

Status hukum anak perusahaan grup badan usaha milik negara persero sebagai separate legal entity di Indonesia = Legal status of the subsidiary of the state-owned group companies as a separate legal entity in Indonesia

Baruga Ermond, author

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Abstrak

Pembentukan perusahaan grup badan usaha milik negara berbentuk persero sedang gencar dilakukan oleh Pemerintah Republik Indonesia agar tercipta perusahaan grup yang ramping dan kuat. Dengan dilakukannya pembentukan perusahaan grup tersebut, persero-persero yang terlibat diharapkan akan semakin fokus dalam mengembangkan bisnisnya dari hulu hingga ke hilir. Akan tetapi, terdapat polemik-polemik dari gagasan pembentukan perusahaan grup ini. Mulai dari tidak adanya peraturan yang sistematis, rinci, dan komprehensif mengenai pembentukan perusahaan grup beserta hubungan-hubungan yang terjadi didalamnya, hingga terlalu kuatnya dominasi negara di dalam anak perusahaan akibat penyisipan saham seri A dwi-warna yang mengaburkan batasan antara kepemilikan dan pengendalian sehingga melunturkan prinsip separate legal entity. Adapun penelitian ini dilakukan dengan metode yuridis-normatif melalui kajian peraturan perundang-undangan yang relevan serta menganalisis doktrin-doktrin ahli hukum terkait dengan permasalahan yang dibahas. Hasil penelitian ini menyimpulkan bahwa Indonesia belum mengakomodasi kerangka regulasi yang valid dan memadai dalam pembentukan perusahaan grup baik dari segi pendirian, hubungan antara induk dan anak perusahaan, perpajakan, keuangan, persaingan usaha, kepailitan, dan sebagainya. Kemudian, tidak adanya batasan yang jelas mengenai peran negara dalam dominasi dan/atau kontrol anak perusahaan melalui saham seri A dwi-warna yang berpotensi menyebabkan pengurusan perusahaan menjadi tidak efisien dan mencederai prinsip-prinsip Good Corporate Governance.

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The establishment of a state-owned group company is being intensively carried out by the Government of the Republic of Indonesia in order to create a lean and strong group company. By encouraging these group companies, the involved companies are expected to be more focused on developing their business from upstream to downstream. However, there are several problems and polemics about the establishment of this kind of group company. Starting from the absence of systematic, detailed, and comprehensive regulations regarding the establishment of group companies as well as the relationships that will occur within parent and subsidiary company, to the overly strong dominance of the state in the subsidiary company due to the insertion of golden share which is owned by Indonesia Government that obscures the boundary between ownership and control as well as injures the principle of separate legal entity. The research is conducted by juridical-normative method through the study of relevant legislation and analyzing the doctrines from legal experts which are related to the issues discussed. The results of this study conclude that Indonesia has not accommodated a valid and adequate regulatory framework regarding group companies in terms of establishment, relations between parent and subsidiaries companies,

taxation, finance, business competition, bankruptcy, and so on. Then, there is no clear boundary regarding the role of the state in dominating and/or controlling subsidiaries through golden share which has the potential to cause the management of the company to be inefficient and injure the principles of Good Corporate Governance.