 6 of 2018. Considering: To strengthen the capital structure and increase the business capacity of the Company (Persero) PT Pertamina.
- g. Holding BUMN in the pharmaceutical sector, based on Government Regulation Number 76 of 2019. Considering: To strengthen the capital structure and increase the business capacity of the Company (Persero) PT Bio Farma.
- h. Holding BUMN in the insurance and guarantee sector, based on Government Regulation Number 20 of 2020. Considering: To strengthen the capital structure and increase the business capacity of the Company (Persero) PT Bahana Pembinaan Usaha Indonesia.
- i. Holding BUMN Certification Services, based on Government Regulation Number 66 of 2021. Considering: To strengthen the capital structure and increase the Company's business capacity, PT Biro Statistik Indonesia.
- j. Holding ultra micro SOEs, based on Government Regulation Number 73 of 2021. Considering: To strengthen the capital structure and increase the business capacity of the Company, PT Bank Rakyat Indonesia Tbk.

- k. Holding of tourism and supporting SOEs, based on Government Regulation 104 of 2021. Considering: To strengthen the capital structure and increase the Company's business capacity, PT Aviasi Wisata.
- l. Food SOE Holding, based on Government Regulation Number 118 of 2021. I am considering: To strengthen the capital structure and to increase the business capacity of the Company (Persero) PT Rajawali Nusantara Indonesia.
- m. Holding BUMN Defense Industry, based on Government Regulation Number 5 of 2022. Considering: To strengthen the capital structure and increase the business capacity of the Company (Persero) PT Len Industri.
- n. Holding of cross-sector BUMN, based on Government Regulation Number 7 of 2022. I was considering: To strengthen the capital structure and to increase the Company's business capacity, PT Danareksa.

From further investigation, no synergy was found as a goal against the background of the Government Regulation related to its formation. The stated backgrounds are: increasing efficiency and productivity, improving or strengthening the capital structure, and increasing business capacity.

## 2. Holding Company Articles of Association

Forming a *holding company* will change the articles of association, where there is a change in the articles of association for the BUMN, which is the parent *holding Company* and members of the *holding company/sub-holding*.

Changes to the articles of association for the *holding Company* are traced through two examples of *holding companies* as examples of the *holding company articles of association*, namely:

- a. Amendment to the articles of association of PT Bahana Pembinaan Usaha Indonesia (Persero), as referred to in Government Regulation Number 15 of 2020 concerning Amendments to Government Regulation Number 18 of 1973 concerning State Equity Participation of the Republic of Indonesia for the Establishment of Company Companies in the Field of National Private Business Development. Article 2 paragraph (1): A limited liability company (Persero) has the intent and purpose of carrying out activities as a holding company in the field of...; and Article 2 paragraph (2) a: To achieve the aims and objectives as referred to in paragraph (1), the limited liability company (Persero) carries out the following main business activities: a. Holding company activities include establishing or participating in other entities.
- b. Amendment to the articles of association of PT Len Industri (Persero), as referred to in Government Regulation Number 123 of 2021 concerning Amendments to Government Regulation Number 16 of 1991 concerning State Equity Participation of the Republic of Indonesia for the Establishment of a Limited Liability Company (Persero) in the Field of Professional Electronics and Component Industries. Article 2 paragraph (1): A limited liability company (Persero) has the intent and purpose of carrying out business activities as a holding company in the field of...; and Article 2 paragraph (2): In order to achieve the aims and objectives as referred to in paragraph (1), the limited liability company (Persero) carries out the following main business activities: a. Holding company activities, including establishing or participating in other entities.

From the two examples of amendments to the articles of association as stipulated in Government Regulations, no synergies have been found for *the holding Company*, so between *holding* and *sub-holding* has yet to have strong legal certainty in carrying out direct synergies.

## 4. Conclusion

The absence of inclusion of synergy as a goal in the background of the Government Regulation related to its formation as well as in the articles of association of the *holding Company* does not reflect the existence of synergy as a method and main business activity so that the synergy of *holding companies* has not been effective as an effort to contribute to the development of the national economy.

## 5. Suggestion

There needs to be an evaluation by the Government of SOEs regarding the arrangements in their respective State-Owned Enterprises (BUMN) as well as strengthening the functions of the Board of Directors, Board of Commissioners, or Supervisory Board as representatives of the Government so that the *holding company synergy* can run effectively.

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