



## Restructuring arrangements of state electricity company (persero) through the formation of subholdings in company law

Ni Putu Sawitri Nandari<sup>1</sup>, Kadek Julia Mahadewi<sup>2</sup>, I Putu Edi Rusmana<sup>3</sup>, Anak Agung Ayu Intan Puspawati<sup>4</sup>

<sup>1,2,3,4</sup>Fakultas Hukum, Universitas Pendidikan Nasional, Indonesia. E-mail: [sawitrinandari@undiknas.ac.id](mailto:sawitrinandari@undiknas.ac.id)

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### ABSTRACT

*Law Number 40 of 2007 Concerning Limited Liability Companies, which coincides with the lack of regulation of the legal force of a subholding, which is a holding company in which another holding company owns the dominant stake. The goal is to discover and investigate the regulation about restructuring of the formation of subholdings of PT PLN (Persero), as well as to discover and investigate the impact of restructuring of subholdings of PT PLN (Persero) on their human resources. The normative legal research approach was applied in this study. The findings of this study revealed that the implementation of holding-subholding by PT PLN (Persero) is legally valid because a corporate action carried out in the context of company restructuring and in response to the request of the Minister of BUMN as the government representative as the GMS. The restructuring of Subholding PT PLN (Persero) has no substantial influence on human resources, and there is no legal certainty with the argumentum per analogium technique owing to the lack of Subholding rules in law. A distinct and specific legislative product is required for future company development to govern Holdingization. The government, as a regulator, must be committed to monitoring the execution of industrial relations.*

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#### Corresponding Author:

Ni Putu Sawitri Nandari,  
Fakultas Hukum,  
Universitas Pendidikan Nasional,  
Jalan Bedugul No. 39, Sidakarya, Denpasar Selatan, Denpasar, Bali,  
80224, Indonesia  
Email: [sawitrinandari@undiknas.ac.id](mailto:sawitrinandari@undiknas.ac.id)

### 1. Introduction

Literally, the definition of “holding company” is not known in Law Number 40 of 2007 concerning Limited Liability Companies or in Law Number 19 of 2003 concerning State-Owned

Enterprises (BUMN) even though these Laws and Regulations are the legal umbrella for the existence of BUMN companies (Putri, 2023). However The broad definition of a holding company is a large business entity which is generally in the form of a corporation (PT) which controls the majority of shares of several other companies (Romadhan, 2021). In the past, the indirect definition of a holding company could be found in Article 1 paragraph (3) of the Regulation of the Minister of State for Agrarian Affairs or the Head of the National Land Agency Number 2 of 1999 concerning the procedures for granting PMA or PMDN location permits which has now been revoked and declared invalid, which states that a holding company is a group of companies which are two or more business entities whose shares are partly owned by the same person or legal entity, either directly or through another legal entity, with the amount or nature of ownership such that through the ownership of these shares it can directly or indirectly determine the organization or running of the business entity. On December 30, 2016, the Government issued Government Regulation of the Republic of Indonesia Number 72 of 2016 concerning Amendments to Government Regulation of the Republic of Indonesia Number 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies (PT) (Nauvaldy, 2020). The issuance of this government regulation immediately gave rise to controversy and misunderstanding of the concept, but the implementation of Holdingization continued (Asfhahani, 2022). The letter of the Ministry of State-Owned Enterprises number SK-352/MBU/10/2021 concerning the Establishment of a Team to Accelerate the Formation of Subholdings of PT Perusahaan Listrik Negara (Persero) further confirms that 'holding-subholding companies' occurred at PT PLN (Persero).

The concept of holding can be interpreted as a company taking over another company in order to obtain all or most of the shares to carry out control of interests. A company that carries out control over another company is called a holding company, while the controlled company is called a subsidiary company and the two companies are called a group of companies (Utoyo et al., 2019).

PLN has again undergone institutional or organizational changes, with the transfer of the company form, from a company that was originally in the form of a Public Company (Perum) to a Limited Liability Company (Persero), based on PP No. 23 of 1994 concerning the Transfer of the Form of the State Electricity General Company to a Limited Liability Company (Persero) (Nababan & Simarmata, 2020). With the change in the form of the company, it is hoped that PLN can increase the efficiency, competitiveness and development of the Company's business as an effort to anticipate world economic and trade developments and run a business based on the principles of a limited liability company as regulated in Law No. 40 of 2007 concerning Limited Liability Companies (Suprianto, 2018).

According to public policy observer Agus Pambagio, there are several laws and regulations that must be given special attention when forming a BUMN Holding Company, namely Law Number 19 of 2003 concerning BUMN, Law Number 40 of 2007 concerning Limited Liability Companies, and Law Number 17 of 2007 concerning State Finance (Widjoseno et al., 2022). However, the legal basis that has been used as legal legitimacy for the implementation of BUMN holding is Government Regulation Number 72 of 2016 which is an Amendment to Government Regulation Number 44 of 2005 concerning Procedures for Participation and Administration of State Capital in BUMN and PT (WIDJOSENO et al., 2021).

However, the decision of the Minister of SOEs to make PLN a 'holding-subholding company' to form a structured business group with a strong foundation with a parent company that owns the majority shares of the subsidiary, but that choice received a lot of internal and external rejections. As done by the PLN Workers Union, PJB Workers Union and Indonesia Power Workers Union and supported by the President of the United Pertamina Workers Union

Federation. The form of rejection was carried out in the form of a Statement of Position and Press Release carried out in front of national print and electronic media (Ginting, 2020). The author found that there were empty norms in the restructuring of subholdings at PLN. For several things above, the research in this journal will discuss "Restructuring Regulations of PT PLN (Persero) Through the Formation of Subholdings in Company Law".

Based on the description of the preliminary background above, the problems that the author formulated in writing this research are as follows: how is the regulation of the restructuring of PT. PLN. (Persero) in corporate law? and what is the impact of the restructuring of the subholding of PT. PLN. (Persero) on its human resource aspects?

## **2. Method**

Method, literally means way. In addition, method or methodical comes from the Greek language, metha (through or passing) and hodos (path or way) (Irianto, 2011). The author uses normative legal research, namely research that emphasizes the use of written legal norms that are associated with the practices and perceptions carried out by sources, and examines legal norms based on legal theory, especially the theory of legal certainty to ensure that each BUMN already has a Standard Operating Procedure (SOP) (Simatupang, 2013). This paper uses a normative legal research method because the focus of the study starts from the absence of norms, using the following approaches: statute approach, and conceptual approach. The technique of searching for legal materials uses a literature study technique in the form of legal materials, as well as an Analysis study.

## **3. Analysis and Results**

### **3.1. Restructuring Regulations of PT PLN (Persero) in Corporate Law**

Restructuring is carried out based on applicable regulations: (a) The Ministry of SOEs has formed a Team to Accelerate the Establishment of PLN Subholding (Decree of the Minister of SOEs SK-352/MBU/10/2021, dated October 22, 2021) involving the Steering Committee (Ministry of SOEs, Ministry of Energy and Mineral Resources, Ministry of Finance & Ministry of Law and Human Rights). (b) The purpose of establishing Subholding is to optimize the contribution of SOEs so that it can increase national economic growth (Consideration of SK-352). (c) Electricity business activities for the public interest remain under the control of the State. (d) The transformation of PLN through Subholding is not intended to liberalize national electricity but so that PLN through each of its subholdings can be more focused, agile, lean, transparent and professional in order to increase the sustainability and value of the company, including in this case to obtain funding needs, especially for new renewable energy business activities (Press Conference of the Minister of SOEs dated January 19, 2022).

The implementation of Holding Company in BUMN Company is different from its implementation in ordinary private companies, although both are subject to the provisions of Law 40/2007, but there is a difference in terms of share ownership originating from state assets placed in the BUMN company as referred to Law 19/2003 (Asfhahani, 2022). Based on the provisions of Article 1 number (4) of Law 40/2007, it states that the Company's organ holds the highest power in the company and holds all authority that is not delegated to the directors and commissioners within the limits determined in the law and the Articles of Association. In companies in the form of BUMN, the Minister acts as the GMS in the event that all of the PT's shares are owned by the state. This is also in line with the authority of the GMS granted by the UUPT, including (Judhanto, 2018): (1) Determination of changes to the Articles of Association; (2) Determining the repurchase of shares; (3) Determination of the increase in the Company's Capital; (4) Determination of the reduction of the Company's Capital; (5) Approval of the

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Annual Report and annual ratification; (6) Determination of the use of Profit; (7) Appointment, dismissal, division of Duties of the Board of Directors and Commissioners; (8) Approval of the Transfer and guarantee of the company's assets; (9) Approval of the Company's Restructuring; (10) Dissolution of the Company.

Based on point (7) above, the Minister of SOEs as the GMS has the authority to carry out the Appointment, Dismissal, and Division of Duties of Directors and Commissioners so that the decree of the Minister of SOEs from a normative perspective does not violate the law. That the formation of a "Holding-Subholding Company" is a company restructuring process, not the implementation of a merger, amalgamation, takeover or separation which can be explained as follows. Firstly, in Law No. 19/2003, it is only regulated that state control in a company can only be 51%, but for PLN as a BUMN company, 100% of its capital comes from state assets. All Capital Assets owned by PLN are State Property (BMN) and are registered in the Harmonized Asset List. If we refer to the Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number PER-03/MBU/03/2021 concerning the Third Amendment to the Regulation of the Minister of State-Owned Enterprises Number PER-02/MBU/2010 concerning procedures for writing off and transferring fixed assets of State-Owned Enterprises dated March 29, 2021, the Minister's regulation only concerns the writing off and transferring of fixed assets of BUMN, for the Investment Management Institution (LPI). In the provisions of Article 5 of this Ministerial Regulation, it is stated that the mechanism used is a sale where one of the requirements is if technically and/or economically it is no longer profitable for the BUMN if its existence is maintained or as part of the BUMN restructuring and health program. In the author's opinion, if the transfer of the assets is carried out for the restructuring program, it is possible, but it should be carried out procedurally referring to the State Finance Law and its implementing regulations. In addition, the assets are also core business assets, not supporting assets. Secondly, although explicitly there is no law or regulation that regulates the implementation of a "holding company", this action has been carried out in a corporate action by PT PLN (Persero) with the formation of a "holding-subholding company".

### **3.2. The Impact of Restructuring of PT PLN (Persero) Subholding on Human Resources Aspects**

#### **a. The Impact of Restructuring of PT PLN (Persero) Subholding on Human Resources Aspects**

In connection with the non-regulation of subholding in Law No. 40 of 2007, a legal regulation related to subholding is needed in Law No. 40 of 2007. Observation of Law No. 40 of 2007 concerning subholding, there is a legal vacuum (*recht vacuum*) or a vacuum of the Law (*wet vacuum*) regarding the regulation of subholding legal power in the form of a hierarchy of regulations (Khoiri, 2023). Efforts made to fill the legal vacuum (*recht vacuum*) are through legal construction or legal reasoning. A legal construction is needed by means of *argumentum per analogium* when facing analogous or similar events. Not only if the event to be decided is similar to the event regulated in the Law, but also if the interests of the legal community demand the same assessment (Puspitarini & Prijadi, 2023).

In relation to the legal issues studied in this research, this *argumentum per analogium* can be used as a method of legal construction in the formation of new norms related to the regulation of the legal force of the Collective Labor Agreement (PKB) in Law No. 40 of 2007 (Anwar et al., 2022). The basic principle in the theory of norm hierarchy by Hans Kelsen, namely that norms have a hierarchical structure, are fundamental state norms (*staatsfundamentalnorm*); basic state rules (*staatsgrondgezets*); formal laws (*formellgezets*); and implementing regulations and autonomous regulations (*verordning en autonome satzung*) as the basis for the analysis of the formation of a hierarchy of regulations that reflect legal force

(Suhenriko, 2023). The norms that are aspired to in the future related to the formulation of legal force are considered to have similar or the same legal events, so it is very relevant to use the formulation of the hierarchy of statutory regulations in Law No. 12 of 2011 as a legal analogy because in addition to the events being similar or the same law, Law No. 12 of 2011 is also a law that is a reference for law makers (executive and legislative) in designing and forming statutory regulations (Asshiddiqie & Safa'at, 2006).

**b. The impact of the restructuring of PT PLN (Persero) subholdings on the human resources aspect and the justice aspect**

Fair procedures in achieving welfare, according to John Rawls above, propose a layered procedure regarding the principle of justice (WILDAN, 2023). First of all, the principle of fair equality of opportunity. This means that access to welfare is opened equally to everyone. Everyone without exception has the right to achieve welfare (TIARASHANNY, 2018). However, if you still find a value of injustice, then the second procedure must be taken, namely the difference principle. This means that social and economic differences must be regulated in such a way as to provide the greatest benefit to those who are less fortunate (Tanya et al., n.d.).

This second principle of justice is very important for the restructuring of the PT PLN (Persero) subholding. When there is inequality in terms of welfare arrangements, it must be regulated accordingly (Idham & SH, 2020). The parties negotiating the PKB, namely employers and labor unions, must agree to provide protection by prioritizing justice both in terms of welfare and work comfort for workers as parties who have a weaker bargaining position than employers in industrial relations (Sitanggang, 2020). The restructuring of the PT PLN (Persero) subholding based on a sense of justice is the basis for consideration in realizing harmonious, dynamic, and equitable working relations (Zainab et al., 2022).

**c. The Impact of the Restructuring of PT PLN (Persero) Subholding on the Human Resources Aspect of Legal Benefit Aspect.**

The economic, social and technical protection above is the philosophy and benchmark of preventive legal protection put forward by Phillipus M Hadjon (Rina Yulianti, 2022). The regulation of worker protection inspires the PKB in the reality of implementation. It can be said that the role of the PKB can provide preventive legal protection that has legal utility value in industrial relations. The PKB which has the characteristics of private legal content with a public legal dimension is shown in the three regulations on worker protection as put forward by Imam Soepomo (Silalahi, 2018).

**4. Conclusion**

The implementation of the restructuring of PT PLN (Persero) by establishing a "Holding-Subholding company" can be carried out as long as the structural changes are carried out under the legal umbrella of regulations that are equivalent to the establishment and establishment of PT PLN (Persero), considering PLN's status as a BUMN and 100% of its assets are owned by the state. The impact of the restructuring of the subholding of PT PLN (Persero) on the aspect of its human resources is not significant. This has been regulated in the talent mobility mechanism through the work assignment mechanism and does not reduce employee rights.

The impact of the restructuring of the subholding of PT PLN (Persero) on the aspect of its human resources in terms of legal certainty through legal construction with the argumentum per analogium method due to the absence of regulations on the legal force of Subholding in Law No. 40 of 2007. The impact of the restructuring of the subholding of PT PLN (Persero) on the aspect of its human resources in terms of justice creates harmonious industrial relations. The

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impact of the restructuring of PT PLN (Persero) subholding on its human resources aspects in terms of legal benefits provides legal protection in both preventive and repressive forms for workers in industrial relations.

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