



## IMPLICATIONS OF THE REGULATION OF SHARE TRANSFER IN STATE-OWNED ENTERPRISES AS STATE CAPITAL PARTICIPATION

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### ABSTRACT

State-owned enterprises (SOEs) are crucial to a country's economy. One of the ways SOEs obtain capital is through the transfer of shares. SOE share transfer arrangements are important in overseeing state capital in SOE companies. This study analyses the urgency of changing the share transfer arrangements in SOEs as state capital participation. This research uses normative research methods. The techniques used by researchers to obtain legal materials are document studies and literature studies. All legal materials successfully found and selected by researchers were inventoried, classified, and analyzed using systematic, grammatical and historical interpretation techniques. The results show that the ratio legis of the transfer of state-owned shares in BUMN as state equity participation in other BUMN in Government Regulation No. 72/2016 is to improve the performance of BUMN to be more efficient, effective, and profitable. The transfer of state-owned shares in SOEs as state equity participation in other SOEs aims to increase the efficiency of SOEs by optimizing existing resources, increase the effectiveness of SOEs by improving the quality of services to the public and increase the profitability of SOEs by increasing revenue and reducing costs.

Keywords: *Share Transfer, SOE, State Capital*

### 1. INTRODUCTION

State-Owned Enterprises (SOEs) are business entities whose entire or majority of capital is owned by the state through direct participation derived from separated state wealth (Koto, 2021). The legal position of SOEs in State finance is State wealth which is separated from the State Budget to be used as State capital participation in the Company and Perum. With the source of capital of SOEs derived from separated state assets, Indonesian SOEs are also subject to Law Number 17 of 2003 concerning State Finance (Sumiyati, 2013). There are two types of State-Owned Enterprise Companies, namely Companies (Persero) and Public Companies (Perum), the difference between the two companies is in the aspect of capital. Where the Company is a state-owned company whose shares can be partly owned by other parties while Perum is a state-owned company the government must own whose entire shares or 100% of its shares. To support the realization of *good governance*, one of them in state financial management needs to fulfill the application of good principles in state financial management, namely results-oriented accountability, professionalism, proportionality, openness in state financial management and financial audits by free and independent audit bodies (Sutedi, 2012).

Holding Company is not a legal entity or business entity with special status, but only as a company consisting of grouping companies so that there are holding companies *and* subsidiaries which in general the holding company *does* not run a business, but only as a supervisor of the business implementation of its subsidiaries (Yani & Widjaja, 2000). By grouping SOEs into *holdings*, it is possible to increase the company's market value creation (*market value creation*), namely efforts to multiply the value of existing companies (Ginting, 2020).

Until now, no laws and regulations in Indonesia specifically regulate *SOE Holding Companies*. In principle, in Indonesia a State-Owned Enterprise can be merged, merged with other SOEs or taken over by other SOEs based on article 63 paragraphs (1) and (2) of Law Number 19 of 2003 concerning State-Owned Enterprises. PGN (Persero) to integrate its business fields with PT. Pertamina (Persero), the Ministry of State-Owned Enterprises through the Decree of the Minister of SOEs Number SK-16 / MBU / 01/2016 concerning the Strategic Plan of the Ministry of SOEs for 2015-2019, by deciding to transfer series B State shares of 57.3% in PGN to Pertamina. So that PGN officially became a subsidiary of Pertamina with PGN becoming a gas subholding, including Pertagas, also listed as a subsidiary of Pertamina. Based on this, the government issued Government Regulation Number 50 of 2020 concerning the Increase of State Capital Participation into the Share Capital of the Company (Persero) PT. Pertamina, as stated in article 4 of Government Regulation Number 43 of 2005 concerning Merger, Merger, Takeover and Change of Form of State-Owned Enterprises. The total holding per sector currently formed is in 15 holdings and has a legal umbrella in each holding (Harir, nd).

To support the implementation of State capital participation in SOEs and Limited Liability Companies and to implement the provisions of Law Number 17 of 2003 concerning State Finance and Article 4 paragraph (6) of Law Number 19 of 2003 concerning State-Owned Enterprises, the government stipulates Government Regulation Number 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies. In its development, the government needs to reorganize the sources of State capital participation that can be used as participation in SOEs and Limited Liability Companies and improve the administrative process, so it is necessary to stipulate Government Regulation Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies. However, in the amendment of the clause in article 2A paragraph (1) of PP Number 72 of 2016, namely "State Capital Participation originating from state wealth in the form of state-owned shares in SOEs or Limited Liability Companies as referred to in Article 2 paragraph (2) letter d to SOEs or other Limited Liability Companies, is carried out by the Central Government **without going through the mechanism of the State Budget.**" The sound in Article 2A paragraph (1) of Government Regulation Number 72 of 2016 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies shows a conflict of norms with Law Number 17 of 2003 concerning State Finance in article 24 paragraph 2, namely "The provision of loans/grants/capital participation and the receipt of loans/grants as referred to in paragraph (1) **are first stipulated in the APBN/APBD.**"

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The validity of a law is indeed an absolute requirement, but it is not sufficient for the status of its existence. The content of the Act must be true, precise and fair. However, what if the formulation of the law contains principles and values that collide with each other and each according to its enforceability. This shows the existence of value antinomy in law as legislation that seeks harmony or synthesis of these legal problems. Based on the above background, it shows that there needs to be more consistency of norms between Government Regulation Number 72 of 2016 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies and Law Number 17 of 2003 concerning State Finance. Therefore, based on the background described above, it is very important to research **"Implications of Share Transfer Arrangements in State-Owned Enterprises as National Capital Participation"**.

## 2. RESEARCH METHODS

This study used a normative type of research. In this study, researchers focused on the implications of regulating the transfer of shares in state-owned enterprises without a state budget mechanism. In research using several approaches, the author can get information about the problem being sought for a solution using various methods including the *Statute Approach* and the *Conceptual Approach*. The types of legal materials used in this study are primary legal materials, secondary legal materials and tertiary legal materials where primary legal materials are used as the main legal materials. In this study, the techniques researchers use to obtain primary, secondary and tertiary legal materials are document and literature studies. The results of legal materials that have been successfully found and selected by researchers are then inventoried, classified, and analyzed using systematic and grammatical interpretation techniques

## 3. RESULTS AND DISCUSSION

State-Owned Enterprises (SOEs) are business entities whose entire or most capital is owned by the state (Koto, 2021). SOEs are established to carry out tasks of a strategic nature or to provide goods and services that the private sector cannot provide. SOEs provide benefits to society and the state (Akyuwen, 2016). SOEs are expected to provide quality services, affordable prices, and create jobs. SOEs are also expected to contribute to the national economy through income, foreign exchange, and infrastructure development. The role of SOEs in the national economy is very important. SOEs can act as public goods and services providers, economic drivers, foreign exchange earners, job creators, and infrastructure builders (Utama & Junaedi, 2015). SOEs can benefit the community and the state through various activities, including providing goods and services needed by the community, increasing the competitiveness of the national economy, creating jobs, increasing state income, and building infrastructure. SOEs are expected to continue to play an active role in national economic development and benefit the community (Estanto, 2018).

State capital participation (PMN) is one form of government investment in SOEs. PMN aims to improve the performance of SOEs to make them more efficient, effective, and profitable. PMN can be given to SOEs through shares, bonds, or loans. PMN can be given to newly established SOEs, developing SOEs, or those experiencing financial difficulties. PMN can have several implications for SOEs, including increasing the working capital of SOEs, increasing the production capacity of SOEs, increasing the competitiveness of SOEs in the market, improving the quality of SOE services to the community, and creating jobs (Fathyah et al, 2019).

One of the participation of state capital can be by the transfer of state-owned shares. Transfer of state-owned shares within the legal framework of Government Regulation Number 72 of 2016 concerning procedures for participating and administrating state capital in state-owned enterprises and limited liability companies. In the transfer of SOE shares, ratio legis is the reason or legal basis underlying the transfer of state-owned shares to SOEs as state capital participation in other SOEs. The ratio legis of the transfer of SOE shares is to improve the performance of SOEs to be more efficient, effective, and profitable. The transfer of state-owned shares in SOEs as state capital participation in other SOEs aims to increase the efficiency of SOEs by optimizing existing resources, increasing the effectiveness of SOEs by improving the quality of services to the community and increasing the profitability of SOEs by increasing revenues and reducing costs. The transfer of state-owned shares to SOEs as state capital participation in other SOEs is carried out by considering the national interests and interests of the SOEs concerned. The transfer of state-owned shares to SOEs as state capital participation in other SOEs in Government Regulation 72 of 2016 article 2A paragraph 2 so that most of the shares are owned by other SOEs, then these SOEs become subsidiaries of SOEs provided that the state is required to have shares with privileges regulated in the articles of association (Faiz, 2019). In 2A paragraph 7 BUMN companies as referred to in paragraph (2) are treated the same as SOEs for the following:

1. Obtain a Government assignment or perform public services; and
2. Obtain special state and government policies, including natural resource management, with certain treatment applied to SOEs.

The transfer of SOE shares as state capital participation to other SOEs has a broad impact on economy, social, and politics. Here is a description of these impacts:

1. Economic Impact

a. Economic Synergy and Collaboration

The transfer of SOE shares can generate synergy between the SOEs involved. The collaboration of resources, technology, and expertise can improve the efficiency of production and services, ultimately positively impacting economic growth.

b. Increased Revenue and Profitability

SOEs that receive capital participation can increase their revenue and profitability by sharing resources and optimizing operations. This contributes to an increase in the contribution of the SOE sector to the national economy.

c. Drivers of Investment and Growth

The capital participation model can make the SOE sector more attractive to investors. This can support the influx of new investment, drive infrastructure projects, and stimulate economic growth.

2. Social Impact

a. Improved Service Quality

Through synergy and increased effectiveness, SOEs that receive capital participation can improve the quality of services provided to the community. This positively impacts the quality of life and well-being of the people who use the service.

b. Expertise Development and Human Resource

Collaboration between SOEs can enable the exchange of expertise and knowledge. Improving the quality of human resources and developing expertise can have a long-term impact on the potential of human resources in the country.

3. Political Impact

a. Changes in Ownership Dynamics

The transfer of SOE shares can change the ownership and control structure in the SOE sector. This can affect political dynamics and the role of the government in managing SOEs.



- b. Government Imaging

The policy of transferring SOE shares as state capital participation can affect the government's image in the eyes of the public. If implementation is effective, it can support the image of a progressive and development-committed government.
4. Environmental Impact
5. The transfer of SOE shares can change the company's focus on environmental and social aspects. SOEs that receive capital participation may be more oriented towards sustainability and social responsibility.
6. Regulatory and Policy Impact
  - a. Regulatory Development

The transfer of SOE shares can encourage the government to develop more careful regulations related to capital participation and management of SOEs.
  - b. Public Policy Influence

The transfer of shares can reflect the direction of public policy and the government's view on developing and managing SOEs in the economic and political ecosystem.

The impact of transferring SOE shares as state capital participation to other SOEs not only impacts economic aspects, but also includes social, political, and environmental dimensions. These changes can permeate various aspects of people's lives and transform the country's economy and governance. The transfer of SOE shares can be one of the effective instruments to encourage economic growth and national development. This is because the transfer of shares can increase the efficiency and effectiveness of SOEs, improve the quality of SOE services to the public, and increase the competitiveness of SOEs in the global market. The efficiency and effectiveness of SOEs can be improved by reducing bureaucracy, increasing transparency, and increasing accountability of SOEs. The quality of SOE services to the community can be improved by improving the quality of SOE products and services, increasing the availability of SOE products and services, and increasing affordable prices for the community. The competitiveness of SOEs in the global market can be increased by increasing investment in technology, improving the quality of human resources, and increasing the network of SOEs abroad.

Government Regulation (PP) Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies, regulations regarding the participation and administration of State capital in SOEs are regulated in Article 2A paragraph (1), which reads as follows: "The participation of State Capital derived from state wealth in the form of State-owned shares in SOEs or Limited Liability Companies as referred to in Article 2 paragraph (2) letter d to SOEs or other Limited Liability Companies, is carried out by the Central Government without going through the mechanism of the State Budget." The provisions in article 2A paragraph 1 above state that the mechanism for State capital participation in SOEs is no longer through the APBN mechanism, namely through discussion and agreement with the DPR but only carried out by the central government. Talking about the participation of State capital in SOEs, of course, it must also be regulated about the source of State capital participation. In this PP it is regulated in Article 2 which reads as follows:

- 1) "The participation of State capital into SOEs and Limited Liability Companies comes from:
  - a. State Budget
  - b. Capitalization of reserves; and
  - c. Other sources.
- 2) Sources of State capital participation derived from the State Budget as referred to in paragraph (1) point a include State assets in the form of:

- a. Fresh funds;
  - b. State Property;
  - c. State Receivables to SOEs and Limited Liability Companies
  - d. State-owned shares in SOEs or limited liability companies; and
  - e. Other State Assets.
- 3) Sources of State capital participation originating from other sources as referred to in paragraph (1) point c include:
- a. Profit of asset revaluation; and
  - b. Stock area.

The issuance of PP No. 72 of 2016 Amendments to PP No. 44 of 2005 concerning Procedures for Participation and Administration of State Capital in SOEs and PTs, has implications for the birth of a new scheme of new funding source schemes that can be carried out by the government related to the participation of State capital in SOEs. In this case it is implemented by the central government alone without going through the APBN mechanism. The clause in Article 2A paragraph (1) limits the authority of the DPR as a State institution that has the function of legislation, budget function and supervisory function which has been regulated in the Indonesian State Constitution, namely in Article 20A paragraph (1). Based on the provisions in PP RI No. 72 of 2016, it has an impact on weakening the position of the DPR where the DPR is no longer included in the mechanism for state capital participation in SOEs because it no longer goes through the APBN process but is regulated by the central government only, which means there is no need for approval and supervision from the DPR.

In particular, when we analyze the contents in PP No. 72 of 2016, there is an insectosis. Where it is stipulated in the provisions of Article 2A paragraph (1) of PP No. 72 of 2016 that the participation of State capital in SOEs is only carried out by the central government without going through the APBN process or mechanism, while in the previous article SOE capital sourced from the State Budget was regulated in Article 2 paragraph (2) letter d. Where the mechanism of state capital participation in SOEs may be carried out without the APBN mechanism while the participation capital is obtained from the APBN. Between the legal world and government policy there is diversity which can eventually lead to legal disharmony. According to Rudolf Stammeler that a concept of legal function is to harmonize various purposes, goals and interests between individuals with individuals and individuals with society. A just legal principle includes harmonization between aims and objectives, individual interests, and aims and purposes and the public interest. The aims and objectives and interests consist of two elements, namely mutual respect and participation. When we connect with what is the source of capital participation in SOEs, it is found that in the regulation, the capital comes from State wealth which is separated The mechanism of State capital participation to SOEs without going through the State Budget bumps into the provisions stipulated in the Law on State Finance. As for the scope of State finance, including State assets that are separated and used as participation capital in SOEs, their management must be subject to regulations in the Law on State Finance. State financial management must go through the APBN mechanism to achieve state goals.

The presence of the State Finance Law mandate 23 C Chapter VIII (eight) of the 1945 Constitution. It is further emphasized in the regulation of State financial management, that related to capital participation in State companies, it must first be determined through the State Budget by involving the role of the DPR. Furthermore, Article 24 paragraph 2 of Law No. 17 of 2003 states the financial relationship that regulates between the government and State companies, including: "The provision of loans/grants/capital participation and the receipt of loans/grants as referred to in paragraph (1) are first determined in the APBN/APBD." This is certainly different from the regulation in article 2A paragraph (1) of PP No. 72 of 2016, which states that the participation of state capital in SOEs can only be carried out by the central government by not going through the APBN mechanism.



The presence of this PP is one proof that the Government as the organizer of the State needs to be more careful and more careful in making and issuing a strategic policy. Where the establishment of PP RI 72 of 2016 is an amendment to the previous PP PP RI No. 44 of 2005 which was made to implement the State Finance Law and in Article 4 paragraph (6) of the SOE Law. In this case, the government should in making and formulating a written regulation, must be made and prepared by weighing and linking to other laws and regulations that are interrelated or regulate the same thing, so as not to cause conflicting laws or cause disharmony of legal norms. Legal norms must be clear, fixed, consistent and consequential, which in their implementation are not influenced by subjective circumstances. Because PP RI No. 72 of 2016 is an implementing regulation that is present to implement the State Finance Law and Article 4 paragraph (6) of the SOE Law which regulates the Procedures for Participation and Administration of State Capital in SOEs and PT. This PP should not cause conflicts or norms with related regulations above, to realize a legal certainty in its implementation in the community.

#### 4.CONCLUSION

The implications of the transfer of state-owned shares to SOEs as state capital participation in other SOEs, per the provisions of Government Regulation 72 of 2016, have a fundamental objective to improve the performance of SOEs holistically. The transfer of state-owned shares from one SOE to another is based on the belief that this action can significantly improve SOE operations. First, this goal emphasizes the importance of efficiency, where the transfer of shares is intended to optimize the utilization of existing resources within SOEs. By sharing resources, SOEs can avoid waste and promote more effective use of those resources. Second, the transfer of shares is also aimed at increasing the effectiveness of SOEs in providing services to the community. By strengthening the quality of services provided by SOEs through capital participation, it is hoped that the public will feel greater benefits and better service quality from SOEs. Lastly, this goal also leads to an increase in the profitability of SOEs. Through the synergy of resources and joint efforts, it is expected that SOEs' revenues can be increased and operational costs can be reduced, which will ultimately positively impact profitability.

There is legal disharmony in this PP with the Law on State Finance. If we look at the regulation regarding the type and hierarchy of legal norms, then of course the position of PP is under the Law. If two or more legal norms contradict each other at different levels vertically, then based on the *principle of lex superior derogate legi inferior*, the higher rule overrides the lower rule. In other words, the State Finance Law resulted in Article 2A paragraph (1) of PP No. 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies.

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