

# The Position of Subsidiaries State-Owned Enterprises in the Mining Industry Sector in Indonesia's State-Owned Perspective

## (Study of Subsidiaries in the Structure of a SOES Holding Company in the Mining Sector PT. Indonesia Asahan Aluminum Persero)

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### ABSTRACT

Issues regarding the establishment of a State-Owned Enterprise holding company in the mining sector as well as other sectors in the perspective of the Indonesian state administration will cause legal problems, including the constitutionality of the establishment of a SOES subsidiary, the legal entity status of a SOES subsidiary, the financial status and state assets in a SOES subsidiary, and state control over SOES subsidiaries. This normative legal research uses a statutory approach and then analyzed using qualitative data analysis methods.

The position of SOES in the Indonesian economic system is as an implementer of the state's right to control important economic resources and control the lives of many people. The position of the subsidiary in the state-owned mining holding company remains as a State-Owned Enterprise and does not change to an ordinary limited liability company. State control over SOES subsidiaries in the structure of the SOES holding company in the mining sector can still be exercised through the ownership of Series A shares by the Government of the Republic of Indonesia as stated in Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

**Keywords:** subsidiary, state-owned enterprises, holding company, Mining, state administration.

### INTRODUCTION

Formation of a Holding Company in the mining sector, formed on November 10, 2017 based on Government Regulation Number 47 of 2017 concerning Addition of the Republic of Indonesia's State Equity Participation into the Share Capital of the Company (Persero) PT. Indonesia Asahan Aluminum which became the basis for the Formation of the Mining Sector Holding. In this Government Regulation, all Series B shares belonging to the Republic of Indonesia are transferred to the Company (Persero) PT. Aneka Tambang Tbk, a Limited Liability Company (Persero) PT. Bukit Asam Tbk, and the Company (Persero) PT. Timah Tbk and all shares owned by the Republic of Indonesia in PT. Freeport Indonesia.

The constitutional issue of establishing a subsidiary of a state-owned company in the structure of a SOES holding company in the mining sector. Establishment of a SOES subsidiary based on Government Regulation Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005

concerning Procedures for State Capital Participation and Administration in State-Owned Enterprises and Limited Liability Companies, which was subject to judicial review in the Constitutional Court Decision of the Constitutional Court Number 12/PUU-XVI/2018 and Constitutional Court Decision Number 14/PUU-XVI/2018 in the case of reviewing Law Number 19 of 2003 concerning State-Owned Enterprises against the 1945 Constitution of the Republic of Indonesia as well as at the Supreme Court in Supreme Court Decision Number 21 P/HUM/2017 in the review of Government Regulation Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Procedures for State Capital Participation and Administration in State Owned Enterprises and Limited Liability Companies. The judicial review is also based on the applicant's understanding that the formation of a holding company is the same as the privatization of a new model of State-Owned Enterprises and also degrades the role of the House of Representatives in supervising State-Owned Enterprises because the holding process is not based on the State Revenue and Expenditure Budget system.

The issue of the legal status of a subsidiary of a state-owned company in the structure of a SOES holding company in the mining sector. Article 4 Government Regulation Number 47 of 2017 which is the legal basis for the establishment of a State Owned Enterprise holding company in the mining sector which makes PT. Indonesia Asahan Aluminum which is the holding company for the Company (Persero) PT. Aneka Tambang Tbk, a Limited Liability Company (Persero) PT. Bukit Asam Tbk, and the Company (Persero) PT. Timah Tbk and all shares owned by the Republic of Indonesia in PT. Freeport Indonesia, has implications for the legal entity status of the subsidiary, which was previously a Persero legal entity to become a limited liability company which is fully subject to Law

Number 40 of 2007 concerning Limited Liability Companies.

The status of a subsidiary of a State-Owned Enterprise will also cause legal problems, on the one hand as referred to in Article 2A paragraph (7) Government Regulation Number 72 of 2016 a subsidiary of a State-Owned Enterprise is considered a State-Owned Enterprise, but on the other hand the subsidiary State-Owned Enterprises are considered not to be State-Owned Enterprises as based on the Constitutional Court Decision Number 01/PHPU-PRES/XVII/2019.

The issue of financial status and state assets in the structure of the SOES holding company in the mining sector. As it is known that, the financial status and state assets in a subsidiary of a State-Owned Enterprise will lead to legal dualism from and between laws and regulations that are private in nature and laws and regulations of a public nature in terms of auditing the finances and state assets of the subsidiary.

The issue of state control over SOES subsidiaries in the structure of the SOES holding company in the mining sector. The mining industry sector is included in the category of natural resource wealth which is regulated and referred to in Article 33 paragraph (3) of the 1945 Constitution. The definition of Article 33 paragraph (3) which refers to the meaning of being controlled by the state, must be interpreted to include the meaning of being controlled by the State in a broad sense, which includes also public ownership by people's collectivities of Natural Resources. The people collectively give the mandate to the State to make policies (Beleid), management actions (bestuursdaad), regulation (Regelensdaad), management (beheersdaad) and supervision (toezichthoudensdaad) as referred to in the Constitutional Court's Decision on the application for a judicial review of Law Number 20 of 2003 concerning Electricity No. 001-021-022/PUU-I/2003, Law No. 22 of 2001 on Oil and Gas No. 002/PUU-I/2003, and Decision on Judicial Review of Law No. 7 of 2004 on Water Resources No.

058-059 -060-063/PUU-II/2004. In the decision, the Constitutional Court stipulates that what is meant by the right to control the state includes five meanings an. The state formulates policies (beleid), including making arrangements (regelendaad), managing (bestuurdaad), managing (beheer daad).

According to Tri Hayati (2019: 779), all of these activities are aimed at the greatest purpose for the prosperity of the people. The "authority right" over the natural wealth belonging to the Indonesian nation is managed by the Government (mining right) so that it can be used for the greatest prosperity of the people. The government as the day-to-day administrator of the state government can cooperate in mining business with other parties (investors) as the executor of mining concessions (economic rights).

Such as the constitutional issue of the establishment of a SOES subsidiary which focuses on reducing state control over SOES subsidiaries and also degrading the role of the House of Representatives in supervising State-Owned Enterprises because the holding process is not based on the State Revenue and Expenditure Budget system.

## **LITERATURE REVIEW**

### **Welfare State**

According to Ridwan HR (2002: 4) and Jimly Asshiddiqie (2005: 45), the welfare state is a function of the state to achieve general welfare (welfare state) which states that the state is responsible for the welfare of the people and therefore must actively regulate economic and social life with a According to Miriam Budiarjo (2008: 115), a system that controls economic forces and tries to minimize social and economic differences, especially differences that arise from the unequal distribution of wealth.

According to Lukman Santoso Az (2016: 16) the concept of a "Welfare State" where the government is responsible for the welfare of all the people and therefore must carry out a comprehensive economic and

social development plan. The Unitary State of the Republic of Indonesia also adheres to the concept of a Welfare State. This was emphasized by the Pioneers of Independence and the Founders of the Unitary State of the Republic of Indonesia that the democratic state to be established was a "Welfare State" (welvaarstaat) not a "Night Guard State" (nachtwachterstaat). In this choice regarding the conception of the Indonesian welfare state, Moh. Hatta used the term "Management State" M. Yamin (1960: 299).

The principle of Welfare State in the 1945 Constitution can be found in detail in several articles, especially those relating to socio-economic aspects. With the inclusion of welfare issues in the 1945 Constitution of the Republic of Indonesia, according to Jimly Asshiddiqie (2005: 124) the Indonesian constitution can be called an economic constitution and even a social constitution as also seen in the constitutions of Russia and Bulgaria. , Czechoslovakia, Albania, Italy, Belarus, Iran, Syria and Hungary. Furthermore, according to Jimly, as far as the style of content stipulated in the 1945 Constitution is concerned, it appears to be influenced by the style of writing the constitution that is commonly found in socialist countries.

The concept of being controlled by the state in order to prosper the people in Article 33 of the 1945 Constitution of the Republic of Indonesia as explained by Jimly Asshiddiqie (2016: 276) is in the sense of being owned by the state, namely ownership in a broad sense, ownership in the sense of public law. Earth, water and all natural resources contained in the bowels of the earth and in water are not only understood in terms of mere control through control and regulatory functions alone.

### **Subsidiaries of State-Owned Enterprises**

Subsidiaries of State-Owned Enterprises are a consequence of the company's reorganization in the form of a holding company. Holding company in the Black Law Dictionary is defined as a

company formed to control other companies, usually confining its role to owning stock and supervising management. Therefore, a subsidiary is a limited liability company most of whose shares are owned by a State-Owned Enterprise or a limited liability company controlled by a State-Owned Enterprise;

### **The State's Right to Control Over Natural Resources**

Article 33 paragraph (3) of the 1945 Constitution regulates "controlled by the state" over the earth, water and natural resources contained therein. The birth of Article 33 paragraph (3) of the 1945 Constitution became a milestone in the legal politics of managing Indonesia's natural resources. As Ibnu Sutowo said that: "Since we proclaimed independence in Indonesia in 1945, we have known that we must control over natural resources as written in our constitution". Control over Indonesia's natural resources is a written law in the Indonesian Constitution.

The phrase "controlled by the state" in Article 33 paragraph (3) of the 1945 Constitution according to Soepomo as the architect of the 1945 Constitution which gives the meaning of "controlled" as follows with the meaning of regulating and/or organizing, especially to improve and consider production. Similarly, Mohammad Hatta, the founding fathers of the Indonesian state, who is also an Indonesian economic figure, former first Vice President and one of the architects of the 1945 Constitution, stated:

... The government builds from above, carries out big things such as building electricity, supplying drinking water, organizing various kinds of production that affect the lives of many people. What are called in English "public utilities" are managed by the Government. Owned by such a large company is best in the hands of the Government...".

Furthermore, Mohammad Hatta formulated the notion of being controlled by the state, namely being controlled by the

state does not mean that the state itself becomes an entrepreneur, entrepreneur or orderner. It is more accurate to say that the power of the state lies in making regulations for the smooth running of the economy, regulations that prohibit the exploitation of the weak by people with capital. Mohammad Hatta's opinion differs from that of Bagir Manan, that the scope of the notion of being controlled by the state or the right of state control is as follows:

"(1) Control is a kind of ownership by the state, meaning that the state through the Government is the only authority holder to determine the right of authority over it, including here the earth, water, and the wealth contained therein, (2) Regulate and supervise the use and utilization, (3) Equity participation in the form of a state company for certain businesses".

The concept of "controlled by the state" as contained in Article 33 paragraph (3) of the 1945 Constitution, has been interpreted by the Constitutional Court in case number 022/PUU-I/2003 concerning the examination of the Und Laws No. 20 of 2002 and 02/PUU-I/2003 concerning the review of Law No. 22 of 2002 concerning Oil and Gas, dated December 1, 2004, which stipulates that state control is something higher than ownership. It is stated that:

"...the notion of being controlled by the state in Article 33 of the 1945 Constitution contains a higher or broader meaning than ownership in the civil law conception. The conception of control by the state is a conception of public law relating to the principle of popular sovereignty espoused in the 1945 Constitution, both in the fields of politics (political democracy) and economics (economic democracy). supreme power in the life of the state, in accordance with the doctrine "of the people, by the people, and for the people".

The control of natural resources by the state, as regulated in the 1945 Constitution cannot be separated from the purpose of such control, namely to realize

the greatest prosperity of the people. The linkage of control by the state for the prosperity of the people.

## **METHODS**

This type of research is normative legal research. Normative legal research is legal research that puts the law as a building system of norms. The system of norms in question is about principles, norms, rules of statutory regulations, court decisions, agreements and doctrines. Therefore, normative legal research in this study serves to answer the constitutional basis for the position of subsidiaries of State-Owned Enterprises in the Indonesian constitutional system, as well as to address conflicts of norms in the laws and regulations governing aspects of state assets in the holding company of State-Owned Enterprises. as well as aspects of state assets in subsidiaries of State-Owned Enterprises.

Taking into account the main problems and objectives of this research, the research approach methods used to answer the main problems are the statutory approach, the case approach and the conceptual approach. Legal materials for normative legal research are secondary data which are generally known as legal materials consisting of primary legal materials, secondary legal materials and tertiary legal materials.

Techniques and data collection tools in this research is through library research in the library area of the University of North Sumatra and libraries in other areas as long as it is necessary to complete this research as well as document studies related to the parent and subsidiary PT. Indonesia Asahan Aluminum Persero. Data analysis is an analysis to get the final argument in the form of answers to the problems studied. In this study, qualitative data analysis will be carried out. Qualitative data analysis was carried out using descriptive analysis techniques, evaluative techniques, and argumentative techniques.

## **RESULT AND DISCUSSION**

### **The Position of State-Owned Enterprises in the Indonesian Economic System**

Based on the purpose of establishing a State-Owned Enterprise as confirmed in Article 2 of Law Number 19 of 2003 concerning State-Owned Enterprises, the role of State-Owned Enterprises in the Indonesian economic system can be categorized into two roles, namely as agent of business and agent of development. M. Iqbal Asnawi (2016: 133) explains that the existence of SOES with its characteristics as a business entity should generate profits and have a profit value for the state, besides that SOES has a non-commercial function in carrying out the goals of community welfare which is the goal of the state.

Article 1 number (1) of Law Number 19 of 2003 concerning State-Owned Enterprises defines State-Owned Enterprises as a business entity whose entire or most of the capital is owned by the state through direct investment originating from separated state assets. The provisions of Article 9 of Law Number 19 of 2003 concerning State-Owned Enterprises stipulates that State-Owned Enterprises consist of Persero and Perum.

Article 1 number (2) of Law Number 19 of 2003 concerning State-Owned Enterprises explains that a Limited Liability Company is a State-Owned Enterprise in the form of a Limited Liability Company whose capital is divided into shares which are wholly or at least 51% (fifty one percent) of the shares. owned by the Republic of Indonesia whose main purpose is to pursue profit. Meanwhile, Article 1 point (4) of Law Number 19 of 2003 concerning State-Owned Enterprises explains that a Public Company, hereinafter referred to as Perum, is a State-Owned Enterprise whose entire capital is owned by the state and is not divided into shares, which aims to public benefit in the form of providing goods and/or services of high quality and at the same time pursuing profit based on the principles of company management.

The provisions of Article 11 of Law Number 19 of 2003 concerning State-Owned Enterprises stipulates that all provisions and principles applicable to Limited Liability Companies are applicable to the Company as regulated in the Law on Limited Liability Companies. Furthermore, Article 12 regulates the aims and objectives of the establishment of a Persero, namely providing goods and/or services of high quality and strong competitiveness, as well as pursuing profits in order to increase the value of the company. In relation to the goal of pursuing profits in order to contribute to

the development of the national economy in general and state revenues in particular, the following is a graph of dividend payments of State-Owned Enterprises to the State Treasury for the period 1994 to 2019.

Meanwhile, Article 36 paragraph (1) of Law Number 19 of 2003 concerning State-Owned Enterprises states that the purpose and objective of Perum is to carry out a business aimed at the public benefit in the form of providing quality goods and/or services at affordable prices by the community based on principles of sound corporate management.

**Table: Comparison of the Purpose and Objectives of the Establishment of State-Owned Enterprises (Persero) and State-Owned Enterprises Perum**

SOES Persero	SOES Perum
The aims and objectives of establishing a limited liability company are: 1. Provide goods and/or services of high quality and strong competitiveness; and 2. Pursuing profit in order to increase the value of the company Article 12 of Law Number 19 of 2003 concerning State-Owned Enterprises.	The purpose and objective of the establishment of Perum is to carry out a business that aims for the public benefit in the form of providing quality goods and/or services at affordable prices to the public based on the principles of sound corporate management. Article 36 paragraph (1) of Law Number 19 of 2003 concerning Business Entities State Owned.

Source: Law Number 19 of 2003 concerning State-Owned Enterprises

Refly Harun (2019: 61) explains that the clauses and explanations in Law Number 19 of 2003 concerning State-Owned Enterprises as explained above, the purpose of State-Owned Enterprises is to advance the national economy for the welfare of the people and the pursuit of profit can be likened to a single coin. with two inseparable sides. Then Aminuddin Ilmar (2012: 76-77) explains that on the one hand State-Owned Enterprises are present as agents of development, but on the other hand State-Owned Enterprises also carry out commercial activities or as agents of business. This is what distinguishes State-Owned Enterprises from private companies that are entirely profit-oriented. The purpose of establishing a State-Owned Enterprise must also be in line with the general goal of the state, namely increasing promote general welfare and educate the nation's life, so that State-Owned Enterprises also carry out social functions.

### **State Of State-Owned Business Entity (Persero) That Change To Be A Subsidiaries Of State-Owned Business Entity In The Structure Of Soe Holding In The Mining Sector**

Appointment of PT. Indonesia Asahan Aluminum as the holding company in the holding company structure of State-Owned Enterprises in the mining sector is due to PT. Indonesia Asahan Aluminum for all of its shares or 100% of its shares are owned by the state. 100% share ownership by the state in PT. Indonesia Aluminum Persero can be seen from Article 1 paragraph (2) of Government Regulation Number 26 of 2014 concerning the Designation of PT Indonesia Asahan Aluminum as a Limited Liability Company (Persero) PT Indonesia Asahan Aluminum which states that "With the transfer of shares of Nippon Asahan Aluminum Co., Ltd. as referred to in paragraph (1), the value of the capital investment of the Republic of Indonesia in the Company (Persero) PT Indonesia Asahan Aluminum

which previously was 41.12% (forty one hundred percent)”. point twelve percent) becomes 100% (one



**Chart: Composition of Shareholders of SOES Holding Company Mining sector**  
 Source: <https://www.inalum.id/en/about/company>, accessed March 01, 2022

Three members of Holding Company for Mining Industry (Antam, Timah & Bukit Asam) remain fully controlled by the state through the presence of golden share in the three Holding members. The purpose of the appointment of PT. Indonesia Asahan Aluminum as the holding company in the holding company structure of State-Owned Enterprises in the mining sector is to strengthen the capital structure and increase the business capacity of PT Indonesia Asahan Aluminum Persero, so it is necessary to add the Republic of Indonesia's State Equity Participation to the share capital of PT Indonesia Asahan Aluminum Persero which originated from the transfer of all Series B shares owned by the Republic of Indonesia to the Company (Persero) PT Aneka Tambang Tbk, Company Company (Persero) PT Bukit Asam Tbk, and Company Company (Persero) PT Timah Tbk as well as all shares owned by the State of the Republic of Indonesia in PT Freeport Indonesia.

The Supreme Court's decision Number 21 P/HUM/2017 regarding the review of Government Regulation Number 72 of 2016 against Law Number 19 of 2003 concerning State-Owned Enterprises as described above states that SOES which are used as subsidiaries of SOES in the SOES holding company structure are still as a SOES and does not change its status to an ordinary limited liability company. However, in the Constitutional Court Decision Number 1/PHPU-PRES/2019, it is stated that BNI Syariah or Bank Mandiri Syariah which is a subsidiary of BNI and Bank Mandiri (which is a SOES) is not a SOES on the grounds that the two subsidiaries of BNI and Mandiri are there is no direct investment from the state. Therefore, to be able to distinguish the institutional status of SOES subsidiaries which are SOES and SOES subsidiaries, it will be described in the following table:

**Table: Comparison of SOES Subsidiaries which are SOES and SOES Subsidiaries which are not SOES**

SOES Subsidiary which is SOES	Subsidiary of SOES which is not SOES
A business entity whose capital is wholly or partly owned by the state through direct investment.	There is no direct state capital participation in SOES subsidiaries
The Minister of SOEs acts as a GMS or shareholder in a SOE subsidiary.	The Minister of SOES does not have the authority to act as a GMS or shareholder in a SOES subsidiary.
The state, through the government, has preferred diamond shares or Series A shares in a subsidiary of a state-owned enterprise as a form of state control over state-owned subsidiaries. Holders of preferred series shares (diamond shares) or dual series A shares have the authority to: <ol style="list-style-type: none"> <li>1. Appointment of members of the Board of Directors and members of the Board of Commissioners;</li> <li>2. Amendments to the articles of association;</li> <li>3. Changes in share ownership structure; and</li> <li>4. Merger, consolidation, separation, and takeover by other companies.</li> </ol>	The state does not have dual shares in SOES subsidiaries, so the state does not have direct control over SOES subsidiaries.

Source: edited by the 2020 Author.

Based on the description above, it can be seen that SOEs that are placed in the management of other SOEs make it a reason for SOE subsidiaries which are still SOEs as long as the state has direct capital and the state through the Ministry of SOEs has the authority to act as a GMS for a company whose capital is entirely owned by the state or as shareholders in SOES which are not wholly owned by the state. Regarding the institutional status of SOE subsidiaries in the mining sector SOES holding structure, it can be analyzed based on the provisions in Government Regulation Number 47 of 2017 concerning Addition of State Equity Participation of the Republic of Indonesia into the Share Capital of the Company (Persero) PT Indonesia Asahan Aluminum jo. Government Regulation Number 72 of 2016 concerning Amendments to Government Regulation Number 72 of 2016 against Law Number 19 of 2003 concerning State-Owned Enterprises as well as Supreme Court Decision Number 21 P/HUM/2017 and Supreme Court Decision Number 7 P/HUM/2018.

Based on the provisions of Article 3 of Government Regulation Number 47 of 2017 concerning Addition of State Equity Participation of the Republic of Indonesia into the Share Capital of the Company (Persero) PT Indonesia Asahan Aluminum, it can be interpreted that the State Capital participation (PMN) is in the form of shares of PT Aneka Tambang Tbk, PT Timah Tbk, PT Bukit Asam Tbk to PT. Indonesia Asahan Aluminum which causes SOES to become a subsidiary of the parent SOES (holding) in the mining sector is indeed possible, because there is no provision that states that SOES that is a subsidiary of the parent SOES turns into a Limited Liability Company, because state ownership through series A Dwiwarna shares remains recognized by granting special rights, so that control (supervision) over subsidiary companies can still be exercised by the state through the parent SOES PT. Indonesia Asahan Aluminum and does not reduce the intent of state control in Article 33

paragraph (2) of the 1945 Constitution of the Republic of Indonesia as described in the Decision of the Constitutional Court Number 002/PUU-I/2003, dated December 21, 2004.

Therefore, with respect to PT Aneka Tambang Tbk, PT Timah Tbk, PT Bukit Asam Tbk, it is still a State-Owned Enterprise or at least a state-owned company. This can be seen from the composition of the shares of the subsidiary of the Mining SOES Holding, Series B shares of 65% of PT. Aneka Tambang, Tbk, Series B Shares 65.02% Series B shares in PT. Timah Tbk, Series B Shares 65% of PT. Bukit Asam, Tbk is still owned by the state through PT. Indonesia Asahan Aluminum Persero, then the state also has Series A Shares in the three subsidiaries.

### **State Control Of Soe Subsidiaries In The Holding Structure Of State-Owned Business Entities In The Mining Sector In Specifically Related To State Control Rights Over Natural Resources**

The discussion of state supervision and control over subsidiaries of State-Owned Enterprises in the holding structure of State-Owned Enterprises in the mining sector will be divided into two parts, namely the authority to supervise state finances in State-Owned Enterprises subsidiaries through the State Audit Board and secondly, state control over subsidiaries. State-Owned Enterprises through ownership of series A dwiwarna shares by the state through the government in a subsidiary of State-Owned Enterprises.

State-Owned Enterprises are state companies which on the one hand are bound to government provisions in the field of public law, on the other hand are bound to corporate provisions in the field of private law. This is because the capital of State-Owned Enterprises is and comes from separated state assets. The separation of state assets in state-owned enterprises must be seen that the state still has a relationship as a shareholder in state-owned enterprises. When the state separates wealth in State-



Owned Enterprises, at first the state has rights and obligations to the amount of funds it owns. When these funds are separated to be placed as company capital, the rights and obligations of these funds are transformed into rights and obligations contained in share ownership as a consequence of the formation of legal subjects who also have their own legal rights and obligations. Merdiansa Papatungan (2017: 438)

According to Article 2 paragraph (2) of Law Number 19 of 2003 concerning State-Owned Enterprises, State-Owned Enterprises in terms of formation are an extension of the state to implement Article 33 paragraph (3) of the 1945 Constitution to

achieve state goals, namely advancing the general welfare for the greatest prosperity of the people. This is also reflected in the aims and objectives of establishing a State-Owned Enterprise as referred to and confirmed in Law Number 19 of 2003 concerning State-Owned Enterprises. State control over the control of state-owned enterprises subsidiaries in the holding of state-owned enterprises in the mining sector in relation to state control rights over natural resources is through the ownership of series a dual color shares. The total number of Series B state shares in SOES which is now a subsidiary of PT. Indonesia Asahan Aluminum is as shown in the following table:

**Table: Mechanism of Inbreng Series B Shares of SOES into PT. Indonesia Asahan Aluminum and State Control of SOES Subsidiaries in the Structure of a SOES Holding Company in the Mining Sector**

Name of SOES	Number of Series B Shares	State Control
1. A limited liability company (Persero) PT Aneka Tambang Tbk whose status as a Limited Liability Company (Persero) is determined based on Government Regulation Number 26 of 1974 concerning the Transfer of the State Company of Aneka Tambang to a Limited Liability Company (Persero)	15,619,999,999 (fifteen billion six hundred ninety nine) twelve million nine hundred ninety-nine thousand nine hundred ninety-nine) Series B shares in the Limited Liability Company (Persero) PT Aneka Tambang Tbk.	The state exercises control through the ownership of Series A shares with the authority as regulated in the Articles of Association of PT. Aneka Tambang Tbk, among others: a. Appointment of members of the Board of Directors and members of the Board of Commissioners; b. Amendments to the articles of association; c. Changes in share ownership structure; d. Merger, consolidation, separation, and dissolution, as well as takeover of companies by other companies.
2. The Limited Liability Company (Persero) PT Timah Tbk whose status as a Limited Liability Company (Persero) is determined based on Government Regulation Number 3 of 1976 concerning the Transfer of the Form of the State Tin Mining Company to a Limited Liability Company (Persero).	4,841,053,951 (four billion eight hundred forty-one million fifty-three thousand nine hundred and fifty-one) Series B shares in the Limited Liability Company (Persero) PT Timah Tbk.	The state exercises control through the ownership of Series A shares with the authority as regulated in the Articles of Association of PT. Timah Tbk, among others: 1. Appointment of members of the Board of Directors and members of the Board of Commissioners; 2. Amendments to the articles of association; 3. Changes in share ownership structure; 4. Merger, consolidation, separation, and dissolution, as well as takeover of companies by other companies.
3. The Company (Persero) PT Bukit Asam Tbk whose status as a Limited Liability Company (Persero) is determined based on Government Regulation Number 42 of 1980 concerning State Equity Participation of the Republic of Indonesia for the Establishment of a Bukit Asam Coal Mining Company (Persero).	1,498,087,499 (one billion four hundred ninety-eight million eighty seven thousand four hundred ninety nine) Series B shares in the Company (Persero) PT Bukit Asam Tbk.	The state exercises control through the ownership of Series A shares with the authority as regulated in the Articles of Association of PT. Bukit Asam Tbk, among others: 1. Appointment of members of the Board of Directors and members of the Board of Commissioners; 2. Appointment of members of the Board of Directors and members of the Board of Commissioners; 3. Amendments to the articles of association; 4. Changes in share ownership structure; 5. Merger, consolidation, separation, and dissolution, as well as takeover of companies by other companies.

*Source: Government Regulation Number 47 of 2017 concerning Addition of State Equity Participation of the Republic of Indonesia into the Share Capital of the Company (Persero) PT Indonesia Asahan Aluminum Jo. Government Regulation Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Procedures for State Capital Participation and Administration in State-Owned Enterprises and Limited Liability Companies.*

The consideration of the government regulation regarding the establishment of SOES holding in the mining sector is based on 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. Based on Government Regulation Number 72 of 2016, the state is required to own shares with special rights regulated in the articles of association, as is the case with Government Regulation Number 47 of 2017 as a form of state control rights over SOES holding subsidiaries. Arrangements for Preferred Shares (Series A Shares) which are regulated in the articles of association of companies in the SOES holding structure in the mining sector are as follows:

1. Based on the Deed of Decision of the General Meeting of Shareholders of PT. Bukit Asam, Tbk in Notarial Deed of Fathiah Helmi, SH, Number 54 dated 22 May 2018, Series A Dwiwarna shares are only specifically owned by the Republic of Indonesia as regulated in Article 5 Amendment to the Articles of Association of PT. Bukit Asam, Tbk;
2. Based on the Deed of Decision of the General Meeting of Shareholders of PT. Timah, Tbk in Notarial Deed of Fathiah Helmi, SH, Number 11 Dated July 12 2018, Series A Dwiwarna shares are only specifically owned by the Republic of Indonesia as regulated in Article 5 Amendment to the Articles of Association of PT. Timah, Tbk;
3. Based on the Deed of Statement of Meeting Resolutions on the Amendment to the Articles of Association of PT Aneka Tambang Tbk in the Deed of Notary Jose Dima Satria, SH., M.kn, Number 33 Dated May 11 2018, Series A Dwiwarna shares are only specifically owned by the Republic of Indonesia as regulated in Article 5 Amendment to the Articles of Association of PT. Aneka Tambang, Tbk.

The ownership of the Series A Dwiwarna Share to the three subsidiaries in the structure of the SOES holding company in the mining sector which is only owned by the Republic of Indonesia is a form of state control over the mining sector which is part of the natural resource wealth as referred to in Article 33 of the State Constitution. Republic of Indonesia Year 1945 Jo. Law Number 4 of 2009 concerning Mineral and Coal Mining. The ownership of series A Dwiwarna shares by the Government of the three subsidiaries of State-Owned Enterprises in the mining sector SOES holding structure PT Aneka Tambang (Persero) Tbk, PT Timah (Persero) Tbk, and PT Bukit Asam (Persero) Tbk are SOESs that have business in mineral and coal mining natural resource management. Whereas based on Article 4 paragraph (1) of the Minerba Law and Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the business fields of the three SOEs are natural wealth management and important production branches that must controlled by the state and used for the greatest prosperity of the people.

The relationship between SOES and the concept of state control has been given a reference/corridor by the Constitutional Court of the Republic of Indonesia as contained in several of its decisions, including Decision Number 36/PUU-X/2012 which states "The 1945 Constitution gives a mandate to the state to implement policies (beleid) and management actions. (bestuursdaad), regulation (regelendaad), management (beheersdaad), and supervision (toezichthoudensdaad) for the purpose of the greatest prosperity of the people. The management function (bestuursdaad) by the state is carried out by the Government with the authority to issue and revoke permit facilities (vergunning), licenses (licentie), and concessions (concessie). The regulatory function by the state (regelendaad) is carried out through the legislative authority by the DPR together with the Government, and regulation by the Government. The

management function (beheersdaad) is carried out through a share-holding mechanism and/or through direct involvement in the management of State-Owned Enterprises or State-Owned Legal Entities as institutional instruments, through which the State, c.q. The government, utilizes its control over these sources of wealth to be used for the greatest prosperity.

## CONCLUSION

Based on the description of the discussion in the previous chapters, in this study it can be concluded as follows:

1. The role of SOES is felt to be increasingly important as a pioneer or pioneer in business sectors that are not yet in demand by private businesses. In addition, SOEs also have a strategic role as implementing public services to balance the power of the big private sector, and helping to develop small businesses/cooperatives as referred to in Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia in the context of the welfare of the people's lives. SOES is also a significant source of state revenue in the form of various types of taxes, dividends and privatization proceeds.
2. Position of PT. Aneka Tambang Tbk, PT. Bukit Asam Tbk, and PT. Timah Tbk in the holding of SOES in the mining sector is institutionally still a SOES or equivalent to SOES, financially, the three SOES subsidiaries have state finances, namely direct share ownership so that they become the object of examination from the Supreme Audit Agency (BPK) based on the business paradigm. judgment rules), the position of the Board of Commissioners, the Board of Directors, and officials at the level below the board of directors in the SOES subsidiaries can be categorized as SOES Officials as referred to and regulated in Law Number 28 of 1999 concerning the Implementation of a Clean and Free State of KKN, Law No. Law Number 7

of 2017 concerning General Elections, Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2014 concerning Regional Head Elections;

3. The state still has full control over the parent company PT. Indonesia Asahan Aluminum with 100% share ownership and the state also retains strategic control over SOES subsidiaries in the holding structure of the state-owned mining company as a form of state control over natural resources through ownership of Series A Dwiwarna shares by the Government of the Republic of Indonesia. The authority of the owner of the Series A Dwiwarna share includes the appointment and dismissal of the Board of Commissioners, Board of Directors, Amendment to the articles of association, Changes in share ownership structure, Merger, consolidation, separation, and dissolution, as well as takeover of the company by another company.

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