



ALIGNING STATE-OWNED ENTERPRISES WITH CONSTITUTIONAL VALUES: THE CASE OF INDONESIAN BUMN HOLDING COMPANIES

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Abstract: This study examines the relationship between Indonesia's economic constitution and the legal framework governing State-Owned Enterprises (BUMN) holding companies. The research analyzes the alignment of BUMN operations with constitutional ideals of welfare and social justice, based on the principles of the 1945 Constitution and the Limited Liability Company Law. The text highlights the discrepancies between theoretical principles and practical implementations, specifically in the areas of corporate governance, ethical conduct, and fair economic distribution. The investigation focuses on how these discrepancies manifest in BUMN operations, their impact on stakeholders, and the wider socio-economic implications for Indonesia. The study emphasizes the need for specific regulations that are tailored to the unique structural and operational characteristics of BUMN holding companies. Recommendations include improving oversight, increasing transparency, and strengthening accountability mechanisms. These measures are essential for aligning BUMN practices with constitutional mandates, ensuring operational efficiency and competitiveness, and making significant contributions to national socio-economic progress.

Keywords; *BUMN Governance, Corporate Accountability, Economic Constitution, Indonesian Law, Socio-Economic Welfare.*

INTRODUCTION

The concept of a state-owned holding company (BUMN) in Indonesia must be understood in a broader context, namely Indonesia as a state of law and constitutional principles that form its foundation. Indonesia, based on the 1945 Constitution, is a Democratic state of law, where sovereignty is in the hands of the people, and every aspect of the life of the nation and state is governed by law (Harun et al, 2023). In this framework, the Constitution provides not only for government and the rights of citizens, but also for economic and social aspects, including the management of state-owned enterprises.

The 1945 constitution stipulates that the economy is structured as a joint effort based on the principle of kinship and mutual assistance, with the aim of realizing the welfare of the people. Article 33 of the 1945 Constitution specifically addresses the management of Natural Resources and production that are important to the state that must be controlled by the state for the prosperity of the people (Putri et al, 2023). The concept of a state-owned holding company (BUMN) in the context of the Indonesian economic Constitution is a topic that includes an in-depth understanding of the structure and functions of BUMN within the legal and economic framework of the country (Chiran, 2010). In Indonesia, the main Constitution is the 1945 Constitution, which is the constitutional basis for all aspects of the state system, including the regulation and management of SOEs.

First of all, the 1945 Constitution establishes the basics of the state economy oriented to the principle of people's economy, which means that the economy is organized as a joint venture based on the principle of kinship (Cahyanti, Pangastuti & Sumriyah, 2023). This is stated in Article 33 of the 1945 Constitution, which emphasizes the importance of Natural Resources and branches of production that are important to the state and that control the livelihoods of many people are controlled by the state (Gobel, Muhtar & Putri, 2023).

In this context, BUMN is present as an entity that plays a role in the national economy by managing several strategic sectors. Holding company BUMN is a regulatory model in which

several BUMN engaged in the same or related fields are grouped under one parent management to improve efficiency, effectiveness, and competitiveness.

The concept of this SOE holding company must be in line with the principles contained in the 1945 Constitution, especially in terms of national resource management and service to the community (Reisyana, Mentari & Wulandari, 2019). Therefore, the formation of a state-owned holding company is not just a business strategy, but must also consider social aspects and their contribution to the welfare of the people, in accordance with the spirit of the Constitution.

Soe Holding companies in Indonesia reflect efforts to integrate various SOEs within a more efficient managerial and operational framework. It aims to improve the performance and competitiveness of SOEs at the national and international levels. State-owned Holding companies are designed to enable synergies between state-owned companies operating within related sectors, strengthening their capacity in innovation, investment, and market development (Sitorus, 2018).

The formation of state-owned holding companies is also a response to global challenges and the need to improve economies of scale. By managing SOEs in a holding structure, the government is trying to create a stronger and more resilient entity, able to compete in the global market and at the same time make a greater contribution to the domestic economy (Bachmid, 2021). Through the integration of resources and capabilities, the holding company is expected to improve operational efficiency and reduce redundancy among SOEs. However, this concept also brings challenges in terms of governance and accountability. It is important for state-owned holding companies to maintain transparency and good governance, in accordance with the principles of the rule of law (Disyon, Gultom & Rahmawati, 2023). There must be clear mechanisms in place to ensure that the management of the holding company acts in a responsible manner and complies with regulations and business ethics. Effective oversight and strong accountability are key to preventing abuse of state authority or resources.

In addition, in the socio-economic context of Indonesia, SOEs and their holding companies also have social responsibilities. They are not only expected to be successful economic players, but must also contribute to the social and economic development of society at large. This includes supporting sustainable development initiatives, providing affordable and quality services to the public, and taking an active role in the development of national infrastructure.

The application of the SOE holding company concept in Indonesia must also pay attention to other legal aspects, including laws governing SOEs and other related regulations. It aims to ensure that every step taken in the formation or management of a state-owned holding company is not only effective on a business scale, but also legal and in accordance with the constitutional principles upheld by the state (anda, Wibawa & Sumriyah, 2023).

Based on that, some key issues need to be addressed. First, the main challenge lies in the implementation of effective governance and accountability. Although the holding company concept is aimed at improving the efficiency and effectiveness of SOE operations, its reality is often hampered by issues such as excessive bureaucracy, lack of transparency, and the risk of abuse of authority. This calls for stricter oversight mechanisms and more transparent governance policies in order to maximize the potential of state-owned holding companies while minimizing the risk of corruption and inefficiency.

Exploring the practical implications of the discrepancy between theoretical models and actual practices in the management of state-owned enterprises (SOEs) in Indonesia reveals a complex landscape. While the theoretical framework for SOEs, particularly in the context of holding companies, is designed to synergize efficiency with social and economic responsibilities, the ground reality often presents a stark contrast. This gap is primarily due to challenges in implementing effective governance and accountability structures. In theory, SOE holding companies are expected to operate with streamlined efficiency, reduced

bureaucracy, and enhanced performance. However, in practice, these entities frequently grapple with issues like bureaucratic inertia, opacity in decision-making processes, and potential for mismanagement or abuse of power. These issues not only impede the operational efficiency of SOEs but also compromise their ability to fulfill their broader socio-economic mandates. Addressing this divide requires a concerted effort to reinforce governance structures with robust oversight, transparency, and accountability measures. This approach should aim to align the operations of SOEs more closely with their theoretical ideals, ensuring that they contribute effectively to Indonesia's socio-economic development while maintaining business competitiveness. Such reforms would not only enhance the performance of these enterprises but also ensure that they serve as engines of social and economic progress, in line with the constitutional principles of welfare and social justice that they are intended to uphold.

Second, the problem that arises is the balance between commercial objectives and social responsibility. BUMN has a dual role as a profitable business entity and as a provider of public services oriented to the welfare of the community. In a holding company structure, there is a risk that a focus on profitability and efficiency may sacrifice aspects of Public Service and social responsibility. Therefore, it is important to ensure that a state-owned holding company not only pursues economic gains but also remains true to its social mandate.

Third, there are challenges in integrating various SOEs with different backgrounds and interests into one holding entity. Each SOE has its own unique operational and corporate culture, and combining them under one roof requires a careful and strategic approach. This integration should be done in a way that takes into account the specific needs of each Soe, while ensuring that the overall objectives of the holding company are maintained. Finally, another issue is compliance with laws and regulations. In Indonesia, the regulations governing SOEs and holding companies are constantly evolving, which requires continuous adaptation and understanding. State-owned Holding companies must operate within the limits of existing laws and be ready to adapt to regulatory changes that may occur.

In accordance with the description above, this research discusses how the concept of the Indonesian economic Constitution in the holding company of SOEs and how the framework of the Indonesian economic Constitution into a legal umbrella in the laws governing the Holding company of SOEs?

METHODS

This research is categorized into the type of normative legal research, it is based on the issues and / or themes raised as research topics. The research approach used is philosophical and analytical, namely research that focuses on rational views, critical and philosophical analysis, and ends with conclusions that aim to produce new findings as an answer to the main problem that has been set (Ishaq, 2017). And will be analyzed with descriptive analytical methods, namely by describing the applicable legislation related to the theory of law and positive law enforcement practices related to the problem (Marzuqi,2011).

In the context of the Indonesian economic Constitution, the concept of a state-owned holding company plays an important role in realizing national economic goals. Indonesia's economic Constitution, which is reflected in various regulations and policies, aims to regulate and direct economic activity, including the operations of state-owned holding companies, to be in line with economic principles of social justice (Pradhyksa, 2021). This research, which is normative law, raises this theme as the main topic, focusing on philosophical and analytical analysis of the existing legal framework and how it can accommodate the principles of the Indonesian economic Constitution.

This study explores how the Indonesian economic Constitution is integrated in the state-owned holding company arrangements. It involves an in-depth understanding of how the principles of the economic Constitution are reflected in the laws governing state-owned enterprises and how these principles affect the decision-making and operations of

enterprises (Suminto et al., 2021). A philosophical and analytical approach helps in critiquing and evaluating existing legislation, as well as in understanding how legal theory and law enforcement practice positively interact with these issues.

Through descriptive analytical methods, this study describes in detail how the current legislation supports or may limit the implementation of the principles of the economic Constitution in the context of state-owned holding companies. This includes evaluating how current legislation affects transparency, accountability, and management of state resources in the context of SOEs. The results of this analysis aim to produce new findings that can be the answer to the main problem that has been set, namely the integration of the Indonesian economic Constitution in the regulation and operationalization of state-owned holding companies.

RESULT AND DISCUSSION

1.1 The Concept of the Indonesian Economic Constitution in a State-Owned Holding Company

There are two classical words closely related to the current sense of Constitution, namely, *politeia* (ancient Greek) and *constitutio* (Latin). *Politeia* contains higher power than *nomoi*, because *politeia* has the power to form whereas *nomoi* do not, because it is only a material that must be formed so as not to be scattered. In Greek culture, the term Constitution is closely related to the speech *Respublica Constituere*, which gave birth to the motto, *Princeps Legibus Solutus Est, Salus Publica Suprema Lex*, which means "the King has the right to determine the organizational structure of the state, because he is the only legislator" (Muhtar et al, 2023). Both are related to the word *juice*. The word *politeia* of Greek culture can be called the oldest of its age. The definition includes (Widodo et al, 2023):

"All the innumerable characteristics which determine that state's peculiar nature, and these include its whole economic and social texture as well as matters governmental in our narrower modern sense. It is a purely descriptive term, and as inclusive in its meaning as our own use of the word 'constitution' when we speak generally of a man's constitution or of the constitution of matter."

In the ancient Greek language there is no known term that reflects the meaning of the word *jus* or *constitutio* as in the later Roman tradition (Indra, Saragih & Muhtar, 2023). The whole system of thinking of the ancient Greek philosophers, judged the word *constitutio* as it is meant today (Abqa et al, 2023). The word *constitutio* in the time of the Roman Empire, in its Latin form, was first used as a technical term to refer to the acts of legislation by The Emperor (Abqa et al, 2023).

In England, the first rule associated with the term *constitution* was the "Constitutions of Clarendon 1164" referred to by Henry II as *constitutions*, *avitae constitutions* or *leges*, a *recordatio vel recognition*, concerning the relationship between church and state government in the reign of his grandfather, Henry I. The content of the regulation, which is referred to as the Constitution, is still ecclesiastic, although its popularization is carried out by secular governments (Muhtar, Kasim & Syriac, 2023). In later times, however, the term *constitutio* was often interchanged with the term *lex* or *edictum* to refer to various secular administrative enactments. Glanvill often used the word *constitution* for a royal edict. Glanvill also relates Henry III's writ creating the remedy by grand assize as ' *legalis is a constitutio* ' (Muhtar, Pedrason & Harryarsana, 2023) and calls the assize of novel disseisin a *recognition* as well as a *constitutio*.

From this, we can understand the notion of Constitution in two conceptions. First, the Constitution as the natural frame of the state that can be drawn back by associating it with the notion of *polytheia* in the ancient Greek tradition. Second, the Constitution in the sense of *jus publicum regni*, that is, the public law of the realm. Cicero (in Berki, 1988) can be called the first scholar to use the word *constitutio* in this second sense, as illustrated in his book "De Res Publica". In the Roman Empire, the word *constitutio* in its Latin form was also

used as a technical term to refer to the acts of legislation by The Emperor. According to Cicero, "this constitution (haec constitution) has a great measure of equability without which men can hardly remain free for any length of time".

Such developments are what ultimately led mankind to the meaning of the word constitution in modern English. In this sense, the Constitution is always considered to "precede" and "overcome" the government and all other decisions and regulations. The Constitution is called preemptive, not because of its time order, but rather in its superior nature and its authority to bind. As Charles Howard McIlwain put it, the traditional notion of constitutionalism before the late eighteenth century was of a set of principles embodied in the institutions of a nation and neither external to these nor in existence prior to them (Berki, 1988).

Traditionally, before the 18th century, constitutionalism has always been seen as a set of principles that are reflected in the institutions of a nation and no one overcomes it from the outside and no one precedes it. In Indonesia as the highest form of social agreement, the Constitution contains the ideals to be achieved by the establishment of the state and the basic principles of achieving these ideals. Constitutional authority derives from the constituent power, that is, the authority that is outside and over the established system. In a Democratic state, the holders of constituent power are the people. The 1945 Constitution as the Constitution of the Indonesian nation is a legal document and political document that contains ideals, fundamentals, and principles of national life (Barendt, 1998). Article II additional rules of the 1945 Constitution states that the Constitution of the Republic of Indonesia in 1945 consists of the Preamble and the articles of the Fourth Amendment of the 1945 Constitution. Before the changes were made, it was generally accepted that the 1945 Constitution consisted of an opening, a torso, and an explanation. The preamble and articles constitute the supreme Constitutional norms of the national legal order.

The ideals of the formation of the state we know by the term national goals contained in the fourth preamble of the 1945 Constitution, namely (a) protecting the entire Indonesian nation and all Indonesian blood; (b) promoting the general welfare; (c) educating the life of the nation; and (d) participating in implementing world order based on independence, lasting peace, and social justice. These ideals will be implemented in an arrangement of the Republic of Indonesia which stands on five foundations, namely Pancasila as also included in the fourth alenia of the Preamble to the 1945 Constitution.

To achieve these ideals based on Pancasila, the 1945 Constitution provides a framework for the arrangement of national and state Life. The norms in the 1945 Constitution, not only regulate political life, but also economic and social life. The 1945 Constitution is a political constitution, economic Constitution, and social constitution that must be a reference and foundation politically, economically, and socially, either by the state (state), society (civil society), or the market (market).

As a political constitution, the 1945 Constitution regulates the issues of the composition of the state, the relationship between state institutions, and the relationship with citizens. This is for example regulated in Chapter I on the form of sovereignty, Chapter II on the people's Consultative Assembly, Chapter III on state government powers, Chapter V on State Ministries, Chapter VI on Local Government, Chapter VII on the House of Representatives, Chapter VIIA on the House of regional representatives, Chapter VIIB on Elections, Chapter VIII on financial matters, Chapter VIIIA on the Supreme Audit Board, Chapter IX on Judicial Power, Chapter IX on State territory, Chapter X about citizens and residents in particular Article 26, Chapter XA on Human Rights in particular article 28i paragraph (5), Chapter XII on the defense and security of the State, Chapter XV on the flag, language, and coat of arms, as well as the National Anthem, Chapter XVI on amendments to the constitution, transitional rules, and additional rules.

The 1945 Constitution, also known as the economic Constitution, regulates how the national economic system should be structured and developed. The main provisions of the

1945 Constitution on the national economic system are contained in Chapter XIV Article 33. Provisions on the national economic system is only in one article consisting of five paragraphs. However, this provision must be elaborated consistently with the ideals and foundations of the state based on the basic concepts desired by the founder of the nation. In addition, the national economic system must also be developed in relation to human rights which also includes economic rights, as well as with the provision of people's welfare. The 1945 Constitution is also a social Constitution, namely in Chapter X on citizens and residents, especially Article 27 and Article 28, Chapter XA on Human Rights, Chapter XIII on education and culture, and Chapter XIV on the national economy and people's welfare, especially Article 34.

In the context of the Indonesian economic Constitution, especially as stipulated in the 1945 Constitution, especially Chapter XIV Article 33, the principles of the national economy emphasize the economy which is regulated as a joint venture based on the principle of kinship and economic democracy. This reflects the national ideals to realize the welfare of the people through a fair and sustainable economic system. In practice, the concept of a state-owned holding company (BUMN) in Indonesia can be seen as a manifestation of the Economic Principles mandated by the Constitution.

In an analytical context, the relationship between the Constitution (UUD) 1945 and The Limited Liability Company Law (UU PT) in the regulation of holding companies of state-owned enterprises (SOEs) in Indonesia shows how the constitutional legal framework and Company Law synergize in regulating the national economy.

Article 33 of the 1945 constitution stipulates that the Indonesian economy is structured as a joint venture based on the principle of kinship and economic democracy, with the state controlling the branches of production that are vital to the country and the public interest. In the context of SOE holding companies, this article provides a constitutional basis for the government to organize and regulate SOEs in such a way as to contribute effectively to the national economy and the welfare of the people.

Meanwhile, the PT Law specifically regulates the formation, structure, and liability of limited companies, including holding companies. Article 3 of the PT Law, for example, which establishes the principle of separate entity and limited liability, provides the legal basis for the formation of a state-owned holding company as a separate legal entity from its shareholders (in this case the state).

1.2 The legal framework of the Indonesian economic Constitution serves as a basis for the laws that govern Soe Holding companies

The framework of the Indonesian economic Constitution plays an important role as a legal umbrella in various laws that regulate economic activities in the country (Razak et al, 2023). The main function of this framework is to guarantee that all economic activities, whether carried out by the government or the private sector, proceed in accordance with fair and responsible legal principles. The framework is designed to promote sustainable and inclusive economic growth, while ensuring that the interests of the wider community remain a priority. Through various provisions in the Constitution, such as human rights, consumer protection, and market regulation, the Indonesian economic constitution aims to create an environment conducive to investment and innovation, while protecting workers' rights and preventing unethical or environmentally harmful business practices. This can be seen more clearly in the table 1.

Table 1. Analysis of the relationship between the Indonesian economic Constitution (UUD 1945) and its implementation in the holding Company of SOEs in accordance with the PT Law and related regulations

Aspects of the 1945 Constitution and legislation	Description	Implementation in a state-owned Holding Company (in accordance with the PT Law and related regulations)
Chapter XIV Article 33 (national economy)	Establish the economy as a joint venture based on the principles of kinship and economic democracy, with the state in control of the vital branches of production.	State-owned Holding companies are formed as a mechanism for strengthening the efficiency and effectiveness of state enterprises, asserting state control over strategically important sectors.
Chapter X Article 27 and Article 28 (Human Rights)	Guarantee equality in the eyes of the law and the right to social welfare.	A state-owned Holding must operate its business on the principles of equality and social responsibility, ensuring justice and well-being for employees and society.
Chapter XIII (education and culture)	Emphasis on the importance of education and culture in national development.	SOEs in the holding structure are expected to contribute to educational and cultural initiatives, including CSR (Corporate Social Responsibility) programs that support education and culture.
Article 3 of the PT Law (responsibilities and separate entities)	Establish the principle of separate entities and limited liability companies in the company.	In the holding structure, state-owned enterprises are recognized as separate entities with limited liability, but with the applicable exceptions in accordance with Article 3 Paragraph (2) of Law PT.
Article 1 Number 3 agrarian regulation / Head of BPN No. 2/1999 (Understanding Group Of Companies)	Indirect definition of holding company.	Although the Permen is no longer valid, the concept of a group of companies helps provide context for the holding structure of SOEs.
The practice of Piercing the Corporate Veil (Article 3 Paragraph (2) of the PT Law)	Exceptions to the principle of limited liability.	State-owned Holding companies can be held responsible for their subsidiaries in certain cases, strengthening aspects of accountability and transparency.

Based on the table above on the interaction between the Indonesian economic Constitution and legal practices related to state-owned holding companies, it reveals several important areas that require attention and improvement. First, although the 1945 Constitution establishes economic principles oriented to welfare and social justice, there are gaps in the practical application of these principles in the operation of state-owned holding companies. This shows the need for more effective oversight mechanisms and stronger accountability in the management of SOEs.

Delving deeper into the analysis of specific cases or examples that illustrate the aforementioned gaps, we can examine instances where the operational dynamics of state-owned holding companies in Indonesia have deviated from the ideal legal frameworks. Such case studies are instrumental in highlighting the practical challenges in applying existing laws to the unique structure and operations of these entities.

One notable example is the issue of accountability and transparency in the management of state-owned enterprises (SOEs). There have been instances where SOEs,

despite operating under the PT Law framework, have demonstrated a lack of transparency in financial dealings or decision-making processes. This becomes particularly problematic in the context of state-owned holding companies, where the hierarchical structure can obscure the lines of responsibility and accountability. The principle of separate entities and limited liability, while foundational in corporate law, sometimes allows for a disconnect between the parent holding company and its subsidiaries, leading to challenges in ensuring corporate accountability.

Moreover, the application of the 'piercing the corporate veil' principle in cases of lawlessness or abuse of power has been sporadic and inconsistent. There are instances where subsidiaries of state-owned holding companies have engaged in questionable practices, yet the holding company itself has managed to avoid direct accountability due to the legal protection afforded by the principle of separate entities. This scenario demonstrates a critical gap where the legal framework fails to adequately address the complex realities of state-owned holding operations.

These specific cases underscore the need for more nuanced and targeted regulations that can cater to the unique nature of state-owned holding companies. Such regulations should aim to enhance accountability mechanisms, clarify the roles and responsibilities of both parent and subsidiary companies, and ensure that the operations of these entities align with the principles of good corporate governance and public accountability.

In summary, a detailed examination of these practical cases reveals significant areas where the existing legal framework falls short in addressing the complexities of state-owned holding companies. This analysis not only highlights the gaps in the current system but also underscores the urgent need for legal reforms tailored to the specific needs and challenges of managing these important national assets.

Overall, this analysis shows the need for strategic measures to ensure that the state-owned holding company operates in accordance with the spirit of the 1945 Constitution, while maintaining its efficiency and competitiveness. These include improvements in oversight, transparency, and corporate accountability, as well as regulatory adjustments to address changing economic dynamics. This approach not only strengthens the governance of SOEs but also helps ensure that their contribution to the national economy is in line with the welfare and social justice goals mandated by the Constitution.

CONCLUSION

In light of the challenges identified between the principles of the 1945 Constitution and the actual practices of state-owned holding companies in Indonesia, specific recommendations for legal and policy reforms become paramount. The first area of focus should be the establishment of a comprehensive legal framework specifically tailored for state-owned holding companies. This framework needs to clearly define the structural and operational parameters of these entities, addressing the current ambiguities in the law. It should incorporate provisions for stronger governance structures, enhanced transparency in financial and operational decisions, and stricter accountability measures. Such a framework could include mechanisms for regular audits, mandatory public disclosure of financial statements, and clearer guidelines on the roles and responsibilities of both parent companies and their subsidiaries. Additionally, this framework should facilitate a system where violations of corporate governance principles are promptly addressed, and appropriate penalties are enforced.

Furthermore, in terms of policy, there is a need to reinforce the application of the 'piercing the corporate veil' principle in situations of misconduct or abuse of power within state-owned holding companies. This would involve revising the PT Law to allow for more stringent accountability of holding companies for the actions of their subsidiaries, especially in cases of financial irregularities or ethical breaches. The policy should also include guidelines for the application of this principle, ensuring that it is used judiciously and

effectively. Alongside these legal reforms, there should be a focus on developing a culture of ethical business practices within SOEs. Initiatives could include regular training for executives and staff on corporate ethics, the establishment of internal compliance units, and the promotion of a whistleblower culture to encourage reporting of unethical or illegal practices. By implementing these specific legal and policy reforms, Indonesia can bridge the gap between the constitutional ideals of economic welfare and social justice and the real-world operations of state-owned holding companies, ensuring that these entities not only contribute effectively to the national economy but also uphold the values enshrined in the 1945 Constitution.

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