

# The Implementation of Subsidiary toward Holding Company in Manifestation of *Good Corporate Governance (GCG) Principle*

Alfarina Ardyastutik<sup>1\*</sup>, Albertus Sentot Sudarwanto<sup>2</sup>, Yudho Taruno Muryanto<sup>3</sup>

<sup>1</sup>Master Program of Law, Universitas Sebelas Maret, Surakarta, Indonesia

<sup>2,3</sup>Lecturer Master Program of Law Universitas Sebelas Maret, Surakarta, Indonesia

\*Corresponding Author

**Abstract:** - This research aims to know the implementation of the subsidiary toward the holding company in manifestation of Good Corporate Governance (GCG) principle. This research was conducted at PT INKA (Persero) and PT IMS. This research uses empirical legal research and the nature of this research is descriptive research. It explained implementation of the subsidiary toward the holding company in manifestation of Good Corporate Governance (GCG) principle. The types of data are divided into primary and secondary data. The primary data are the data gained from interview, and the secondary data taken from written document, reports, books, journals, and articles related to the research. Meanwhile, source of data consist of primary and secondary data source. The primary data source is information or fact which is directly gained through research on location, and secondary data source consist of primary and secondary legal material. Technique of collecting primary data is conducted by interview, while technique of collecting secondary data is conducted by literature review. Based on the research finding and discussion, it can be concluded that the implementation of Subsidiary toward holding company in manifestation of Good Corporate Governance has been corresponding with Article 36 paragraph (2) of Decree of the Minister of State-Owned Enterprises No: KEP-117/M-MBU/2002 concerning the application of Good Corporate Governance Practice in the State-Owned Enterprises. The implementation of the Good Corporate Governance Principle is important for companies. It is used to increase business success and company accountability in order to embody long term shareholder value while while paying attention to the interest of other stakeholders based on the legislation and ethical values.

**Keywords:** Implementation, Good Corporate Governance, The Holding Company and Subsidiary Of State-Owned Enterprises

## I. INTRODUCTION

**B**adan Usaha Milik Negara (BUMN) or State-Owned Enterprises (SOEs) is business entity which all or most of its capital come from separated state assets, including one of economic agents in the national economy system aside from private business and cooperation. Separated assets of the State-Owned Enterprises (SOEs) are state wealth coming from State Expenditure Budget (APBN) made as state capital

participation in Persero (limited liability company) and / or Perum (public service Company) and other limited company.<sup>1</sup>

The rationale of the State-Owned Enterprises (SOEs) establishment is as a manifestation of efforts to achieve government goals to improve the welfare of its people<sup>2</sup>. The important of the State-Owned Enterprises (SOEs) establishment is provided in the 1945 State Constitution of the Republic of Indonesia Article 33 paragraph (2) and (3):

Paragraph (2): “Sectors of production which are important for the country and affect the life of the people shall be under the powers of State.”

Paragraph (3): “The lands, the waters, and the natural resources within it shall be under the powers of the State and shall be used to the greatest benefit of the people.”

State-Owned Enterprises (SOEs) is explicitly regulated in the Act No. 19 Of 2003. The reason why the Act concerning State-Owned Enterprises (SOEs) was created because the previous legislations have still not provided a strong legal foundation in the state business entity development which is in line with the development of the cooperation.

It is needed to embed corporation and professionalism culture within the State-Owned Enterprises (SOEs) through improvement of management and supervision based on principles of good corporate governance<sup>3</sup>. In accordance with Regulation of Minister of Stated Owned Enterprises No: PER – 01/MBU/2011 concerning Good Corporate Governance Implementation in the State-Owned Enterprises which states that all of State-Owned Enterprises (SOEs) must apply Good Corporate Governance principle.

The problem of this research is about the subsidiary implementation toward Holding Company in the manifestation of Good Corporate Governance principle,

<sup>1</sup> Article 1 paragraph (10), Act No. 19 of 2003 concerning State-Owned Enterprises.

<sup>2</sup> Suhardi, G. (2007). *Revitalisasi BUMN*. Yogyakarta: Universitas Atma Jaya, p. 1

<sup>3</sup> Soeriaatmadja, A. (2010). *Laporan Akhir Kompendium Bidang Hukum Keuangan Negara (Sumber-Sumber Keuangan Negara)*. Jakarta: Law and Human Rights Development Agency of Republic of Indonesia, p.28.

whether the subsidiary company applies the same principle as the holding company (SOEs). Concerning of companies which ensconce under a holding company or group company, Rudhi Prasetya explained: "Holding is an order among a number of limited companies which are juridically independent legal subject of one another (separate legal entity), but all of them are actually one economic entity. Economically, the majority of the ownership is in one hand."<sup>4</sup> The Regulation of Minister of Stated Owned Enterprises No. Per 03/MBU/2012 of 2012 concerning Guidelines for Appointment of Members of the Board of Directors and Board of Commissioners of Subsidiary of State-Owned Enterprises, in the Article 1 number 2 explained that "Subsidiary of State-Owned Enterprises is limited company which is most of its share are owned by SOEs, or limited company which is controlled by SOEs."<sup>5</sup>

For improving the professionalism, the company needs regulations to run the company, both big company and small company. The regulation applied in the company called Good Governance Corporation (GCG). Good Governance Corporation aims to develop and advance the company. Good Governance Corporation principles are transparence, accountability, responsibility, and independence. Fairness and equality are also needed to achieve business sustainability by paying attention to stakeholders. By applying Good Corporate Governance, the company is able to run the business with integrity, and prioritize the interests of many people especially the stakeholders.

There are some obstacles and problems existed within SOEs management, especially in the subsidiary implementation toward Holding Company in the manifestation of Good Corporate Governance principle wherein most of the subsidiaries are suitable or yet to apply Good Corporate Governance (GCG) synergizing with the Holding Company.

## II. RESEARCH METHOD

This research uses empirical legal research. The nature of this research is descriptive research using qualitative research. The research was conducted in Holding Company of PT INKA (Persero) located in Jl. Yos Sudarso No. 70 Madiun. The types of data of this research are divided into primary and secondary data. The primary data are the data gained from interview, and the secondary data taken from written document, reports, books, journals, and articles related to the research. Meanwhile, source of data consist of primary and secondary data source. The primary data source is information or fact which is directly gained through research on location, and secondary data source consist of primary and secondary legal material. Technique of collecting primary data is conducted

by interview, while technique of collecting secondary data is conducted by literature review. This research also uses interactive analysis model as technique of analyzing data.

## III. RESEARCH FINDING AND DISCUSSION

### The Implementation of Subsidiary toward Holding Company in the Manifestation of Good Corporate Governance (GCG) Principle

In its operational activities, SOEs is inclined with various regulations as part of company (persero) or public service company (perum). SOEs consist of Public Service Company (Perum) and Limited Liability Company.<sup>6</sup> Public Service Company (Perum) is SOEs which the whole capital are owned by the state and it is not divided into share, while Persero is SOEs which are Perseroan terbatas or Limited Liability Company and its capital is divided into share which the whole or at least 51% (fifty one percent) of its capital owned by state. In addition, the main goal of the company (persero) is to make profits.<sup>7</sup>

According to the Act of Limited Liability Company of 2007, it is stated that company is a legal entity, and as legal entity, Limited Liability Company can take action in the legal traffic as legal subject and have wealth transferred from personal wealth of its management (Personastandi in Judicio).<sup>8</sup>

Furthermore, in establishing the SEOs, the Government provides the capital which derives from separated state assets.<sup>9</sup> Further regulation concerning State Capital Participation on the SOEs and limited company is regulated in the Government Regulation No. 72 of 2016 about Amendment of Government Regulation No. 44 of 2005 concerning Participation and Administration Procedure of State Capital on State-Owned Enterprises and Limited Liability Company (PT). The government regulation stated that State can provide capital participation for:<sup>10</sup>

- a. Establishing SOEs or Limited Liability Company;
- b. State Capital Participation on the Limited Liability Company in which there have no State-Owned Shares available yet; or
- c. State Capital Participation on the Limited Liability Company in which there have State-Owned Shares available.

Moreover, Subsidiary of SOEs is limited liability company which most of its capital is owned by SOEs or limited liability company controlled by SOEs.<sup>11</sup> The position

<sup>6</sup> Article 09 Act of SOEs

<sup>7</sup> Article 01 number 2 and 4 Act of SOEs

<sup>8</sup> Usman, R. (2004). *Dimensi Hukum Perusahaan Perseroan Terbatas*. Bandung : Alumni, p. 50

<sup>9</sup> Article 4 paragraph (1) Act of SOEs

<sup>10</sup> Article 5 Government Regulation 44/2005

<sup>11</sup> Article 1 number 2 of Regulation of Minister of Stated Owned Enterprises No. Per 03/MBU/2012 of 2012 concerning Guidelines for Appointment of

of the Subsidiary is private company which is in corporation controlled by SOEs as holding company. Therefore, instead of giving responsibility to the State, the subsidiary have obligation to give responsibility to the SOEs as the holding company. The legal consequences of the fund entity separation, which is the wealth of the State, is if there is a loss to the subsidiary, it will not have an impact on the State's losses. However, there is certain exception; if the subsidiary carries out states duties, then for several things the subsidiary is treated equally to SOEs, the things are as follow:<sup>12</sup>

- a. Receiving Government assignment or carrying out the public service; and/or
- b. Receiving state and/or Government specific policy, including in the management of natural resources with special treatment as applied to SOEs.

Based on the implication of the provision enactment, it can be concluded that the subsidiaries are treated the same as SOEs. Therefore, it has responsibility toward the State as the owner of the capital.

Good Corporate Governance is one of key successes of the company to grow and give long-term profit and also win the Global competition. It is also a process and structure used by *Organ Persero* to increase business success and company accountability. It is useful to embody long term shareholder value while paying attention to the interest of other stakeholders based on the legislation and ethical values. The principles of Good Corporate Governance are:

1. Transparency. It is openness in the decision making process and release material and relevant information about the company.
2. Accountability. It is clarity of function, implementation, and Organ responsibility, so that company management is carried out effectively.
3. Responsibility. It is suitability in the company management toward legislation and healthy corporate principles.
4. Independency. It is circumstance where the company is managed professionally without conflict of interest and influence / pressure from any parties which are not in accordance with the laws and regulations and healthy corporate principles.
5. Fairness. It is justice and equality in fulfilling the rights of stakeholders which arise based on the agreement and legislation.

By the existence of good corporate governance, such as monitoring by increasing the company's share ownership conducted by management and the role of monitoring which is conducted by commissioners independent board is expected to improve company performance. Therefore, the use of corporate governance in this study, as a moderating variable,

is expected to strengthen the relationship of CEO replacement with company performance. In this research, corporate governance mechanism indicator used is managerial ownership institution ownership, proportion of independent commissioners, and number of audit committee members.

SOEs and the Subsidiary are different legal entities which have their own obligation and responsibility to both company assets management and losses suffered. Based on the *separate entity* principle in the Law of the Limited Liability Company, in term of management and responsibility, Subsidiary and SOEs cannot be equated. There are several opinions about holding company, and one of the opinions comes from Munir Fuady. He defines Holding Company as parent company or controlling company. Holding company means a company which aims to own shares in one or more companies and / or manage one or more of these other companies. A holding company usually (although not forever) has many companies engaging in different business fields.<sup>13</sup>

The wider scope of business owned by the Company makes the principles of GCG important to be carried out. Business expansion creates complex business conditions which demand an increasingly measurable and systematic arrangement among all the organs of the Company. Through application of GCG, all business duties, authorities, and responsibilities in the Peruri (*Money Printing Public Corporation of the Republic of Indonesia*) and all Subsidiaries can be well divided, organized, and controlled. The Directors attention toward implementation of GCG is not only as the fulfillment of obligations but also a need in running the Company business. Directors, Supervisory Board, and all employees committed to apply GCG in every Company activities.

Management, as a party given the delegation of the owners of capital to operate the company, needs to be constantly monitored. Different interests owned by the owners of capital and management can lead to the disintegration of the company. With Good Corporate Governance (GCG), the authority of all parties in the company can be arranged and the supervisory function can be optimized to reduce the occurrence of fraud committed by various parties in the company for its sake. The existence of GCG is expected to reduce conflicts of interest that may occur that impede the progress of the company's financial performance.<sup>14</sup>

As stated in the Act No. 40 of 2007 concerning Limited Liability, company Organ consisted of General Meeting of Shareholders, Board of Commissioners and Directors. The management of the company embraces two boards system, namely Board of Commissioners and

<sup>13</sup> Fuady, M. (2005). *Pengantar Hukum Bisnis Menata Bisnis Modern di Era global*. Bandung: PT Citra Aditya Bakti, p. 83

<sup>14</sup> Xu, X., & Xia, Y. (2012). Internal corporate governance and the use of IPO over-financing: Evidence from China. *China Journal of Accounting Research*, 5(3), 231- 249. <https://doi.org/10.1016/j.cjar.2012.08.003>

Members of the Board of Directors and Board of Commissioners of Subsidiary of State-Owned Enterprises

<sup>12</sup> Article 2A paragraph (7) Government Regulation 72/2016

Directors, which have clear authority and responsibility according to their respective functions as mandated in the Articles of Association and Legislation.

The company believes that fair relationship among Company Organs have positive effect on the success of the Company management and the implementation of Good Corporate Governance. Hence, the Company has commitment to explicitly separate the functions and duties of each Company Organ, which are General Meeting of Shareholders, Commissioners, and Directors.

The company encourages fair relationship among Company Organs. Each Company Organs always respect and take action as their respective functions and roles, make relationship based on the principle of equality and mutual respect for their respective duties and responsibilities. Structure of Good Corporate Governance is company organs which have important role in the implementation of Good Corporate Governance. It includes main organ, they are Shareholders, the Board of Commissioners, Directors, and supporting organs of GCG, i.e. Committees, Company Secretaries, and Internal Control Unit.

#### IV. CONCLUSION

Based on the problem statement which has been revealed and the theory discussion gained during the research, then the conclusions obtained are as follow:

1. Based on the research finding and the discussion above, the implementation of Subsidiary toward holding company in manifestation of Good Corporate Governance has been corresponding with Article 36 paragraph (2) of Decree of the Minister of State-Owned Enterprises No: KEP-117/M-MBU/2002 concerning the application of Good Corporate Governance Practice in the State-Owned Enterprises, which stated:

*“Provision of this Decree, can be enforced towards Limited Liability Company which half of its capital is owned by State of Republic of Indonesia and Subsidiary of State-Owned Enterprises, as long as this matter is approved by General Meeting of Shareholders of the Limited Liability Company or the intended SOE Subsidiary.”*

2. In its implementation, all of subsidiaries and Holding Companies have possessed the regulation about GCG, yet it is still needed Self Assessment between subsidiary and holding company in its practice.

#### V. SUGGESTION

The implementation of the Good Corporate Governance Principle is important for companies. It is used to increase business success and company accountability in order to embody long term shareholder value while while paying

attention to the interest of other stakeholders based on the legislation and ethical values.

GCG guidelines is important as general guidance for Organ and employees in the policy formulation and organizational goal, implementation and management of the organization, controlling, supervision, evaluation, and report for all matters related to the implementation of the policy and achievement of organizational goal based on the vision, mission, company's value, ethic code, and behavioral guideline, and also applicable laws and regulations and company articles of association. Moreover, it needs to conduct supervision from the Ministry of SOEs for Self Assessment in subsidiaries.

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