

Legal Aspects of The Process of Forming A State-Owned Enterprise Holding Company Industrial Estate Cluster

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Abstract

This research aims to analyze the suitability of the process of transferring government shares into PT Danareksa (Persero) shares with statutory provisions and analyze the protection of the rights of minority shareholders in the process of holding company PT Danareksa (Persero). This type of research uses normative legal research with a statutory approach and conceptual approach. The statutory approach is carried out by examining legislation or statutory studies. The conceptual approach is carried out in order to find the process and mechanism of holding SOEs. Analysis of legal materials is carried out using content analysis. The results of this study, namely: 1) The transfer of government shares into shares of PT Danareksa (Persero) is carried out with PP 72/2016, but the implementation of the provisions in PP 72/2016 related to state equity participation does not correspond to the arrangements in state finances regarding the formation of holding companies and also on the status of State Owned Enterprises (SOE). The absence of arrangements regarding the mechanism for implementing the holding provides different implementation practices. There is a practice of forming virtual holding in the pre-implementation stage. In the post-holding implementation, the status of subsidiaries in BUMN holding companies is still treated like SOE; 2) Legal protection in the holding process carried out by the Ministry of SOEs together with PT Danareksa (Persero) has not paid attention to the rights of minority shareholders, in this case the Provincial / City Government, although it is clearly regulated in the 2007 Company Law that minority shareholders should also be involved. In the holding process, it is important for the Ministry to fulfill the rights of minority shareholders, especially in each stage of the holding.

Keywords: Holding Company; Industrial Estate, Minority Shareholder; State-Owned Enterprise (SOE).

1. Introduction /Introduction

State-Owned Enterprises (BUMN) are economic actors whose role is very important, so the capability and performance of BUMN is the basis of hope for being able to carry out public benefit functions in the form of providing goods and services of high quality and strong competitiveness, as well as generating profits for the state. However, in reality, this situation is very difficult to achieve because several BUMNs often experience losses in their implementation, thereby burdening the state budget through subsidies or additional state capital participation (PMN) in the BUMN in question. With such a reality, efforts to improve and perfect the administration of BUMN are the right and urgent thing to do.¹

The Ministry of BUMN under the leadership of Minister of BUMN Erick Thohir, carried out a restructuring and clustering strategy so as to streamline the profile of BUMN from the original number of 157 (one hundred and five twenty-seven) companies to just 41 (forty-one) companies, divided into 12 (twelve) clusters with reference to similarities in sectors and supply chains. One of the holdings that was formed was Danareksa Holding which was appointed to be the parent of problematic BUMNs, in this case unhealthy BUMNs and/or

¹ Aminuddin Ilmar, *Privatization of BUMN in Indonesia* (Makassar: Hasanuddin University Press, 2004).

unhealthy BUMNs . ²PT Danareksa (Persero) was inaugurated as a Cross-Sector BUMN Management *Holding* or also known as Danareksa *Holding* on July 20 2022 by BUMN Minister Erick Thohir. There are 10 (ten) state-owned companies that have joined as members of *Holding* Danareksa in the first stage, namely PT Perusahaan Pengelola Aset, PT Kawasan Industri Medan (KIM), PT Kawasan Berikat Nusantara (KBN), PT Kawasan Industri Makassar (KIMA), PT Kawasan Industri Wijayakusuma (KIW), PT Surabaya Industrial Estate Rungkut (SIER), PT Jakarta Industrial Estate Pulogadung (JIEP), PT Balai Pustaka, PT Nindya Karya, and PT Kliring Berjangka Indonesia. PT Danareksa (Persero) as the parent company groups its *holding members* based on their sectors and business lines to form an Industrial Area Sub-Cluster consisting of 6 (six) industrial areas. ³At the implementation level, the holding phenomenon in a number of state-owned companies in Indonesia creates legal uncertainty for the relevant *stakeholders*.⁴

Holding or clustering arrangements specifically have not been regulated in the regulations, however there are several articles that regulate subsidiaries as stated in Law Number 19 of 2003 concerning State-Owned Enterprises (hereinafter referred to as the BUMN Law), Law Number 40 of 2007 concerning Limited Liability Company (hereinafter referred to as UUPPT 2007) ⁵. Likewise in implementing regulations such as Government Regulation Number 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies (hereinafter referred to as PP 44/2005), as well as Government Regulation Number 72 of 2016 concerning Amendments to Government Regulations Number 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies.

Establishment of a holding *company* in this BUMN resulted in a new concept in the mechanism for transferring rights to shares. The phrase transfer of shares used in the 2007 Company Law is the transfer of rights to shares. Apart from that, before the Danareksa ⁶*Holding was established*, the Industrial Estate BUMN which would be the parent of PT Danareksa formed a *virtual holding* or pre- *holding* which discusses strategic plans and standardization of each sub-cluster so that when *holding* occurs, there will already be consolidation between industrial areas. *Virtual formation* This *holding was carried out without any regulatory basis due to the lack of standard holding preparation procedures* in Indonesia.

There is no concrete mechanism and legal basis for implementing *holding company* BUMN Industrial Area Cluster caused problems in the transfer of Central Government shares to PT Danareksa (Persero). Apart from that, there is a lack of clarity regarding the interests and position of minority shareholders in planning, pre-holding and post-holding. For this reason, this paper will specifically examine the suitability of the process of transferring government shares into PT Danareksa (Persero) shares with statutory provisions and

² Ridwan Nanda Mulyana, "Danareksa Becomes a BUMN *Holding*, Here is a List of Its Members," newssetup.kontan.co.id, 2021.

³ PT Danareksa (Persero), " *Holding* Danareksa, the First Transformation Specialist BUMN in Indonesia," Danareksa.co.id, 2022.

⁴ Sindy Riani Putri Nurhasanah and Ulil Afwa, " *Legal Responsibility of Parent Directors for Subsidiary Business Risks in BUMN Holding Companies*", *Indonesian Law Reform Journal*, Vol. 1 No. 3 (2021): 303-317, <https://doi.org/10.22219/ilrej.v1i3.18335> .

⁵ Ahmad Ishak, Aminuddin Ilmar, Winner Sitorus, "Analysis of Government Policies in Structuring State Owned Corporation Through the Formation of Holding Companies", *Volkgeist Law Journal* , Vol. 6 No. 1 (2021): 38-45, <https://doi.org/10.35326/volkgeist.v6i1.1322>

⁶ Agus Triyono, " BUMN *Holding Regulations* Reap Criticism," 2022.

analyze the protection of the rights of minority shareholders in the PT Danareksa (Persero) *holding company process*.

2. Method/Method

The type of research that the author uses is normative legal research or doctrinal legal research,⁷ namely research to test an applicable provision or norm by examining library materials or secondary data. This research focuses on written studies, namely using secondary data such as statutory regulations, legal theory, legal principles, legal principles, and the results of scientific work by scholars (doctrine).⁸ This research also uses a statutory, conceptual and regulatory approach and is equipped with empirical data.

The legal materials used consist of primary legal materials, secondary legal materials and tertiary legal materials. A legislative study was carried out to examine all provisions governing the implementation of holding companies and BUMN. This research is also equipped with empirical data obtained through interviews with sources related to the implementation of *the holding company*, namely Plt. Main Director of PT Danareksa (Persero) and PT Kawasan Industri Medan, Main Director of PT Kawasan Berikat Nusantara, Wijayakusuma Industrial Estate, Makassar Industrial Estate, Surabaya Industrial Estate Rungkut, Jakarta Industrial Estate Pulogadung, Plt. Head of the DKI Jakarta Regional Owned Enterprise Development Agency, and Makassar City Government Economic Section Staff.

The collection of primary legal materials in this research was by means of library research *and* further analysis of the legal materials obtained was carried out using content analysis and qualitatively by combining the *statute approach* and *conceptual approach* to solve problems from the legal aspects studied.

3. Analysis and Discussion/Analysis and Discussion

Analysis of the Process of Transferring Government Shares from Several State-Owned Enterprises (BUMN) in the Formation of the Holding Company PT Danareksa (Persero) Based on the Provisions of Applicable Legislation

Holding Company in Applicable Laws and Regulations

Holding A company is a company that has shares in another company that is its target so that the company becomes the controller of the other company that is its target. The formation of *holding companies* in BUMN is one of the government's efforts to revitalize the performance of BUMN, with the aim of creating a strong business group with one parent who owns the majority shares so that the activities of subsidiary companies are more controlled and directed. Restructuring in this provision is intended to improve the capital structure, such as quasi reorganization, reducing the percentage of share ownership by the state as a result of the issuance of new shares that are not taken up by the state and shifting or transfer of state-owned shares in BUMN or Limited Liability Companies to BUMN and/or Limited Liability Companies others as State Capital Participation, among others, in the context of establishing a BUMN holding company .

⁷ Irwansyah, *Legal Research: Choice of Article Writing Methods & Practices* (Yogyakarta: Mirra Buana Media, 2020).

⁸ Peter Mahmud Marzuki, *Legal Research (Revised Edition)* (Jakarta: Kencana Prenada Media Group, 2010).

However, PP 72/2016 as the legal basis for *holding* regulates provisions that are different from other laws and regulations. Some of these provisions include a) The provisions of Article 2A paragraph PP 72/2016 stipulate that participation in state capital originating from state assets in the form of state-owned shares in BUMN or other Limited Liability Companies, is carried out by the Central Government without going through the State Revenue and Expenditure Budget mechanism. This article cannot be the legal basis for state capital participation without the APBN mechanism because in principle, this provision is different⁹ from the provisions of Law Number 17 of 2003 concerning State Finance. b) The provisions of Article 2A paragraph PP 72/2016 stipulate that BUMN subsidiaries are treated the same as BUMN to obtain special state/government policies, including in the management of natural resources. This article regulates provisions that are different from the BUMN Law, as stated in Article 1 point 1 that BUMN is a business entity whose capital is wholly or largely owned by the state through direct participation originating from separated state assets.¹⁰ This means that natural resources must be managed by the state through BUMN as a form of state control in the management aspect.

There are 2 (two) Constitutional Court decisions regarding state assets, namely Constitutional Court Decision Number 48/PUU-XI/2013 and Constitutional Court Decision Number 62/PUU-XI/2013. Based on these two decisions, it is known that the State Finance Law stipulates that BUMN assets are part of state assets, even though state assets in these BUMNs have been separated into private areas. Then, after *the holding* in a BUMN is legalized, the subsidiary of that *holding* is no longer a BUMN, as stipulated in Article 1 number 1 of the BUMN Law in the phrase direct capital participation. This means that Article 2A paragraph (7) PP 72/2016 regulates provisions that are different from the BUMN Law. Article 1 point 1 of the BUMN Law states that "State-Owned Enterprises, hereinafter referred to as BUMN, are business entities whose capital is wholly or largely owned by the state through direct participation originating from separated state assets." With this approach, it can be ensured that a BUMN subsidiary will obtain status as a BUMN if it meets the minimum requirements of having the majority of its capital owned by the state, in the proportion of 50%+1 share ownership in the company.

In company law theory, it is explained that there are 2 (two) types of *holding companies*¹¹ which differ from the business activity aspects of the parent company. *First, Investment Holding Company*, this form of parent company activity is only implemented to place shares as capital for its subsidiaries. Other supporting activities of the parent company are not involved, such as operational activities. The parent company only gets a share of profits from its subsidiaries. *Second, Operating Holding Company*, this form of holding is the opposite, where there is greater involvement, especially in controlling the company and carrying out business activities. In practice, the parent company's business activities are often the basis for determining the type of business activity permits carried out by the subsidiary.

The provisions of PP 72/2016, especially in Article 2, regulate the transfer through investment in BUMN shares to other BUMN or other Limited Liability Companies, as

⁹ Nano Tresna Arfana, "M. Guntur Hamzah Explains BUMN Wealth in Constitutional Court Decision," 2023, <https://www.mkri.id/index.php?page=web.Berita&id=16511>.

¹⁰ Rosa Panggabean, "PP on State Capital Participation in BUMN Contradicts 3 Laws," m.bisnis.com, 2023.

¹¹ Rizal Choirul Ramadhan, Legal Position of State-Owned Enterprises as Subsidiaries of Parent Holding Companies, "Media Iuris", Vol. 4 No. 1, 7390(2021):DOI:10.20473/mi.v4i1.23669

regulated below: " In the case of state assets in the form of state-owned shares in BUMN as intended in Article 2 paragraph (2) letter "d used as state capital participation in other BUMNs so that most of the shares are owned by other BUMNs, then the BUMN becomes a subsidiary of the BUMN with the provisions that the state is obliged to own shares with special rights as regulated in the articles of association." This provision is applied in the case of investments and transfers of BUMN shares in other BUMNs with a minimum share percentage of 50% owned by the BUMN and making the company that receives the investment a subsidiary of the BUMN.

separate entity principle, this also provides a dividing line between the parent and subsidiary companies. When a company forms a subsidiary company, the capital participation comes from the assets of the parent company, not from the shareholders of the parent company. This has an impact on differences in liability between the parent company and the subsidiary (Company). The accountability referred to is to whom the company is responsible for all its business activities categorized as BUMN.

Provisions are also regulated in the 2007 UUPT which provide legitimacy for the establishment or formation of group companies or *holding companies*. *First*, the establishment of a company by another company in the provisions of Article 7 paragraph (1) stipulates that the company is established by 2 (two) or more people with a notarial deed made in Indonesian. Then the Elucidation to Article 7 paragraph (1) determines that what is meant by "person" is an individual, whether an Indonesian or foreign citizen, or an Indonesian or foreign legal entity. This article regulates the legitimacy of a company legal entity to establish another company. The establishment of a company by another company creates a link between the parent and subsidiary companies which then form a group company. *Second*, the formation of a group company through a takeover in the provisions of Article 1 point 11 of the Company Law states that a group company can be formed through the takeover of share ownership in a subsidiary company by the parent company with juridical implications in the form of a transfer of control over the company. Munir Fuady is of the opinion that the takeover or acquisition regulated in Article 125 paragraph (3) of the 2007 Company Law results in a legal transfer of control by the party taking over the company, or the acquiring party, and the company whose shares are taken over does not become dissolved and continues to exist as before. . *And Third* , the formation of a group company through separation is regulated in Article 1 number 12 of the 2007 Company Law, separation is a legal action carried out by the Company to separate the business which results in all of the Company's assets and liabilities being transferred by law to 2 (two) or more Companies or some of the assets and The Company's liabilities are transferred by law to 1 (one) Company or more. The definition of separation when referring to the Company Law in Article 1 point 12 is a legal act carried out by a Company to separate its business which results in all of the Company's assets and liabilities being transferred by law to 2 (two) or more Companies or some of the Company's assets and liabilities being transferred by law to 1 (one) Company or more. Article 135 of the 2007 Company Law divides the method of separation into 2 (two) ways, namely (1) Pure separation is a type of separation, which results in the transfer of all assets and liabilities of the company to another person due to the law of 2 (two) or more companies receiving the transfer, and companies that have discontinued their divisions for legal reasons; (2) Impure separation refers to the transfer of part of a company's assets and liabilities to one or more of one other company, and the separated company still exists. The similarity between these two separations is the transfer of assets from the assets and liabilities of the separated company. At the same time, the difference is that there are companies that separate after separation, while in pure separation, the separated company is terminated due to law. At the same time, the

inappropriate quarantine of the separated companies has not ended. The company's resignation must take into account (1) the interests of the company, minority shareholders and company employees; (2) creditors and other business partners; (3) healthy competition between society and companies. This separation scheme also resembles *what a holding company* does. With the formation of this BUMN holding company, a new concept emerged in the mechanism for transferring rights to shares. The term transfer of rights to shares used in the 2007 Company Law is transfer of rights to shares.

The process of transferring rights to shares through state capital participation which is carried out in the formation of a BUMN holding is taking over rights to shares directly from shareholders, in this case the state as the shareholder by following the provisions of PP 72/2016.

It is regulated in Article 2A paragraph (7) PP 72/2016 that BUMN subsidiaries are treated the same as BUMN to obtain special state/government policies, including in the management of natural resources. This article regulates provisions that are different from the BUMN Law, as Article 1 point 1 states that BUMN determines business entities whose capital is wholly or largely owned by the state through direct participation originating from separated state assets.

In Indonesia, it is known as special shares owned by the Indonesian Government or also called Dwiwarna Shares. So, apart from being the majority shareholder in BUMN, the government also owns 1 (one) special share or dwiwarna share.¹² Dwiwarna shares are regulated in Article 2A paragraph (2) PP 72/2016 which determines "In the event that state assets in the form of state-owned shares in BUMN as intended in Article 2 paragraph (2) letter d are used as state capital participation in other BUMNs so that the majority of shares are owned by another BUMN, then the BUMN becomes a subsidiary of the BUMN with the condition that the state is obliged to own shares with special rights as regulated in the articles of association." Dwiwarna shares are divided into Series A Dwiwarna Shares and Series B Dwiwarna Shares. In short, Series A Dwiwarna shares are special shares that have more rights than ordinary shares, including preferential rights to propose and nominate members of the board of directors and board of commissioners. The special characteristic of this share classification is that these shares cannot be traded. In general, Series A shareholders are the founders of the company.¹³ Based on Attachment S-BUMN No. 163/MBU/03/2017 concerning Submission of the Standard Draft Articles of Association of BUMN Tbk for the Non-Banking Sector states that Series A Dwiwarna shares are shares owned specifically by the Republic of Indonesia which gives their holders special rights as holders of Series A Dwiwarna shares. Meanwhile, Series B Dwiwarna shares are shares that can be traded to the public.

So, in the process of establishing a BUMN *holding*, the Indonesian Government transferred all Series B Shares to the parent *holding* which resulted in the transfer of control of the company and made the parent *holding* the majority shareholder in the subsidiaries whose shares were transferred. However, the Indonesian Government still reserves 1 (one) Series A Dwiwarna share as a share that is specifically owned by the state and has special rights compared to ordinary shares in controlling the company. So the position of the BUMN subsidiary is no longer a BUMN, but a limited liability company which is subject to the 2007 UUPT.

¹² Law Online, " *SOE Articles of Association Standardization Program* ".

¹³ *Ibid.*

PT Danareksa (Persero) was targeted to become a banking *holding company*, but after further study, it was not appropriate for PT Danareksa (Persero) to become a banking *holding company*. Finally, PT Danareksa (Persero) was appointed as a multi-sector *holding* for transformation and *scale up*. Danareksa *Holding* members consist of 20 (twenty) companies whose inauguration is divided into 2 (two) stages. On December 1 2020, the Ministry of BUMN stipulated the Decree of the Minister of State-Owned Enterprises of the Republic of Indonesia Number SK-385/MBU/12/2020 concerning the Formation of a Team for the Acceleration of Consolidation of State-Owned Enterprises in the Danareksa-PPA Sub-Cluster, hereinafter referred to as the Team Decree (SK), which determined that a team to accelerate the consolidation of Danareksa *Holding be formed*, with the composition of a Steering Team, Working Team and *Project Management Office* (PMO).

PT Danareksa (Persero) as PMO is given the responsibility to group its subsidiaries by forming sub-clusters, one of which is the Industrial Estate Sub-Cluster which consists of PT KBN, PT KIM, PT KIW, PT KIMA, PT SIER, and PT JIEP. The formation of this sub-cluster received approval in principle by the President of the Republic of Indonesia Joko Widodo and the ranks of 16 (sixteen) Ministers through a limited meeting on March 8 2021. The Industrial Area Sub-Cluster then formed a *virtual holding* or *virtual holding as a program to accelerate holding consolidation* in the pre- *holding stage*.¹⁴ *Virtual* This *holding* discusses the strategic plans and standardization of each sub-cluster which is carried out every 2 (two) weeks, with the aim that when *the holding* occurs there will already be consolidation between industrial areas. After *the holding* was inaugurated, this *virtual holding* was abolished. Without procedures for the *holding formation process*, there will be potential violations in the use of company costs. Companies must not spend funds without a budget, their use must be regulated so that they can be accounted for. The provision of the company's budget has not been budgeted because the *virtual holding mechanism* was only issued by a SK Team from the Ministry of BUMN which is partial and does not regulate *virtual holding authority* as a whole. The Team Decree tends to direct the formation of a *holding preparation work team*. The government needs to immediately make a law regarding *holding* which of course also discusses the legal basis for implementing *virtual holding*, not just based on a partial decree from the Ministry of BUMN.

Holding was inaugurated by the Minister of BUMN, Erick Thohir, on July 20 2022. Regarding the implementation of the General Meeting of Shareholders (GMS) at BUMN Industrial Areas, namely PT KBN, PT KIM, PT KIW, PT KIMA, PT SIER and PT JIEP, it was explained that the GMS was not carried out completely. The Ministry of BUMN sees that with the implementation of the GMS, the BUMN Industrial Area is ready to change its status to become a subsidiary of PT Danareksa. In fact, based on the information the author received, the 6 industrial areas are not yet ready to join *the holding* due to the need for clearer preparation and explanation from the Central Government, in this case the Ministry of BUMN.

¹⁴ Monica Wareza, "Take notes! PLN *Virtual Holding* and Sub *Holding* to Run in May 2022," CNBC Indonesia, 2022.

Rights of Minority Shareholders Who Get Legal Protection in the Pt Danareksa (Persero) Holding Company Process

Legal Protection of Minority Shareholders

Legal protection is protection given to legal subjects in accordance with legal rules, both repressive and preventive, both written and unwritten. Minority shareholders are often only used as accessories in a company. In the decision-making mechanism in a company, it is certain that minority shareholders will always lose out to majority shareholders because decision making is based on the percentage of shares owned. The concept of protecting minority shareholders is something that has not received special attention in Indonesian legislation, due to the principle that those who can represent and act for and on behalf of the company are the directors, the opinion that what is meant by democratic is the party with the majority in power. , and the reluctance of the courts to interfere in a company's business matters.¹⁵

The 2007 Company Law basically regulates the rights of minority shareholders separately. These rights are the right to request the convening of a GMS (Article 79 paragraph (2) letter a of the 2007 Company Law); The right to sue on behalf of the company (Article 97 paragraph (6) UUPT 2007); The right to sue the company (Article 62 paragraph (1) UUPT 2007); Right to inquiry (Article 138 UUPT 2007); The right to request that the company buy its shares at a fair price (Article 62 paragraph (1) of the 2007 Company Law); and The right to apply for dissolution of the company (Article 144 paragraph (1) UUPT 2007). However, the above rights only arise when the shareholder owns at least 1/10 (one tenth) of the shares of all shares issued by the company. This shows that the regulations in the new 2007 UUPT protect minority shareholders with a certain amount of share ownership.

Legal Protection for Minority Shareholders in the PT Danareksa (Persero) Holding Company Process

Holding subsidiary, Industrial Area Sub-Cluster, is not only owned by the Government of the Republic of Indonesia, but there are also shares from the Provincial Government and Regency/City Government. *Danareksa Holding* was formalized based on PP No. 7 of 2022 concerning Addition of State Capital of the Republic of Indonesia to the Share Capital of the Company (Persero) PT Danareksa. The provisions of Article 1 paragraph (2) letter b of this regulation stipulate that additional state capital participation in PT Danareksa (Persero) comes from the transfer of all Series B shares belonging to the State of the Republic of Indonesia to the Company (Persero) PT Kawasan Industri Medan which was established based on PP Number 19 1984 concerning State Capital Inclusion of the Republic of Indonesia for the Establishment of a Limited Liability Company (Persero) in the Medan Industrial Area Business Sector; The Company (Persero) PT Kawasan Industri Wijayakusuma which was established based on Government Regulation Number 3 of 1986 concerning State Capital Participation of the Republic of Indonesia for the Establishment of a Company (Persero) in the Cilacap Industrial Area Business Sector; The Company (Persero) PT Kawasan Industri Makassar which was established based on Government Regulation Number 4 of 1986 concerning State Capital Participation of the Republic of Indonesia for the Establishment of a Company (Persero) in the Ujung Pandang Industrial Area Business Sector; The Company (Persero) PT Kawasan Berikat Nusantara which was established based on Government Regulation Number 23 of 1986 concerning the Dissolution of the Company (Persero) PT Bonded Warehouses Indonesia and the Company (Persero) PT

¹⁵ Risno Setiawan, Rahmat., Mina, "Legal Protection for Minority Shareholders Linked to the Implementation of Good Corporate Governance (GCG)," *Yustisiabel Journal* 3 (2019): 137.

Sasana Bhandas as well as the Establishment of a Company (Persero) in the Bonded Zone Business Sector (Bonded Zone). Furthermore, the provisions of Article 2 paragraph (2) letter c PP 7/2022 regulate the transfer of all shares belonging to the State of the Republic of Indonesia to PT Jakarta Industrial Estate Pulogadung which was established based on Government Regulation Number 28 of 1973 concerning Capital Inclusion of the Republic of Indonesia for the Establishment of Limited Liability Companies (Persero) in the *Industrial Estate Sector* and PT Surabaya Industrial Estate Rungkut which was established based on Government Regulation Number 4 of 1974 concerning State Capital Participation of the Republic of Indonesia for the Establishment of a Company (Persero) in the Industrial Area Business Sector (*Industrial Estate*).

Basically, the share ownership structure in the 6 industrial areas has not changed in percentage. However, the Indonesian Government still reserves 1 (one) Series A Dwiwarna share as a share that is specifically owned by the state and has special rights compared to ordinary shares in controlling the company.

At the formation of *Danareksa Holding*, the Ministry of BUMN commissioned the formation of *the holding*, then a consultant was appointed to make a study. After the study was completed, the Ministry of BUMN together with PT Danareksa held a *road show* or discussion with each prospective *holding member*, but no offers were made to other shareholders in *the road show* as regulated in Article 57 paragraph (1) letter a of the PT UUPT. 2007, but directly in the form of share transfer. There are 3 (three) indicators of non-fulfillment of Article 57 paragraph (1) of the 2007 PT UUPT in the process of establishing *Danareksa Holding*, namely the *holding policy* is determined directly by the Government, in this case the Ministry of BUMN; Studies from consultants do not indicate that there was a share offering, but rather that it was transferred directly to PT Danareksa (Persero); There is no mechanism to offer minority shareholders to take part in these shares during *the road show*. This is obtained from information about all industrial areas.

The holding action only involves the Ministry of BUMN and PT Danareksa (Persero) as the majority shareholder. This illustrates that minority shareholders were not protected in the process of establishing *Danareksa Holding*. Minority shareholders can make efforts to avoid potential losses arising from the parent company's actions in the *holding company* and to protect the legal interests of minority shareholders. These efforts include drafting a shareholder agreement, preparing the company's articles of association that protect the interests of minority shareholders and optimizing rights in law. However, the above rights only arise when the shareholder owns at least 1/10 (one tenth) of the shares of all shares issued by the company. There are also known principles in corporate law that can protect minority shareholders, namely the principle of *Piercing the Corporate Veil*, namely the elimination of limited liability of shareholders.¹⁶

The regulation of the principle of *piercing the corporate veil* as determined by Article 3 of the 2007 Company Law causes the elimination of the limited liability of company shareholders to become unlimited liability, including the personal assets of shareholders. Based on Munir Fuady's opinion, the principle of *piercing the corporate veil* can also be applied in *holding companies* because it is very possible for actions to occur that cause losses to minority shareholders. By implementing *piercing the corporate veil*, minority shareholders can hold the *holding company accountable* when losses arise.¹⁷ Based on the Academic Text of the Draft Law on Limited Liability Companies which was proposed in 2016, it is regulated in the theoretical study section regarding *piercing the corporate veil*.

¹⁶ Munir Fuady, *Modern Doctrines in Corporate Law and Their Existence in Indonesian Law* (Bandung: Citra Aditya Bakti, 2022).

¹⁷ Yahya Harahap, *Limited Liability Company Law* (Jakarta: Sinar Graphics, 2019).

The main aim of applying this principle is to achieve justice, especially for minority shareholders and third parties who have certain relationships with the company. The Academic Text of the Draft Law on Limited Liability Companies clearly separates majority shareholders and minority shareholders, as this is not further regulated in the 2007 Company Law. The 2007 Company Law needs to be amended to regulate the legal protection of minority shareholders in limited companies fairly. Additionally, *holding actions were carried out by the Indonesian Government* which resulted in the rights of minority shareholders being increasingly ignored.

4. Closing/Conclusion

The transfer of government shares into PT Danareksa (Persero) shares was carried out based on provisions of PP 72/2016, however there are several discrepancies with the provisions governing state finances and BUMN subsidiaries. Apart from that, a number of BUMN *holdings* have also formed *virtual ones holding* without any regulatory basis, while subsidiaries in the *holding* are still treated like BUMN. Furthermore, the *holding* process involving the Ministry of BUMN together with PT Danareksa (Persero) does not pay sufficient attention to the rights of minority shareholders, which should be protected under Article 53 paragraph (2) of the 2007 Company Law. Minority shareholders, including the Provincial/City Government, should have the same rights, and the share transfer mechanism should be carried out in accordance with existing provisions. In order to maintain transparency, fairness and compliance with applicable regulations, corrective steps are needed in the implementation of share transfer and BUMN *holding processes*, so that all parties, including minority shareholders, can obtain the rights they should obtain in accordance with the law. applies. The need for state-owned *holding company* regulations regulated in a law as a legal basis and the need to change the provisions UUPT 2007 to regulate the legal protection of minority shareholders of limited liability companies fairly.

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