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THE LEGAL RELATIONSHIP BETWEEN PARENT COMPANIES AND SUBSIDIARIES IN THE HOLDING COMPANY SYSTEM IN INDONESIA

Dicki Irvandi

Mahasiswa Program Studi Doktor Hukum Universitas Muhammadiyah Sumatera Utara
dickiirvandis3umsu@gmail.com

Abstract: *This paper aims to examine the form of legal relationships between parent companies and subsidiary companies within the holding company system in Indonesia. This study employs normative legal research using a statute approach and a case approach. The research is explanatory in nature and uses secondary data consisting of primary legal materials such as the State-Owned Enterprises Law, the Limited Liability Company Law, and Government Regulation No. 72/2016, analyzed qualitatively. The legal relationship between a parent company and its subsidiaries arises from the establishment of several legal entities whose share ownership is controlled by the parent company, forming what is known as a holding company. The parent company acts as a central authority with the power to supervise and control its subsidiaries and is responsible for their operations. However, subsidiaries still have the authority to enter into agreements with third parties. The parent company's responsibility toward its subsidiaries is limited and adheres to the principle of separate entities, meaning that if the subsidiary acts in bad faith, the parent company cannot be held liable.*

Keywords: *Parent Companies, Subsidiaries, Holding Company, Legal Relationship.*

Introduction

A holding company is an entity established to own shares in one or more other companies and/or manage one or more such companies. Typically (although not always), a holding company owns various companies engaged in different business sectors (M. Manullang, 1984: 70).

In Indonesia, specific regulations regarding holding companies (parent companies) only emerged in 2025 with the enactment of Law No. 1 of 2025 amending Law No. 19 of 2003 on State-Owned Enterprises (SOEs). Dhaniswara K. Harjono (2021: 31) notes that the holding company is one of the developments arising from the evolution of limited liability companies in Indonesia. Essentially, Indonesian corporate law has not expressly regulated holding companies as a standalone concept.

Referring to the Limited Liability Company Law (Law No. 40 of 2007), no specific provisions regarding holding companies can be found. The Company Law only regulates corporate restructuring through mergers, acquisitions, and consolidations. Because the Company Law does not govern the legal relationship between parent companies and subsidiaries within a holding structure and given that such regulation was only introduced in 2025, this issue becomes important to explore.

Literature Review

In a holding company system, more than one company is interconnected, particularly in their business outputs. The holding company structure is viewed from the share ownership status of the parent company over its subsidiaries. This share ownership establishes a relationship granting the parent company the authority to act as the central leader over the subsidiaries (Sulistiowati, 2013: 38-39). The development of conglomerate business groups in Indonesia since the 1970s has made corporate control through holding companies a common and unavoidable business trend.

Sulistiowati (2013: 5) states that the authority of a parent company to control its subsidiaries is what gives rise to central leadership in a holding structure, enabling the parent company to direct the interests of group members to support the broader interests of the holding. This structure also facilitates the handling of operational matters across different jurisdictions.

According to Simanjuntak (1994: 5), a holding company constitutes an economic unit consisting of legally independent companies treated as parent and subsidiary companies.

Munir Fuady (1999: 84) notes that the authority of a parent company to control its subsidiaries indicates that the parent company is exercising the functions of a holding company one established to own shares and/or manage other companies.

Legal relationships between holding companies and subsidiaries include: (Sulistiowati, 2010: 96)

a. Share ownership by the holding company over the subsidiary company.

Significant share ownership by the parent company provides or generates authority for the holding company to act as the central leader and exercise control over the subsidiary company within a unified management structure. Such share ownership also grants voting rights to the holding company, enabling it to control the subsidiary company in accordance with applicable controlling procedures.

b. General Meeting of Shareholders (GMS).

The GMS serves as a controlling mechanism through which the holding company oversees its subsidiaries. In this forum, the holding company has the authority to determine strategic plans that support the achievement of goals and objectives of the group of companies, including setting long-term targets through a five-year business plan. In this business plan, the board of directors of the holding company establishes basic organizational rules, including the company's vision, mission, organizational culture, and organizational targets. These fundamental rules of the holding company must be adhered to by all subsidiaries when formulating their long-term plans.

c. Determination and appointment of the board of commissioners and members of the board of directors of the subsidiary company.

Based on its share ownership, the holding company has the right to determine and appoint commissioners and directors of the holding company who simultaneously serve as commissioners or directors in the subsidiary company. This arrangement also functions as an indirect form of control over the business activities of the subsidiary, allowing the holding company to monitor and understand the growth of each subsidiary's business operations.

d. Relationship based on voting rights agreements.

This relationship is established through agreements among the founders or shareholders, who consent that the appointment of commissioners and directors will be determined based on the choice of one of the founding shareholders.

e. Relationship based on contract.

A company may grant managerial control to another company through a management contract.

Based on the foregoing, the legal relationship that arises between a parent company and its subsidiary is contractual in nature. Contractual, in this context, means that a subsidiary company retains the right to enter into agreements with other parties independently, provided that such legal actions do not exceed the limitations set forth in its articles of association. (Putu Harini, 2015: 5)

Method

Given that the SOE holding company system has already been implemented, this study employs normative legal research, as it analyzes secondary data related to the liability of parent companies for losses suffered by subsidiaries within the SOE holding structure in relation to legal certainty. Since this study examines secondary data, it is categorized as normative legal research or library research. According to Soemitro, normative legal research is also referred to as library research because it relies heavily on secondary data available in libraries (Ronny Hanitijo Soemitro, 1990: 11).

The approaches used in this study are the statute approach and the case approach.Through the statute approach, the researcher examines all laws and regulations related to the issue of parent company liability for subsidiary losses within the SOE holding company system in connection with legal certainty. Meanwhile, the case approach aims to study the application of legal norms in actual legal practice through the resolution of relevant cases. These cases are analyzed to obtain an overview of the normative impact of legal rules in practice and to use the analytical results as input for legal explanations (Johnny Ibrahim, 2011: 321).

The research employed is explanatory research. Masri Singarimbun and Sofyan Effendy (1995: 4) explain that explanatory research focuses on causal relationships between research variables and tests previously formulated hypotheses. The purpose of this study is to test theories related to parent company liability for subsidiary losses in the SOE holding company system in relation to legal certainty.

Result and Discussion

A holding company is a combination of several corporations that are legally independent but closely interconnected, forming a unified economic entity under the leadership of a parent company as the central authority (Emmy Pangaribuan Simanjuntak, 1996: 1).

The legal relationship between parent companies and subsidiaries in Indonesia’s holding company system can be analyzed as follows:

1. **Legal Relationship Between Parent and Subsidiary Companies in the Holding Company System Under the Limited Liability Company Law**

Referring to the Limited Liability Company Law (UUPT), no specific provisions regulating holding companies can be found. The UUPT only regulates corporate restructuring through mergers, acquisitions, and consolidations (Ramlan, Rizka Syafriana, & Dewi Kartika, 2024: 211-227). Based on this, the arrangements under the UUPT do not constitute regulations on holding companies, as a holding company is established to own and control the majority of shares in other companies (subsidiaries), enabling it to determine their strategic direction without being directly involved in day-to-day operations.

The legal relationship between parent companies and subsidiaries is contractual. A subsidiary has the right to enter into legally binding agreements with third parties independently, provided such actions do not exceed the limitations set forth in its articles of association (Putu Harini, 2015: 5).

Sulistiowati (2013: 38-39) states that the authority of a parent company to control its subsidiaries forms the basis for centralized leadership within a holding structure, aligning the interests of the group with the objectives of the holding company. Furthermore, this structure facilitates the management of operational issues across different jurisdictions. From a management perspective, the consolidation of business activities under a parent company primarily aims to enhance oversight of subsidiary operations.

Subsidiaries are generally structured as Limited Liability Companies (PT), allowing the business to be divided into sectors or business groups (Miranda Chairunnisa et al., 2013: 29).

According to Dhaniswara (2021: 43-44), the principle of limited liability means that the parent company, as a shareholder, is not responsible for losses exceeding its share ownership. However, this protection may be lifted, and the parent company may be held liable if:

1. The parent company signs agreements entered into by the subsidiary with third parties;
2. The parent company acts as a corporate guarantor for the subsidiary's agreements with creditors;
3. The parent company commits unlawful acts that cause losses to third parties dealing with the subsidiary.

Thus, the legal relationship between a parent company and its subsidiaries is based on the principle of separate legal entities and limited liability, meaning each company is legally independent. However, these principles may be disregarded through the doctrine of piercing the corporate veil if bad faith, abuse of the corporate structure, or unlawful acts occur.

2. Structure of State-Owned Holding Companies in Indonesia

SOEs serve as pillars of the national economy. They are expected to contribute to economic development alongside private enterprises and cooperatives under the principles of economic democracy (Refly Harun, 2019: 5). A holding company constitutes an economic unity composed of legally independent companies, commonly categorized as parent and subsidiary companies (Emmy Pangaribuan Simanjuntak, 1994: 5).

In a holding company system, more than one company is interconnected, particularly in terms of their business outputs. The holding structure is identified through the share ownership of the parent company over its subsidiaries. This ownership grants the parent company authority to act as the central leader (Sulistiowati, 2013: 5).

The holding company system can be found in the provisions of Article 1 points 24 and 25 of the State-Owned Enterprises Law (UUBUMN), which use two terms, namely:

a. An investment holding company, referred to as investment holding, is a State-Owned Enterprise (SOE) whose entire capital is owned by the Government of the Republic of Indonesia and which is assigned the function of managing dividends and/or empowering SOE assets, as well as performing other duties assigned to the Entity; and
b. An operational holding company, referred to as operational holding, is a State-Owned Enterprise (SOE) whose entire capital is owned by the Government of the Republic of Indonesia and which is assigned the function of supervising the operational activities of SOEs as well as other business activities.

Subsidiaries (subsidiary companies) are defined in Article 1(2) of the SOE Law as companies established by SOEs to fulfill their business interests.

The holding structure, the parent company acts as the controlling shareholder. If the parent company exercises control in bad faith resulting in losses to the subsidiary this may justify the disregard of limited liability, thereby imposing liability on the parent company (Aan Eko Widiarto, 2019: 35).

Parent companies may be held liable in two ways: by law or by contract. Contractual liability typically arises when the parent company provides corporate guarantees for subsidiaries,

and such agreements become binding under the principle of *pacta sunt servanda*. However, if the parent company fails to fulfill its obligations, the subsidiary may seek legal remedies such as filing claims based on negligence or breach of contract.

This underscores the need for enhanced oversight and clearer legal frameworks governing the responsibilities of parent companies and subsidiaries, particularly when the operational sustainability of a subsidiary depends heavily on the support of the parent company.
The doctrine of piercing the corporate veil may be applied to hold parent companies accountable when corporate misconduct occurs (Titik Tri Sulistyawati, 2018: 179).

3. Principles of Share Ownership in the Holding Company System

In the management of State-Owned Enterprises (SOEs), particularly those structured as *Persero*, the inclusion of state assets within the Persero creates a direct linkage between the Persero and state finances. Furthermore, because a Persero is established in the form of a Limited Liability Company (PT), the legal provisions applicable to PTs also apply to SOE Perseros (IG Rai Widjaja, 1994: 72). A Persero is considered part of state finances, as affirmed in Article 1 point 1 of the State Finance Law (UUKN), which defines state finances as all rights and obligations of the state that can be valued in monetary terms, as well as any assets or goods that may be owned by the state in connection with the exercise of such rights and obligations.

Although, conceptually, when a Persero is established as a PT, the state assets injected into the company should become separate corporate assets no longer owned by the state but by the Persero Article 2 letter (g) of Law No. 17 of 2003 on State Finances stipulates otherwise. It provides that:
"State or regional assets managed directly or by another party in the form of money, securities, receivables, goods, and other rights that may be valued in monetary terms, including assets separated into state-owned or regional-owned enterprises."

Based on this provision, funds or state capital (inbreng) injected into aPersero remain classified as state finances, consistent with Article 1 point 1 of the State Finance Law, which states that state finances include all rights and obligations of the state measurable in monetary terms, including assets or goods that can be owned by the state. This clarification demonstrates that capital injections in the form of government-owned shares provided to SOEs remain part of state finances.

The ownership of shares by a company in another company grants the parent company the authority to control the other company (Sulistiowati, 2010: 95).

However, in principle, shareholder liability is limited to the amount of capital agreed to be contributed to the company. Once this capital has been fully paid, shareholders are not required to contribute further to the company's debts. If a company's liabilities exceed its assets, the excess amount does not become the responsibility of the shareholders. When the company earns profits, these are distributed in accordance with applicable regulations. Shareholders receive a portion of these profits, known as dividends, the amount of which depends on the level of profits earned by the PT (Kurniawan, 2014: 19).

Conclusion

Based on the explanations outlined above, it can be concluded that the legal relationship between parent companies and subsidiary companies within Indonesia's holding company system is contractual in nature. This means that subsidiaries may independently enter into agreements with third parties as long as such legal actions do not exceed the limitations set forth in their articles of association. Furthermore, the parent company bears limited liability and operates under the principle of separate legal entities with respect to the operations of its

subsidiaries. However, if there is bad faith or abuse of the corporate structure, the parent company may not be exempt from liability for losses incurred by the subsidiary

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