

Legal Issues of State Financial Status in State-Owned Enterprises of the Holding Company Indonesian Mining Industry (MIND ID)

Muhammad Juang Rambe

Email: muhammadjuangrambe@gmail.com

Master of Law Program, University of North Sumatra, Medan-Indonesia

ABSTRACT

Holding company Mining Industry Indonesia (MIND ID) is one of the state-owned holding companies in Indonesia. MIND ID is a holding company in the mining sector which was formed based on Government Regulation Number 47 of 2017. The state financial status of state-owned enterprises and or subsidiaries of state-owned enterprises is still a matter of debate. There is an assumption that a state-owned company and/or its subsidiaries have state finances, but another opinion states that there is no state finance in the state-owned company but rather becomes the finances of the state-owned company. Supreme Court Decisions No. 21 P/HUM/2017 and No. 7 P/HUM/2018 principally state that a subsidiary of a SOE in a SOE holding structure does not turn into an ordinary Limited Liability Company, but remains a SOE. Then one of the cases of financial losses in state-owned enterprise subsidiaries as examined and tried in the Pangkal Pinang District Court Decision, namely in Decree Number 1 / Pid.Sus-TPK / 2021 / PN Pgp. The case in question is a case of alleged corruption in a subsidiary of the SOE Holding Company Mining Industry Indonesia (MIND ID), namely PT Timah, Tbk. In this decision, the panel of judges held that the SOE subsidiary, in this case, PT Timah, Tbk in the holding company of the Indonesian Mining Industry (MIND ID) is not a state-owned enterprise but a national private company. The consideration of the panel of judges in Decision Number 1/Pid.Sus-TPK/2021/PN Pgp regarding the financial status of the state in state-owned subsidiaries is different from the consideration of the panel of judges in the review decision in Decision Number 7 P/HUM/2018 Jo. Decision No. 21 P/HUM/2017.

Keywords: Legal Issues, State Financial, Subsidiaries, State-Owned Enterprises.

INTRODUCTION

Muhammad Hatta, explained that SOEs carry out their duties as an extension of the State in exercising control over branches of production that are important to the state and controlling the livelihoods of many people and controlling the land, water and natural resources contained in them to be utilized as much as possible. The prosperity of the people.^[1] There is an opinion that the meaning of the control of the State is not intended not to have in this case the State sufficient as a regulator, not as a direct doer. This aims to create fairness among fellow business actors.^[2]

State-Owned Enterprises in carrying out their duties and functions are inseparable from several problems, including the problem of inefficiency that can harm the State and the people, problems of morale, potitic interventions in the management of SOEs and corruption in SOEs.^[3] One of the efforts to overcome the problems faced by SOEs as the arm of the state through the government (executive) in the economic sector is through the reorganization of companies with the concept of a holding company for State-Owned Enterprises.^[4] Mining Industry Indonesia holding company (MIND ID) is one of the state-owned holding companies in Indonesia. MIND ID is a state-owned holding company in the mining sector which was formed based on Government Regulation Number 47 of 2017.

Law No. 19 of 2003 concerning State-Owned Enterprises explains that State-Owned Enterprises as business entities whose capital is wholly or substantially owned by the state

through direct participation derived from separate state assets as referred to in Article 1 paragraph (1) of Law Number 19 of 2003 concerning State-Owned Enterprises. The establishment of a holding company by the method of state capital participation in the form of SOE shares to other SOEs will have implications for the state's financial status as the phrase direct participation derived from separate state assets as referred to in Article 1 paragraph (1) of Law Number 19 of 2003 concerning State-Owned Enterprises. The state financial status of the state-owned company Parser and/or its state-owned subsidiaries is debatable. There is an assumption that state-owned companies and/or their subsidiaries have state finances, but other opinions state that there is no state finance in the SOE in question but rather becomes the finances of SOEs.

Based on Article 4 of Law Number 19 of 2003 concerning SOEs which essentially states that the capital of SOEs is and comes from separate state assets, so that their guidance and management are no longer based on the state budget system, but their guidance and management are carried out based on sound company principles and the application of provisions in the principles of limited liability company management to the management of SOEs. Inconsistencies in the financial status of the State in Persero SOE and or subsidiaries of SOEs are still a problem in the management of SOEs. SOEs as business entities will definitely have the potential to experience business losses, but the business losses in question have the potential to also be classified as state losses.

LITERATURE REVIEW

State-Owned Enterprises have 5 main objectives, namely as follows:

1. Contribute to the national economy;
2. Pursuing profits is devoted to State-Owned Enterprises in the form of *Persero*.
3. Promoting general benefits in the form of providing quality and adequate goods and/or services for the fulfillment of the lives of many people;
4. Pioneering business activities Being that have not been implemented by the private sector and cooperatives is a business activity of providing goods and/or services needed by the community.^[5]

State Finance in SOEs is state wealth that is separated from state companies / regional companies. Then the financial losses of the State are intended as an invasion of money, securities or goods, in real terms and can be calculated in amount as a result of unlawful acts.

METHOD

This research uses normative legal methods with a statutory and case approach, then descriptive legal research as the nature of research as explained by Peter Mahmud Marzuki that descriptive legal research is an analytical and systematic description of facts.^[6]

RESULTS AND DISCUSSION

Holding company Mining Industry Indonesia (MIND ID) is one of the state-owned holding companies in Indonesia. Previously, the nomenkalur in this holding company was a state-owned holding company at PT. Indonesia Asahan Aluminium, but since March 2023 the naming of this holding has become a holding company mining MIND ID. MIND ID is placed

as a holding function and then PT. Indonesia Asahan Aluminium as an operating function. This state-owned holding group is a member of PT. Aneka Tambang, Tbk, PT. Bukit Asam, Tbk, PT. Timah, Tbk, PT. Freeport Indonesia, PT. Vale Indonesia, Tbk, MIND ID Trading, PT. Indonesia Papua Metal and Minerals, PT. Borneo Alumina Indonesia, PT. National Green Lestari and PT. Indonesia Aluminum Alloy, with the following group structure of the company:



Source: MIND ID Annual Report 2021, p. 73

The financial status and wealth of the state in the subsidiaries of State-Owned Enterprises is still a matter of law. This is because there is a dualism of state financial status in State-Owned Enterprises. Therefore, to find out and answer these problems, several decisions of the Constitutional Court on the case in question are first set forth in the Constitutional Court. The position of state wealth in this case has been separated from that of SOEs and then on the wealth of these SOEs, there are still inconsistencies in determining their status. Since the issuance of Constitutional Court Decision No. 48/PUU-XI/2013^[7] and Decision No. 62/PUU-XI/2013^[7], the state's wealth and financial status has become increasingly attached to SOEs.

The state financial status of state-owned enterprise subsidiaries in the Structure of State-Owned Enterprises in the Mining Sector can be analyzed based on the provisions in Law Number 17 of 2013 concerning State Finance Jo. Law Number 1 of 2004 concerning State Treasury and Law Number 15 of 2006 concerning Financial Audit Agencies and Constitutional Court Decision Number 48 / PUU-XI / 2013 Jo. Constitutional Court Decision No. 62 / PUU-XI / 2013 against PT Timah Tbk, PT Aneka Tambang, Tbk and PT Bukit Asam Tbk, there is still a state financial status of 65% Series B shares in the Company (Persero) PT Aneka Tambang Tbk^[8], 65% of Series B shares in the Company (Persero) PT Timah Tbk^[9], amounting to 65.02% of Series B shares in the Company (Persero) PT Bukit Asam Tbk.^[10]

The existence of state financial status in state-owned mining subsidiaries is in line with

Supreme Court Decision Number 21 P / HUM / 2017 which states that SOE subsidiaries in the SOE holding structure do not turn into ordinary Limited Liability Companies, but remain SOEs^[11], then reaffirmed in Supreme Court Decision Number 7 P / HUM / 2018 which states that against subsidiaries of SOEs in the mining sector as referred to in Government Regulation Number 47 of 2017, there are still state finances so that the Financial Audit Agency (BPK) is authorized to conduct financial audits of these subsidiaries,^[12] this is in line with the Supreme Court Circular Letter Number 10 of 2020 concerning Legal Formulation of the Plenary Meeting of the Supreme Court Chamber in 2020.^[13]

That in order to affirm the state's financial status in state-owned enterprise subsidiaries, it can first be reviewed from the Constitutional Court Decision No. 48/PUU-XI/2013 and Decision No. 62/PUU-XI/2013. In the Constitutional Court Decision Number 62 / PUU-XI / 2013 stated that in the context of state financial supervision in SOEs, it can be carried out by the Financial Audit Agency using the paradigm supervision of business judgement rules, because according to the Court's decision, the management of State wealth in SOEs has changed to management based on business judgement rules and good corporate governance.^[14]

That in relation to the authority of the Audit Board in examining the finances and assets of the State constitutionally has been regulated in Article 23E paragraph (1) of the 1945 Constitution. The article expressly states that the examination of the state's finances is held by one Financial Audit Board.^[15] Later in Law No. 19 of 2003 it was also emphasized that the Financial Audit Agency has the authority to examine the management and financial responsibilities of the State. Understanding the concept of business judgement rules is basically attached to the understanding of GCG, in this case it is a fundamental concept in the management of companies, including State-Owned Enterprises.^[16] Corporate Governance by the Organization for Economic Cooperation and Development (OECD) is defined as: *"Corporate governance includes a set of relationships between the company's management, corporate organs, shareholders, and other stakeholders. Corporate governance also includes structures relating to how the company's objectives are set and how to achieve those goals as well as how performance oversight is determined"*.^[17]

The principles of Good Corporate Governance and the principles of Business Judgement Rules are principles that must be held and used by the Audit Board and/or other law enforcement officials when supervising the management and financial responsibility of State-Owned Enterprises. Because the financial management of SOEs is no longer based on the perspective of managing SOE finances, it is no longer based on the perspective of governance judgement rules, but on the principles of business judgement rules. That then there is a new problem, namely, how the state's financial status in a subsidiary of a SOE which was previously a Parser SOE turned into a subsidiary of a SOE subject to Law No. 40 of 2007. In this regard, it has been confirmed through the Supreme Court Decision Number 21 P / HUM / 2017 which in its case states that the examination of state finances on a subsidiary of a SOE holding, this is based on the participation of state capital in the form of shares of other SOEs into the SOE PT Indonesia Asahan Aluminium from the perspective of business transactions, not a transaction of transferring ownership of state assets in the form of shares to state-owned holding companies are only limited to transfers in terms of managing state-owned shares.

Then in the Supreme Court Decision Number 7 P / HUM / 2018 it was reaffirmed that

the Financial Audit Agency is authorized to supervise subsidiaries of state-owned holding companies in the mining sector, namely, among others, the responsibility of state financial management at PT Bukit Asam, Tbk, PT Timah, Tbk, and PT. ^[18] Then one of the cases of financial losses to state-owned subsidiaries as examined and tried in the Pangkal Pinang District Court Decision is in Decision Number 1/Pid.Sus-TPK/2021/PN Pgp, Decision Number 2/Pid.Sus-TPK/2021/PN Pgp and Decision Number 3/Pid.Sus-TPK/2021/PN Pgp. The case in question is a case of alleged corruption in a subsidiary of the SOE Holding Company Mining Industry Indonesia (MIND ID), namely PT Timah, Tbk. In its ruling, the panel of judges held that the SOE subsidiary in this case PT Timah, Tbk in the parent company of the Indonesian Mining Industry (MIND ID) is not as a SOEs but as a national private company. ^[19]

The consideration of the panel of judges in Decision Number 1/Pid.Sus-TPK/2021/PN Pgp, Decision Number 2/Pid.Sus-TPK/2021/PN Pgp and Decision Number 3/Pid.Sus-TPK/2021/PN Pgp on the financial status of the State in state-owned enterprise subsidiaries is different from the consideration of the panel of judges in the test decision in decision No. 7 P/HUM/2018 Jo. Decision No. 21 P/HUM/2017. Supreme Court Decision Number 21 P / HUM / 2017 which states that a subsidiary of a SOE in the SOE holding structure does not turn into an ordinary Limited Liability Company, but remains a SOE. ^[20] then reaffirmed in Supreme Court Decision Number 7 P / HUM / 2018 which states that for state-owned subsidiaries in the mining sector as referred to in Government Regulation Number 47 In 2017, there are still state finances so that the Financial Audit Agency (BPK) is authorized to conduct financial audits of subsidiaries. ^[21] this is in line with the Supreme Court Circular Letter Number 10 of 2020 concerning the Legal Formulation of the Plenary Meeting of the Supreme Court Chamber in 2020. ^[22]

With regard to the foregoing, basically the determination of whether or not there is a state financial loss to a subsidiary of a SOE which is used as an indicator of corruption crimes is not based on whether the SOE subsidiary is still in the form of a SOE or not a SOE, but to what extent it can be proven that the management of State finances in SOEs, subsidiaries of SOEs or in other private companies harms the State unlawfully. Because related to the financial status of the State in a subsidiary of a SOE or a subsidiary of a SOE will always be a long debate and not find a juridical meeting point because there are provisions of laws and regulations that regulate each other, such as Law No. 17 of 2003, Law No. 1 of 2004, Law No. 19 of 2003, Law No. 40 of 2007, Law No. 31 of 1999 Jo Law No. 20 of 2001 and later in Law No. 15 of 2006.

CONCLUSION

Supreme Court Decision Number 21 P / HUM / 2017 which states that a subsidiary of a SOE in the SOE holding structure does not turn into an ordinary Limited Liability Company, but remains a SOE. then reaffirmed in Supreme Court Decision Number 7 P / HUM / 2018 which states that for state-owned subsidiaries in the mining sector as referred to in Government Regulation Number 47 In 2017, there are still state finances so that the Financial Audit Agency (BPK) is authorized to conduct financial audits of subsidiaries. this is in line with the Supreme Court Circular Letter Number 10 of 2020 concerning the Legal Formulation of the Plenary Meeting of the Supreme Court Chamber in 2020.

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