



Legal Status of Business Entities on the Merger of Subsidiaries of BUMN into BUMN (Case Study of Indonesian Sharia Bank)

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Abstract

The background of the research was the merger process of three sharia banks, subsidiaries of BUMN, namely BRIS, BSM, and BNIS into one business entity, Bank Syariah Indonesia (BSI). This is done by the Government for BSI to become the world's Top 10 and Indonesia to become the World Halal Center. The research is to analyze the position of PT Bank Syariah Indonesia as a subsidiary of BUMN on separated state assets and the status of BSI's legal entity in order to become a BUMN through State Equity Participation (PMN). The normative juridical research method is presented with a systematic description and qualitative analysis. The results of the research that BSI as a subsidiary is not included in the separated state assets. BSI is still a subsidiary of a BUMN because there is no direct capital investment from the state, so there needs to be a PMN so that BSI becomes a BUMN. There are two ways of PMN, by reducing the state capital of the three SOEs by the amount of shares or capital in BSI so that the shares become direct capital from the State in BSI. The second method is to inject Series A Dwiwarna Shares into BSI so that the State has special rights over BSI.

Keywords: Mergers; Legal Entity; BUMN.

A. Introduction

The state is an organization that was born as a form of social unity from a common will or interest. The collective will of the Unitary State of the Republic of Indonesia is reflected in Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia that Indonesia's economic development must be carried out with the participation of the community. The direction of national development is basically in line with the goals of a welfare state (Nachrawi, 2020). The existence of State-Owned Enterprises (BUMN) is one of the pillars of the economy based on Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "production branches that are important for the state and which affect the livelihood of many people are controlled by the state" (Natun, 2019). BUMN as a state company in accordance with the mandate of Article 33 of the 1945 Constitution of the Republic of Indonesia has a strategic position to improve people's welfare.

The definition of State-Owned Enterprises (BUMN) based on Article 1 number 1 of the BUMN Law, what is meant by BUMN is a business entity whose entire or most of the capital is owned by the state through direct investment originating from separated state assets (Sutarisno, 2012). The development of state-owned banks that widen the

types of business activities due to the market potential in the sharia sector, several state-owned banks have made subsidiaries in the form of Islamic banks. This potential is supported by the improvement of Law Number 7 of 1992 into Law Number 10 of 1998 which confirms the existence of two banking systems in Indonesia (dual banking system), namely the conventional banking system and the Islamic banking system, resulting in the emergence of many Islamic banks, including three Islamic banks. which is a subsidiary of a BUMN (Ulfa, 2021).

Indonesia has an Indonesian Islamic Economic Masterplan in May 2019. One of the programs carried out is increasing incentives for Islamic banks through acquisitions and mergers of Islamic banking. In October 2020, the three banks signed the Conditional Merger Agreement (CMA). Then, the Financial Services Authority (OJK) officially approved the merger of BRI Syariah, BNI Syariah, and BSM on January 27, 2021, which was stated in a letter numbered SR-3/PB.1/2021 concerning the Granting of Merger Permit for PT Bank Syariah Mandiri and PT Bank BNI Syariah. into PT Bank BRI Syariah Tbk. In addition to granting a merger permit, OJK also allowed the three Islamic banks to use the name PT Bank Syariah Indonesia (BSI).

In addition to coming from three different parent SOEs, BSI is also expected to become a BUMN as the government plans to change the status of PT Bank Syariah Indonesia Tbk (Bisnis.com, 2022). The government's plan is also in line with the opinion of the Secretary General of the Indonesian Economic Community (MES) Iggi H Achsien, BSI is advised to become a state-owned bank (BUMN) with the label "Persero" because of its current status as a subsidiary of a BUMN. This change in status to become a BUMN can be a reflection of the government's commitment to Bank Syariah Indonesia as well as for the growth of Islamic finance where Bank Syariah Indonesia will become the fifth Himbara with direct ownership of the Indonesian government with shares owned in BSI (Investor.id, 2021).

Subsidiaries of BUMN and BUMN have different statuses in state assets. Article 4 paragraph (1) of the BUMN Law states that BUMN capital is and comes from separated state assets (DPR RI, 2017). As separated state assets, the wealth of SOEs is no longer part of the state finances, although they are still state assets. Separated state assets are used to invest in BUMN in the context of conducting business activities. BUMN business development, a subsidiary was born where most of the shares are owned by BUMN. After the merger, BSI remains a subsidiary, not a state-owned company. However, there is a discourse about turning BSI into a BUMN. BSI as a result of the merger of three SOE subsidiaries, the position of the subsidiaries' assets in separated state assets and the potential to make BSI's legal entity status as a BUMN that requires State Equity Participation (PMN) are interesting things to study. The objectives of this research are as follows:

1. Analyzing the position of PT Bank Syariah Indonesia as a subsidiary of SOE on separated state assets.
2. Analyzing the legal entity status of Bank Syariah Indonesia to become a BUMN through State Equity Participation (PMN)

B. Method

The type or research method that the researcher will use is a normative juridical approach, using a positive legal concept (Soemitro, 1982) using secondary data in the form of materials sourced from scientific opinions of scholars and literature books. Methods of collecting documentaries and literature study (Dewata, 2010). The documentary method is carried out by collecting legal materials and then examining government and non-government documents such as: decision letters, memos, minutes of meetings, reports, mass media, internet, announcements, instructions, regulations of an agency, publications, and archives. archives related to research. Literature studies are carried out by conducting searches on library materials such as: literature, legislation, research results, scientific magazines, and scientific journals published by agencies related to research. In collecting these legal materials, researchers will classify or categorize the forms or formats of legal materials to make them easier to understand in research. Data processing by means of reduction, display, and classification (Moleong, 2009) which is presented with a systematic and logical description and qualitative analysis.

C. Results and Discussion

1. The position of PT Bank Syariah Indonesia as a subsidiary of BUMN in separated state assets

Bank mergers are carried out in the context of strategic development of business entities in facing business competition. Business mergers in the form of mergers are often chosen as a form of accelerating company strengthening compared to starting a business from scratch (Trihastuti, 2016).

Regarding the requirements and procedures for merger or consolidation, it is regulated in Articles 8 – 22 Chapter II of POJK Number 41 of 2019. Bank Syariah Indonesia is the result of a bank merger between BRI Syariah Tbk, Bank Syariah Mandiri, and BNI Syariah. The Merger process is carried out by going through several procedures according to the laws and regulations. The long process of merging Bank Syariah Mandiri was carried out from 2016 to 2021, with the following policies:

- a) The Merger process started in 2016 when the Financial Services Authority prepared a sharia sector financial development plan (Yoursay.id, 2021). The sharia sector finance development plan was prepared in line with the Government of Indonesia's efforts to establish a KNKS on November 8, 2016 with the aim of increasing the effectiveness and efficiency of the implementation of the national development plan in the field of Islamic finance and economy (KNEKS, 2021).
- b) The sharia economic development plan was launched in the Indonesian Islamic Economics Master Plan in May 2019, one of which is the point of the sharia banking merger.
- c) Consolidation was carried out by OJK in banking in 2019 after the launch of the master plan. OJK proposed the names of five Islamic banks in Indonesia to be merged, namely PT Bank Syariah Mandiri, PT Bank BNI Syariah, PT Bank BRI Syariah, Sharia Business Unit, PT Bank Tabungan Negara (Persero) Tbk.

- d) Continuing in July 2020, the Minister of SOEs plans to merge 4 BUMN Syariah Banks, namely BRI Syariah, BNI Syariah, BTN Syariah, and Bank Syariah Mandiri. However, in October 2020 the Government decided to consolidate three banks except BTN Syariah and set the name to PT Bank Syariah Indonesia.
- e) OJK issued a bank merger permit with a name change to PT Bank Syariah Indonesia Tbk on January 27, 2021.
In connection with the Merger, BNIS has taken the following actions:
 - a) Together with BRIS and BSM, BNIS has prepared a Merger Plan which has received approval from the Board of Commissioners of the Merger-Participating Banks on October 20, 2020.
 - b) Announce the Summary of the Merger Plan to the public, and announce the Merger plan to the employees of each Merger Participating Bank on October 21, 2020, and announce additional information and/or changes to the Summary of the Merger Plan to the public on December 11, 2020.
 - c) Until the time limit specified in Article 127 paragraph (4) of the Company Law (ie no later than 14 days after the announcement of the Summary of the Merger Plan) and in Article 37 paragraph (1) of PP No. 28/1999 (that is, no later than 7 days before the summons for the general meeting of BNIS shareholders), no creditors from BNIS have raised objections to the proposed Merger.
 - d) Together with BRIS and BSM submitted a business merger statement to OJK (Capital Market Supervisor) on October 21, 2020 and has obtained an effective statement from OJK Capital Market Supervisor in accordance with OJK Letter No. S-289/D.04/2020 dated December 11, 2020.
 - e) Obtained the approval of the BNIS shareholders based on the Decision of the Shareholders outside the BNIS EGMS on 15 December 2020.
 - f) Signing the Deed of Merger before a notary on December 16, 2020, as stated in the Deed of Merger No. 103 dated December 16, 2020 which was restated in Deed No. 37 dated January 14, 2021, drawn up before Jose Dima Satria, S.H., M.Kn., Notary in Jakarta.
 - g) Obtain a copy of the Decision of the OJK Board of Commissioners No. 4/KDK.03/2021 dated January 27, 2021 concerning the Granting of Permits for the Merger of PT Bank Syariah Mandiri and PT Bank BNI Syariah into PT Bank BRI Syariah Tbk and Permits for Change of Name Using the Business License of PT Bank BRI Syariah Tbk. Become a business license on behalf of PT Bank Syariah Indonesia Tbk. as the Merged Bank.
 - h) Obtaining Menkumham Letter No. AHU-AH.01.10-0011384 dated January 28, 2021 regarding the Acceptance of Notification of the Merger of BNIS and BSM into BRIS.
 - i) Obtaining Menkumham Letter No. AHU-0006268.AH.01.02.TAHUN 2021 dated February 1, 2021. Regarding the amendment and restatement of all articles of the Company's articles of association.
 - j) Announce the Merger Effective Date published in Bisnis Indonesia and Investor Daily newspapers on February 2, 2021.

Based on the merger plan of Bank Syariah Indonesia that the legal consequences of the merger in accordance with Article 122 of the Company Law, Government Regulation Number 28 of 1999 and OJK Regulation Number 74 of 2016 as a result of

the merger, BMS and BNIS will end by law on the effective date of the merger without prior liquidation because:

- a) All assets and liabilities of BSM and BNIS were transferred by law to BRIS as the Surviving Bank.
- b) Shareholders of BSM and BNIS by law become shareholders of the Surviving Bank.

BRI Syariah Bank as the surviving party or the Surviving Firm or the party issuing the issuing firm's shares. And the merged firm will end its legal status so that the merged firm can no longer act on its own behalf or in other words its legal status has ended for the sake of law. BNI Syariah and Bank Syariah Mandiri which merged with BRI Syariah are no longer legal entities.

The legal status of BNI Syariah and Bank Syariah Mandiri expires after obtaining a merger permit from the OJK on February 1, 2021. BNIS and BSM can no longer act as legal subjects supporting rights and obligations because their legal entity status has ended by law because they have merged with BRIS.

Through the Constitutional Court Decisions No. 48/PUU-XI/2013 and 62/PUU-XI/2013 which were read out on 18 September 2014, it has confirmed the status of state assets sourced from state finances and separated from the State Budget to be included as equity participation in SOEs remains part of the of the state financial regime. There is a lot of debate about the status of wealth owned by SOE subsidiaries. As a subsidiary of BUMN, PT Bank Syariah Indonesia is a limited liability company with most of its shares owned by BUMN or controlled by BUMN as a corporation (parent company) not by the state so that it is not included in state assets which are separated directly. This construction makes PT Bank Syariah Indonesia not accountable to the state but to the parent company.

2. Status of Indonesian Sharia Bank Legal Entity To Become a State-Owned Enterprise Through State Equity Participation (PMN)

The legal construction between the parent company and its subsidiaries in the Company Law is based on the legal principle of legal entity independence, as the holding company as an independent legal entity and separate from other legal entities, the subsidiary is also domiciled independently in the form of a limited liability company that bears the rights and obligations. PT Bank Syariah Indonesia is a subsidiary of several state-owned companies and other minority shareholders with the following shareholder structure (BNI, 2021):

Table 1
Summary

Information	Nominal Value Rp. 500 per Share		
	Number of Shares (Sheets)	Nominal Value (Rupiah)	%
Modal Dasar	80.000.000.000	40.000.000.000.000	-
1. PT Bank Mandiri (Persero) Tbk	20.905.219.379	10.452.609.689.500	50,9
2. PT Bank Negara Indonesia (Persero) Tbk	10.220.230.418	5.110.115.209.000	24,9
3. PT Bank Rakyat Indonesia (Persero) Tbk	7.092.762.655	3.546.380.827.500	17,3
4. DPLK BRI-Saham Syariah	751.340.000	375.670.000.000	1,8
5. PT BNI Life Insurance	5.250.415	2.625.207.500	0,0
6. PT Mandiri Sekuritas	33	16.500	0,0

Information	Nominal Value Rp. 500 per Share		%
	Number of Shares (Sheets)	Nominal Value (Rupiah)	
7. Masyarakat	2.056.407.043	1.028.515.604.471.500	5,0
Issued and Paid Up Capital	41.031.208.943	20.515.604.471.500	100
Shares in Portfolio	38.968.791.057	19.484.395.528.500	-

Includes the issuance of 184,395,200 new shares due to the implementation of the Management and Employee Stock Option Program (MESOP) issued by BRIS from November 2, 2020 to December 14, 2020.

In addition to granting a merger permit, OJK also allowed the three Islamic banks to use the name PT Bank Syariah Indonesia (BSI). However, BSI uses the BRI Syariah business license in running its business. The post-merger status of Bank Syariah Indonesia is still a BUMN Subsidiary of Bank BRI Tbk. However, new problems arose when the government announced it would change the status of PT Bank Syariah Indonesia as a subsidiary of a state-owned enterprise to a state-owned company.

Based on Law Number 19 of 2003 concerning State-Owned Enterprises, what is meant by State-Owned Enterprises, hereinafter referred to as BUMN, are business entities whose capital is wholly or most of the capital is owned by the State through direct investment originating from separated state assets.

A description of the legal status of PT Bank Syariah Indonesia as a Business Entity in the form of a subsidiary of a BUMN, not a BUMN.

a. Business entity

A business entity is a business forum for managing sustainable activities with the intention of seeking finance. BUMN is a business organization that aims to manage business. (Khairandy, 2013) Although running a profit-oriented business activity, BSI as a subsidiary of a BUMN is a separate legal entity from its parent company so that it cannot be equated with BUMN.

b. Whole or most of the capital is owned by the state

A business entity is qualified as a BUMN if the capital of the business entity is wholly (100%) or most of its capital (minimum controlling 51%) is owned by the State. If the State's equity participation in a legal entity is less than 51%, it cannot be said to be a BUMN (Khairandy, 2013). Based on the shareholder structure of PT Bank Syariah Indonesia Tbk, there is no capital originating from the state. The paid-up capital of PT Bank Syariah Indonesia Tbk came from the majority shareholder of PT Bank Mandiri (Persero) Tbk of 50.9%, PT Bank Negara Indonesia (Persero) Tbk of 24.9%, PT Bank Rakyat Indonesia (Persero) Tbk of 17.3%, and several minority shareholders with a total share of 6.9%. These data lead to the conclusion that PT Bank Syariah Indonesia does not meet the elements categorized as BUMN.

c. Through direct participation

The existence of direct participation so that the State also bears the risk of profit and loss of a company. The separation of state assets is used as direct investment by the state to SOEs so that such participation must be stipulated by a government regulation. State equity participation in PT Bank Syariah Indonesia Tbk has never been done by the State. Even before the merger, PT BRI Syariah with majority shareholder PT Bank Republik Indonesia (Persero) Tbk, PT Bank Syariah Mandiri with majority shareholder PT Bank Mandiri (Persero) Tbk, and PT BNI Syariah with majority shareholder PT Bank Negara Indonesia (Persero)) Tbk. Even though all three are SOEs

whose capital comes from direct State participation, the participation is already an integral part of the Persero's assets which is separated from state assets so that there is no direct investment but indirect participation. This element is not fulfilled by PT Bank Syariah Indonesia Tbk to be categorized as a BUMN.

d. Participating Capital comes from separated state assets.

Separated wealth is the separation of State assets from the State Revenue and Expenditure Budget (APBN) to be used as State capital participation in BUMN. There has been no stipulation of a Government Regulation that separates State assets from the APBN into PMNs to be included as part or all of the capital in PT Bank Syariah Indonesia.

The description above can be concluded that the Legal Status of the Business Entity PT Bank Syariah Indonesia Tbk is still in the form of a BUMN Subsidiary and cannot be turned into a BUMN (Persero) if all or most of the capital is not owned by the State. Capital from the State is carried out through State Equity Participation (PMN) to the business entity PT Bank Syariah Indonesia Tbk.

The position of BUMN Subsidiaries in laws and regulations is not the same as BUMN because the share ownership (capital participation) of BUMN Subsidiaries is not obtained directly from the state but through BUMN. However, in 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 in Article 2A paragraph (7), BUMN subsidiaries are treated the same as BUMN in terms of as follows:

- a) Get government assignments or carry out public services; and/or
- b) Obtain special state and/or government policies, including in the management of natural resources with certain treatments as applied to SOEs.

The provisions of 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 above provide an opportunity for PT Bank Syariah Indonesia to be treated the same as BUMN. In Article 5 letter b of Government Regulation Number 44 of 2005 it is stated that the State can make capital participation for State Equity Participation in Limited Liability Companies in which there are no State-owned shares.

There are two ways that can be done to include elements of State Equity Participation in PT Bank Syariah Indonesia, including:

- a. Reduction of State Capital in SOEs and transferred to SOEs resulting from the separation of SOE subsidiaries into SOEs

PT Bank Syariah Indonesia is a special case because it comes from a subsidiary of a state-owned company whose most of its capital comes from state-owned enterprises. The mechanism for inclusion of State Equity Participation based on the provisions of Article 9 of Government Regulation Number 44 of 2005, it is explained that the Reduction of State Equity Participation in BUMN and Limited Liability Companies is carried out in the context of:

- 1) Sale of state-owned shares in Persero and Limited Liability Companies;

- 2) Transfer of SOE assets for State Equity Participation in other SOEs or Limited Liability Companies, establishment of new SOEs, or as state assets that are not separated;
- 3) Separation of SOE subsidiaries into SOEs; and/or
- 4) Corporate restructuring.

The mechanism for turning a BUMN subsidiary into a BUMN is by reducing the State's capital in PT Bank Rakyat Indonesia (Persero) Tbk, PT Bank Negara Indonesia (Persero) Tbk, and PT Bank Mandiri (Persero) Tbk which amount to the capital contained in PT Bank Syariah Indonesia Tbk so that The three SOEs are no longer shareholders of PT Bank Syariah Indonesia Tbk and the status of capital originating from the three SOEs is returned to the State. The shares that have been transferred through the reduction of state capital become the property of the State which are allocated for State Equity Participation in PT Bank Syariah Indonesia and the legal status of the business entity becomes BUMN.

b. State Equity Participation through Injection of Series A Dwiwarna Shares

The second way that can be done is by direct injection of State Equity Participation with Dwiwarna Shares under the supervision of the Financial and Development Supervisory Agency (BPKP). This step is more effectively carried out in accordance with the initial goal of merging PT Bank Syariah Indonesia to be financially stronger and able to expand market share and become the Top 10 Islamic banks in the world. Privileges of the Series A Dwiwarna Share which is a special share owned by the Republic of Indonesia which grants special rights to its shareholders with inherent rights, namely approving the approval of the General Meeting of Shareholders (GMS), the right to approve changes to the Company's Articles of Association, the right to propose members of the Board of Directors and the Board of Commissioners, and the right to approve changes in the company's capital (Secretariat Negara RI, 2022). The privilege if the state invests in Series A Dwiwarna Shares is used as a measure to maintain the stability of the business entity to achieve the goals and objectives of PT Bank Syariah Indonesia in accordance with the Articles of Association, as well as the vision and mission of this Syariah Bank. The privilege of Series A Dwiwarna shares is the key for the government to hold control of Bank Syariah Indonesia even though in the share structure there are other BUMN ownership. This is because the State who is in control is attached to the Series A Dwiwarna Share which is injected into the capital investment of PT Bank Syariah Indonesia. When PT Bank Syariah Indonesia has been injected with Series A Shares, it will become a BUMN whose share structure comes from 3 BUMN. The shares owned by the three are currently around 93.2% if transferred, but there is still one Series A Share (Dwiwarna Share) so the control of PT Bank Syariah Indonesia remains in the hands of the Government. Government control in conditions like this is called double cover or layered control (Media Indonesia, 2017). The government directly owns dual-colored shares and through three BUMN (BNI, BRI, and Bank Mandiri) with a majority shareholding of 93.2%.

Provisions regarding the participation of Series A Dwiwarna Shares are regulated in Article 2A paragraph (2) of PP Number 72 of 2016 through the ownership of privileged shares allowing the State to directly control the strategic policies of PT Bank Syariah Indonesia and indirectly the three parent SOEs that have majority shares as PSP (holders of PSP). Controlling Shares) fully controls PT Bank Syariah Indonesia with

the position of the three parent SOEs being a State-Owned Business unit which is directly controlled by the State (JDIHN Ministry of SOEs, 2016).

Efforts to invest in State Capital by injecting Dwiwarna Shares must pay attention to the implementation process so as not to disrupt capital stability and harm the position of the Controlling Shareholder (PSP) of Bank Syariah Indonesia, which are three state-owned banks.

D. Conclusion

The merger process of PT Bank Syariah Indonesia was approved by the Financial Services Authority (OJK) on January 27, 2021 using a BRIS business license and there is only 1 legal entity used, namely PT Bank Syariah Indonesia as a subsidiary of BUMN whose wealth comes from BUMN not from state assets separated directly. PT Bank Syariah Indonesia can turn into a BUMN with two choices, namely the State reducing state capital in the three SOEs and transferring state capital to BSI or by injecting Series A Dwiwarna shares with special privileges attached. The suggestions given are The process of implementing the merger of PT Bank Syariah Indonesia and the desire of the Government of the Republic of Indonesia to make it a BUMN must go through 2 stages, namely the merger stage and the stage of State capital participation with a process of many years. There needs to be provisions that specifically regulate business combinations in BUMN and BUMN Subsidiaries, including in the capital structure and PT Bank Syariah Indonesia can change its status to become a more effective BUMN by means of State Equity Participation through the Provision of Dwiwarna Series A Shares. This is effectively done because it can maintain business stability, without harming the three state-owned banks (PSP) which are public companies.

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