Streamlining State-Owned Enterprise Subsidiary Dissolution: A Prosecutorial Efficiency Approach

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***Abstract*— Efforts to enhance efficiency and consolidate state-owned enterprises (SOEs) implemented by the government in the post-pandemic economic recovery are hindered by the difficulty in the mechanism for dissolving unhealthy subsidiaries of SOEs. The dissolution mechanism through the General Meeting of Shareholders (GMS) is time-consuming and costly, thus necessitating an alternative mechanism that is more effective. This research aims to identify the problems in the dissolution of SOE subsidiaries and to formulate alternative mechanisms by strengthening the authority of the prosecutor's office to file dissolution requests with the court. The method used in this research is qualitative juridical analysis, supported by the economic analysis of law theory. Through this approach, the study examines legal frameworks, case studies, and economic impacts to provide a comprehensive understanding of the current challenges and potential solutions. The results of this research indicate that the authority of the prosecutor's office to dissolve SOE subsidiaries is hindered by a legal vacuum, thus it has not been implemented yet. New norms are needed to regulate the position of SOE subsidiaries so that business losses incurred can be categorized as state losses in the legal sense. The authority of the prosecutor's office can enhance economic efficiency in SOE dissolution, prevent long-term losses, and improve the accountability of state financial management under the supervision of the prosecutor's office. Ultimately, empowering the prosecutor's office with this authority could streamline the dissolution process, leading to significant economic benefits and more effective governance of state assets.**

***Keywords*—SOE Subsidiary Dissolution, Economic Efficiency, Prosecutorial Authority, Legal Framework.**

I. Introduction

Indonesia, which is recognized as the world's largest archago, possesses an impressive diversity of natural resources that essential to its economy and national advancement.[1] These resources consist of vast expanses of forests, ample oceanic areas, as well as natural gas, petroleum, and coal. Among resources, forests take up the most portion of Indonesia's total land area. Recent data from the Ministry of Environment and Forestry (2022) reveals Indonesia's forested area now encompasses a whopping 125.76 million hectares, which represents roughly 62.97% of the nation's entire land area of 191.36 million hectares.

The formulation of state financial governance policies in Indonesia has a significant impact on the country's national economic circulation.[1] One crucial aspect of this governance is the allocation of capital to state-owned enterprises (SOEs). According to 33 paragraph (3) of Indonesia's 1945 Constitution, the state has control over land, water, and natural resources, and it emphasizes utilizing these resources for the utmost benefit of the people. constitutional provision reflects Indonesia's commitment to responsibly manage its natural wealth to promote economic growth and societal welfare.[2] During the transition from the New Order era to the

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Reform era, Indonesia underwent significant changes in its approach to natural resource management and economic activities. Previously, the government directly participated in economic endeavors, but under the Reform era, this role was largely delegated to SOEs or Badan Usaha Milik Negara (BUMN). The strategic governance orientation through SOEs aims not only to generate profits but also to contribute to national development goals and projections.[3]

By leveraging the resources and capabilities of SOEs, Indonesia aims to optimize the sustainable use of its natural resources while promoting economic growth, job creation, and infrastructure development. This approach not only aligns with constitutional mandates but also reflects a pragmatic strategy to manage and utilize Indonesia's abundant natural wealth for the benefit of its citizens and future generations.
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Since regulated in Law Number 19 of 2003 concerning State-Owned Enterprises, several institutional developments and transformations of SEOs have occurred in Indonesia. Entering the third decade of the Reform era during the administration of President Joko Widodo, the efficiency of SEO management with a reduction in the number of companies has been conducted gradually. In 2018, the number of SEO companies was 118, decreased to 95 companies in 2021, and became 77 companies in 2022 operating in 12 business sectors.[4] Out of these 77 companies, there are 52 limited liability companies (persero), 13 publicly listed companies (tbk), and 12 state-owned enterprises (Perum). According to the Ministry of SOEs data, the total asset value of these 77 companies is Rp 9,867 trillion, an increase from the previous year's Rp 8,978 trillion. Efficiency, consolidation, and institutional transformation of SEOs are considered as one of the important factors in improving performance and annual profit acquisition for the government.

Efficiency and consolidation efforts carried out by the Ministry of SOEs, besides simplifying the number of SEO companies, are also conducted by reducing the number of subsidiary companies under SOEs.[5] The simplification of the number of SEO subsidiary companies is done by dissolving a number of subsidiaries deemed to have no efficiency value, similarity to other subsidiary companies, and no significant role in the overall performance of SEO. Until 2022, there have been a total of 173 subsidiary and grandchild companies dissolved by the government, out of a total of 600 companies according to the claim of the Minister of SOEs, Erick Thohir. According to the Ministry of SOEs data, the high number of loss-making subsidiary companies significantly impacts the parent company (holding) of SEOs, resulting in company losses leading to decreased government revenue.[5] Additionally, the potential for corrupt practices through SEOs subsidiary companies also impacts state financial losses.[6]

However, in the dissolution of SOE subsidiary and grandchild companies, there are two significant challenges that make dissolution not easily achievable.[7] First, the current mechanism for dissolving SOE subsidiary companies is only through the General Meeting of Shareholders (GMS). In practice, dissolution through GMS is not easy to execute due to shareholder interests and complex dissolution procedures, which also potentially incur high costs. Second, the limited involvement of law enforcement authorities in examining SOE subsidiary companies, only in cases of suspected corruption or unlawful acts causing losses to the state. The Prosecutor's Office can investigate allegations of corruption in SOE subsidiary companies but cannot file for the dissolution of SOE subsidiary companies due to the legal ambiguity of its authority. The urgency of dissolving a number of SOE subsidiary companies to enhance efficiency and prevent losses to state finances, along with the difficulty faced by the Ministry of SOEs in dissolving SOE subsidiary companies through GMS, makes the authority of the Prosecutor's Office in dissolving SOE subsidiary companies a fundamental discourse.

The authority of the Prosecutor's Office acts as the state's attorney in representing the state's interests in civil and administrative law, as part of efforts to ensure law enforcement, government credibility, and protect public interests.[8] In Article 30C letter f of Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2011 concerning the Republic of Indonesia Prosecutor's Office, it is emphasized that the Prosecutor's Office has authority in the civil and other public fields, with the phrase, "In addition to carrying out duties and authorities as referred to in Article 30, Article 30A, and Article 30B, the Prosecutor's Office: ..... f. carries out its functions and authorities in civil and/or other public fields as regulated in the law."

The functions and authorities of the Prosecutor's Office in civil and administrative law are regulated in the Regulation of the Attorney General of the Republic of Indonesia No. PER-025/A/JA/11/2014 concerning Guidelines for the Enforcement of Law, Other Legal Actions, and Legal Services in Civil and Administrative Law.[9] These authorities are generally classified into two aspects. First, the preventive aspect, which includes the authority as a mediator in civil and administrative disputes. Second, the repressive aspect, which includes the authority to file civil lawsuits, file bankruptcy petitions, and file requests for the dissolution of limited liability companies (PT).

The authority of the Prosecutor's Office to file for the dissolution of a Limited Liability Company (PT) is in accordance with the provisions of Article 142 paragraph (1) letter c of Law No. 40 of 1997 concerning Limited Liability Companies, which stipulates that the dissolution of a company can be carried out based on a court decision. Furthermore, Article 146 paragraph (1) letter a states that the District Court can dissolve a company based on, "...a. A petition from the Prosecutor's Office based on the grounds that the Company violates the Public Interest or the Company commits acts that violate the laws and regulations."[10]

Based on the definition of a SEO as stipulated in Article 1 number 1 of Law No. 19 of 2003, a business entity qualifies as an SEO if its entire or majority capital is owned by the state through direct state participation originating from separated state assets. Furthermore, the definition of SEO subsidiary companies, as outlined in the Regulation of the State Minister for SOEs No. PER-03/MBU/2012 concerning Guidelines for the Appointment of Members of the Board of Directors and Members of the Board of Commissioners of Subsidiary Companies of State-Owned Enterprises, specifies that an SEO subsidiary company is a limited liability company whose majority of shares is owned by an SEO or a limited liability company controlled by an SEO. Consequently, the legal status of SEO subsidiary companies is classified as private entities, which subjects them to the dissolution provisions according to the Limited Liability Company Law.

This classification has significant legal implications, particularly in relation to the prosecutorial powers of the State Prosecutor's Office. In situations where an SEO subsidiary company is suspected of violating public interests or laws and regulations, the Prosecutor's Office possesses the authority to file for the dissolution of the company. This authority is grounded in the need to uphold legal compliance and protect public interest, ensuring that subsidiary companies operate within the legal frameworks established by the state.

The dissolution process for SEO subsidiary companies adheres to the procedural requirements set forth in the Limited Liability Company Law, which provides a structured approach to address violations and ensures that companies are held accountable for their actions. This legal framework emphasizes the importance of corporate governance and regulatory compliance, reinforcing the state's commitment to maintaining ethical and legal standards within its enterprises. The potential for dissolution serves as a deterrent against misconduct and encourages SEO subsidiary companies to align their operations with legal and regulatory standards. It underscores the role of the Prosecutor's Office in monitoring and enforcing these standards, thereby promoting transparency and accountability within the business operations of SEO subsidiaries.

However, unlike petitions for the dissolution of private companies, the position of the Prosecutor's Office in the dissolution of SEO subsidiary companies becomes problematic due to the relationship between the subsidiary and the parent SEO. As a business entity that receives capital from the state, SEO can be represented by State Attorneys in civil and administrative law matters. The dissolution of SEO subsidiary companies will place the Prosecutor's Office as a party representing the public interest in the dissolution and simultaneously representing the SEO in court proceedings. This poses a potential conflict of interest. Additionally, although the position of SEO subsidiary companies is not the same as SEO, the dissolution mechanism regulated in Indonesian positive laws only concerns SEO and private companies, whether in the form of limited liability companies or state-owned enterprises. Meanwhile, there are no specific regulations regarding the dissolution of SEO subsidiary companies through the courts. As a result of this legal vacuum, the authority of the Prosecutor's Office in the dissolution of SEO subsidiary companies becomes unclear and has not been implemented.

With the ambiguity surrounding the authority of the Prosecutor's Office in filing for the dissolution of SEO subsidiary companies, the sole mechanism for dissolution that can be pursued is through GMS. However, the GMS process, which is relatively slow, susceptible to subjectivity, and prone to conflicts of interest as it is decided internally by SEO, necessitates the need for balance with another litigation mechanism, namely the authority of the Prosecutor's Office to file for dissolution in court. Clear and straightforward regulations are needed to establish a mechanism for the dissolution of SEO subsidiary companies through petitions by the Prosecutor's Office.

II. LITERATURE REVIEW

A. *State-Owned Enterprises in Indonesia*

Indonesia's economic policy within the constitution reflects the nation's vision to create general welfare, prosperity for the people, and social justice. Consequently, the state controls and indirectly manages all natural resources within its territory.[11] State management is indirect, meaning the state does not engage in business relationships in the same manner as corporations. As the highest sovereign entity, state management is conducted through governance systems, policy-making, and law enforcement. To directly manage on behalf of the state, the government establishes corporate entities with a majority of shares owned by the state.

Legal reforms post-reform brought about a wave of improvements in all aspects, including economic structures and governance systems. Post the 4th amendment to the 1945 Constitution, with several changes and reformulations of economic policies, the government and The House of Representatives enacted Law No. 9 of 2003 concerning State-Owned Enterprises. The design function of SEO is to serve government business interests, provide economic impetus and generate profits, as well as manage resources and economic affairs that affect the livelihoods of many.[12] Article 2 of the SEO Law explicitly states that SEO is projected to contribute to the development of the national economy in general and state revenues in particular, provide public benefits, and assist in guiding and supporting weak economic enterprises, cooperatives, and the community. The position of SEO as an extension of the state in the field of business and national economic governance is strengthened by several authorities granted, with disparities compared to private enterprises. These authorities include impunity for monopoly practices.[13]

SEO receives monopoly rights granted by the state over sectors operating in vital areas of production.[14] Goods or services essential to people's livelihoods determine the importance of these vital sectors. Control over these production sectors is deemed crucial for economic development, and with centralized management under SEO, the government can obtain greater revenue compared to what is provided to private enterprises. Therefore, legal protection with the grant of monopoly rights becomes a political choice in the SEO Law.[15] In conducting its business, SEO companies can establish subsidiaries with certain capital injections. However, the capital injection by SEO into subsidiaries does not make these companies part of SEO, as the shares are not owned by the state but by SEO.

In the realm of SOEs in Indonesia, the mechanism for dissolving these entities varies significantly depending on their ownership structure and governance arrangements. When a limited liability company's entire shares are held by the state, the Minister of SOEs assumes a pivotal role akin to that of a GMS. This grants the Minister authority under Article 15 and 27 of the SOE Law to appoint and dismiss directors and commissioners, effectively overseeing strategic decisions and governance practices within the company.

This centralized governance approach ensures that SOEs, wholly owned by the state, operate in alignment with national policies and objectives. The Minister's role in acting as the GMS reflects a broader strategy to streamline decision-making processes and enhance accountability in managing state assets and investments. By consolidating authority at the ministerial level, Indonesia seeks to optimize the operational efficiency and financial performance of these critical entities, which play a significant role in the country's economic development and infrastructure projects.

Conversely, the dissolution process for subsidiary companies of SOEs follows a different trajectory. According to Article 2 paragraph (2) of Regulation No. PER-03/MBU/2012 issued by the State Minister for SOEs, the governance and decision-making authority within subsidiary companies are largely independent. Here, the GMS is convened and controlled by the shareholders of the subsidiary company, primarily the parent SOE. This decentralized governance structure allows subsidiary companies to adapt their operational strategies and corporate governance frameworks to specific market conditions and sectoral requirements while remaining accountable to their parent entity. The nomination and appointment of members to the Board of Directors and Board of Commissioners within subsidiary companies are crucial aspects regulated under ministerial guidelines. From a regulatory standpoint, the framework established by Regulation No. PER-03/MBU/2012 underscores the importance of governance clarity and procedural fairness in managing SOE subsidiaries. It ensures that decisions regarding the dissolution of subsidiary companies are made in accordance with corporate governance norms and regulatory requirements, safeguarding the interests of stakeholders and promoting sustainable business practices.

B. State Participation in Enterprises

All forms of vital and non-vital wealth, whether movable or immovable, that possess value and are owned and/or controlled by the state constitute state wealth. The entire potential value included as state wealth is managed and regulated to generate the greatest prosperity for the people.[16] Broadly categorized, state wealth falls into two domains: government-owned wealth (private domain) and state-controlled wealth (public domain). Government-owned wealth includes all goods purchased through the state budget or acquired through other legitimate means. This category encompasses assets owned directly by the government, particularly the Central Government, and includes Separated State Wealth and Unseparated State Wealth.

Separated State Wealth refers to assets that are distinctly separated from the government's operational funds and are designated for specific purposes or programs. These assets are managed under strict guidelines to ensure transparency and accountability in their utilization. On the other hand, Unseparated State Wealth comprises assets that are not specifically earmarked and form part of the broader government assets used for general operational needs. These assets include infrastructure, facilities, and other tangible goods vital for governmental functions and public services.

State-controlled wealth represents potential assets whose exact value and ownership structures are yet to be fully determined. These assets are strategically managed to maximize their potential benefits for the state and its citizens. Regulatory instruments play a crucial role in governing the exploration and exploitation of state-controlled wealth, ensuring compliance with constitutional mandates aimed at promoting public welfare and economic prosperity. As a regulatory body, the state exercises control over its wealth to foster sustainable development and equitable distribution of resources. This oversight includes monitoring the utilization of state assets to prevent misuse or inefficiencies that could undermine public trust and financial stability.

To stimulate economic circulation through the strategic utilization of state wealth, the Indonesian government has established mechanisms for managing Separated State Wealth for investment purposes.[17] According to Article 1 number 10 of Law No. 19 of 2003 concerning SOEs, separated state wealth is defined as state wealth derived from the State Budget (APBN). This wealth is allocated for state capital injections into Limited Liability Companies (Persero), State-Owned Enterprises (Perum), and other designated limited liability companies.

Further regulations, such as Minister of Finance Regulation Number 246/PMK.06/2016, outline the framework for managing Separated State Wealth. It specifies that Separated State Wealth comprises state wealth sourced from the State Budget or acquired through other means, intended for long-term and sustainable investment by the central government. Despite being managed separately from the State Budget, Separated State Wealth remains integral to state wealth and encompasses various assets such as money, securities, receivables, goods, and other rights of monetary value. This definition also extends to wealth managed separately by state-owned enterprises.

The Directorate of Separated State Wealth, under the Directorate General of State Wealth, oversees the management of separated state wealth. Mandated by Minister of Finance Regulation Number 234/PMK.01/2015, this directorate formulates and implements policies and technical standards related to separated state wealth management. It plays a pivotal role in channelling separated state wealth investments to be managed by SOEs entrusted with maximizing returns and fostering sustainable economic growth. In practice, investments from separated state wealth are directed towards enhancing the operational capabilities and strategic initiatives of SOEs. This includes funding for infrastructure projects, technological advancements, and expansions that contribute to national development objectives. By leveraging separated state wealth effectively, the government aims to optimize the use of state resources, stimulate economic activity, and promote equitable prosperity across Indonesia.

III. METHOD

This research employs a juridical-qualitative method, focusing on analyzing legislative authorities to identify effective mechanisms for the dissolution of subsidiaries of SOEs within applicable legal frameworks. The study emphasizes subsidiaries rather than the broader category of SOEs. Data collection is conducted through a rigorous literature review, aiming to explore how norm formulations can enhance economic efficiency and fiscal accountability within state finances.

The analysis adopts the economic analysis of law approach, which facilitates a nuanced examination of legal provisions pertinent to the dissolution of SOE subsidiaries. By scrutinizing these provisions, the research aims to propose strategic improvements that could streamline the dissolution process, mitigate financial losses, and bolster governance mechanisms overseeing state assets. This methodological approach not only addresses the complexities of subsidiary dissolution but also underscores the importance of legal clarity and economic rationale in enhancing regulatory frameworks governing SOE subsidiaries.[18]

IV. RESULT AND DISCUSSION

A. The Urgency of Dissolving Subsidiaries of State-Owned Enterprises to Prevent Losses to State Finances

The management of companies by SEO with capital from the state is intertwined with public interests and the livelihood of the people. The potential for losses experienced by SEO materially translates to losses to state finances, characterized by a decrease in revenue from what should have been fulfilled by the company's value.[19] However, within the framework of a business susceptible to business risks, losses incurred by SEO or their subsidiaries cannot be categorically classified as losses to state finances in a formal sense. Losses to the state can only be addressed through law enforcement instruments if it is proven that they have been carried out in ways that contravene regulations.[20]

Hernold Ferry Makawimbang underscores that losses to state finances occur when practices violating the law, whether for personal gain or not, result in the loss of part or a certain value of state wealth.[21] In Article 1 number 1 of Law No. 17 of 2003 concerning State Finances, state finances are defined as "...all rights and obligations of the state that can be valued in money, as well as everything, whether in the form of money or goods, that can be owned by the state in connection with the implementation of those rights and obligations." Meanwhile, the definition of losses to state finances is not explicitly regulated in legislation. In Article 1 number 15 of Law No. 15 of 2006 concerning the Supreme Audit Agency, the definition of state losses is affirmed as follows, "State/Regional Losses are shortages of money, securities, and goods, the amount of which is real and certain as a result of unlawful acts, both deliberate and negligent."

The term "state financial loss" is explicitly mentioned only in Article 32 paragraph (1) of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.[22] This is further elucidated in the explanatory notes of the law, which state, "The term 'there has been an actual state financial loss' refers to losses that can be quantified based on the findings of authorized agencies or appointed public accountants." From a curative perspective, according to the Law on the State Audit Agency (BPK) and Presidential Decree No. 103 of

2001 concerning the Position, Duties, Functions, Authorities, Organizational Structure, and Work Procedures of Non-Ministerial Government Institutions, the assessment of whether there has been a state financial loss or not falls under the purview of the State Audit Agency (BPK) and the Financial and Development Supervisory Agency (BPKP). The calculation of state losses itself is casuistic, examined on a case-by-case basis.

In the circulation of capital conducted by state-owned enterprises through their subsidiaries, there arises a legal status issue concerning state financial losses. On one hand, the capitalization of SEO subsidiaries is derived from the parent company, which receives its capital from the state.[23] Losses resulting from unlawful actions within SEO subsidiaries constitute material state losses. However, due to the principle of distinguishing between SEO and their subsidiaries, with the latter not being categorized as SEO, instances of unlawful actions detrimental to the financial well-being of SEO subsidiaries do not fall under the purview of corruption and cannot be prosecuted under the Anti-Corruption Law.

When it comes to the losses incurred by subsidiaries of state-owned SOEs, it may not be immediately clear whether they classify as losses to state finances from a juridical perspective. However, these losses still significant as they have material implications. As SOE subsidiaries operate under a business partnership framework with parent companies, any losses they incur are ultimately borne the state the of the capital, even if's not considered a direct loss.

These losses result in a reduction in revenues, which can directly impact the state's fiscal position. This financial strain highlights a critical issue as financially unstable SOE subsidiaries pose a significant risk to state finances which can lead to state financial leakage. The current challenges in addressing these through existing corruption laws compound the problem, limiting effective remedial actions. Therefore, it is urgent to introduce regulatory reforms that enhance financial oversight and accountability, ensuring robust governance mechanisms are in place to safeguard state assets and optimize fiscal outcomes. Addressing these challenges require innovative legal that align with economic realities.

B. Authority of the Prosecutor's Office in Dissolving Subsidiaries of State-Owned Enterprises

Authority or jurisdiction holds a significant position in the study of constitutional law and administrative law.[24] The importance of authority is emphasized by F.A.M Stroink and J.G Steenbeek, who state that "*Het begrip bevoegheid is dan ook een kernbegrip in het staats- en administratief rech*t," meaning "The concept of authority is indeed a core concept in constitutional and administrative law." [25] Authority is indeed the essence of administrative law and therefore closely related to the governance of the state. The term "kewenangan" itself is related to "authority" in English and "bovenoegdheid" in Dutch. Black's Law Dictionary defines it as "legal power, a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in scope of their public duties."

In the understanding of Indoharto, authority is what is referred to as formal authority, which originates from laws or procedures in accordance with statutory provisions. Within authority, there are various powers or "*wewenang*." On the other hand, Bagir Manan suggests that the legal term "*wewenang*" differs from the concept of power. Power refers to the aspect of the right to act or not to act, while in legal studies, wewenang encompasses rights, obligations, or "*rechten en plichten*," thus having a broader scope.

In terms of its competence as regulated in legislation, the Indonesian Prosecutor's Office (*Kejaksaan Republik Indonesia*) has attributive authority in the dissolution of companies.[26] This authority is clearly stated in Article 142 paragraph (1) letter c of Law No. 40 of 1997 concerning Limited Liability Companies (*Perseroan Terbatas*), which stipulates that the dissolution of a company can be carried out by court order. Furthermore, Article 146 paragraph (1) letter a states that the District Court may dissolve a company based on "a petition from the Attorney General based on the grounds that the company has violated the Public Interest or has violated statutory provisions." Understanding that according to Article 1 number 1 of Law No. 19 of 2003 concerning State-Owned Enterprises, subsidiary companies of state-owned enterprises are separate entities and not considered SEO, the Prosecutor's Office can use Law No. 40 of 1997 to file a petition for the dissolution of a subsidiary company of a SEO suspected of violating public interest and statutory provisions.

However, the legal framework regarding the "public interest" and "violation of laws and regulations," as stipulated in Article 146 paragraph (1) letter a, remains somewhat ambiguous without extensive judicial interpretation. In cases involving public companies not affiliated with SOEs, the Prosecutor's Office faces limitations in directly petitioning for dissolution solely based on financial losses or operational distress. This restriction arises because such losses are typically construed as business setbacks rather than direct financial burdens on the state, both legally and practically.

In contrast, subsidiaries of SOEs present a distinct scenario where financial losses directly impact state interests. The financial strains borne by SOE subsidiaries can justify the Prosecutor's Office invoking the "public interest" clause. Essentially, when an SOE subsidiary undergoes prolonged financial distress, it signifies a tangible loss to the state. This distinction empowers the Prosecutor's Office to petition for dissolution, as such circumstances are deemed detrimental to public interests and warrant judicial intervention. Consequently, the justification for dissolution under these circumstances hinges on the substantial and sustained financial detriment to the state, necessitating legal remedies to mitigate further economic losses. This approach underscores the critical role of legal interpretation in aligning corporate governance with public interest mandates, particularly concerning state-owned entities and their subsidiaries.

Subsidiaries of state-owned enterprises facing severe financial instability and operational challenges can be subject to dissolution proceedings initiated by the Prosecutor’s Office. This action is predicated on the premise that such conditions not only breach legal and regulatory norms but also significantly impair state interests. The application of legal principles in these contexts underscores the imperative for judicial discretion and clear regulatory frameworks to safeguard public finances and uphold corporate accountability.

From a law enforcement perspective, the process of dissolving subsidiaries of state-owned enterprises lacks clear guidance due to deficiencies in legislation and procedural. Although the Prosecutor’s Office is authorized to initiate the dissolution under existing regulatory frameworks, demonstrating that a has incurred financial losses to the state proves challenging when its legal status categorizes the losses as private business setbacks rather state liabilities. On the other hand, considering the subsidiary as an integral part of the state-owned enterprise’s capital, its financial obligations directly impact the state. In such cases, both the state-owned enterprise and the Prosecutor’s Office, represented by the General's Office, share a unified interest addressing financial discrepancies. To address this legal ambiguity, new norms must be formulated to systematically regulate the Attorney General’s involving state-owned enterprise subsidiaries. Such norms should encompass procedural clarity and adherence to frameworks, ensuring equitable practices and safeguarding state interests effectively. The of such norms will resolve the challenges currently faced.

C. Cost Efficiency in Dissolving Subsidiary State-Owned Enterprises through the Prosecutor's Office

The regulation on the dissolution of companies is governed by Chapter X of Law No. 40 of 2007 concerning Limited Liability Companies.[9] Under this regulation, six grounds for the dissolution of a company are possible. First, the decision of the GMS. The GMS is an organ of the company besides the board of directors and the board of commissioners. According to Article 142 paragraph (1) letter a, the authority to decide on the dissolution of the company lies with the GMS. Proposal for the dissolution of the company to the GMS is only allowed by the board of directors, the board of commissioners, and the shareholders. Members of the board of directors are not entitled to propose dissolution independently but must be based on the Board of Directors Meeting Decision. Likewise, the Board of Commissioners can only propose dissolution through the Board of Commissioners Meeting Decision.

The dissolution of SOE subsidiaries in Indonesia is currently governed by a singular mechanism: the decision of the GMS. This decision-making process is bound by the stipulations of Law No. 40 of 2007, which outlines a tiered procedure requiring shareholder negotiation to achieve a quorum. While the GMS regulation is designed as a business protection instrument to prevent the hasty and facile dissolution of subsidiaries, it simultaneously poses significant challenges in practice, particularly in cases involving the dissolution of underperforming SOE subsidiaries.[10] One of the primary issues with the current GMS mechanism is the high susceptibility to conflicts of interest. The complex and often costly procedure for dissolution is exacerbated by the intricate dynamics of shareholder interactions. For the GMS to pass a resolution, proposals must be put forth by the board of directors and the board of commissioners, followed by shareholder approval. This multi-layered approval process inherently invites potential conflicts, especially when different stakeholders have varying interests and perspectives on the dissolution.

The financial burden associated with the GMS process is substantial. The costs incurred are not just monetary but also include the time and resources spent on extensive negotiations and compliance with legal requirements. In scenarios where an SOE subsidiary has multiple shareholders, the complexity and duration of the resolution process are significantly amplified. Each shareholder's approval is necessary to reach a consensus, which often leads to protracted negotiations and an elongated timeline for dissolution.

The necessity for such extensive negotiation and compliance stems from the law's intent to safeguard business interests and ensure that dissolution is not undertaken lightly. However, in practice, this can hinder the timely and efficient dissolution of subsidiaries that are no longer viable or are performing poorly. The prolonged process can drain resources from both the parent company and the subsidiary, potentially exacerbating financial and operational difficulties.

Throughout 2020-2022, the Indonesian government successfully dissolved only 173 subsidiary companies out of the 800 companies intended for dissolution, as stated by the Ministry of State-Owned Enterprises. This limited success underscores the inherent challenges and high costs associated with the dissolution process through the GMS. The GMS mechanism, while designed to protect business interests and ensure thorough decision-making, often results in protracted negotiations and significant financial burdens. These challenges have contributed to ongoing financial losses for the state. The cumbersome nature of the GMS procedure is a major factor in the slow pace of subsidiary dissolution. The requirement for proposals from the board of directors and the board of commissioners, followed by shareholder approval, creates multiple layers of bureaucracy. This multi-tiered process is not only time-consuming but also invites potential conflicts of interest among stakeholders, further complicating the resolution. When multiple shareholders are involved, the negotiation process becomes even more complex and drawn out, leading to higher costs and delays.

The financial implications of these delays are considerable. Unhealthy financial conditions of SOE subsidiaries create a burden for the parent company, diverting resources that could be better utilized elsewhere. The ongoing support for these underperforming subsidiaries diminishes the overall potential revenue for the state, leading to continued financial strain. The high costs associated with the GMS process exacerbate these financial challenges, as resources are spent on prolonged negotiations and compliance rather than on more productive ventures.

The need for a more efficient dissolution process is clear. Swift dissolution of non-viable subsidiaries is essential to prevent long-term financial losses and to ensure that the state-owned enterprises can operate more effectively. Streamlining the dissolution process would help reduce the financial burden on parent companies and improve overall financial health.

Richard Posner's perspective in Economic Analysis of Law emphasizes that the formulation of law should not solely enforce norms and regulations outlined in positive legislation but should also encompass an "ideological value" aimed at achieving economic benefits for the public interest. Posner perceives law as an institution grounded in constructs of value, utility, and efficiency. Aligned with Bentham's classical utilitarian theory, Posner defines efficiency as "that allocation of resources in which value is maximized".[27] Furthermore, Posner argues that many legal doctrines are best interpreted as initiatives to enhance resource efficiency and that the common law serves to optimize societal wealth.[28] From Posner's viewpoint, legal rules and doctrines should be evaluated based on their ability to enhance efficiency and maximize societal welfare. This approach involves assessing how legal decisions impact resource allocation, market dynamics, and overall economic performance. By integrating economic analysis into legal reasoning, Posner advocates for laws that not only uphold societal norms and justice but also contribute positively to economic development.

Posner's emphasis on economic efficiency underscores the importance of designing laws that minimize inefficiencies and maximize benefits for society as a whole. This includes considering the allocation of scarce resources, promoting competition, and fostering innovation through legal frameworks. In essence, Posner's economic analysis of law promotes a pragmatic approach to legal theory—one that recognizes the interconnectedness between law, economics, and societal welfare.

The mechanism of dissolving subsidiaries of SOEs through the General Meeting of GMS not only proves ineffective but also fails to align with economic goals as advocated in economic analysis of law. However, the primary objective of dissolving SOE subsidiaries remains rooted in safeguarding state finances and preventing losses that could adversely impact public welfare. Therefore, there is a pressing need to establish more accessible and efficient norms, including granting broader and clearer authority to the Prosecutor's Office.

Dissolving SOE subsidiaries through the Prosecutor's Office presents a viable alternative to GMS-based dissolution, which often faces challenges in resolution. The Prosecutor's Office, driven by the imperative to protect the public interest and state finances, can petition the court to dissolve financially troubled SOE subsidiaries. Through judicial oversight, these companies can be dissolved, and their assets liquidated in accordance with legal provisions.

This alternative mechanism offers several advantages: it reduces dissolution costs, expedites the process to mitigate financial losses for the state, and enhances accountability of SOE subsidiaries through rigorous oversight and enforcement by law enforcement agencies. By centralizing dissolution authority with the Prosecutor's Office, the process can be streamlined, ensuring prompt and decisive action in cases of financial distress or mismanagement.

Strengthening the Prosecutor's Office's authority to dissolve SEO subsidiaries offers significant economic value by increasing the accountability of these subsidiaries in their management practices. When SEO subsidiaries face financial losses, these losses can serve as grounds for dissolution by the Prosecutor's Office. This direct oversight ensures that companies receiving substantial capital from state wealth manage their finances more cautiously and responsibly. Consequently, both SEO subsidiaries and their parent companies are incentivized to avoid incurring losses and to take swift corrective action to prevent dissolution through the Prosecutor's petition.

The enhanced authority of the Prosecutor's Office to petition for the dissolution of SEO subsidiaries is also crucial for improving the effectiveness of dissolution proceedings via the GMS. Without this authority, the GMS process can be lengthy and costly, involving complex and gradual negotiation procedures. However, with the Prosecutor's involvement, if the GMS fails to reach a resolution promptly, the Prosecutor's Office can petition for the company's dissolution in court, considering the public interest. This approach streamlines the dissolution process, bypassing prolonged negotiations and expediting the resolution of financial mismanagement issues.

By granting the Prosecutor's Office the authority to oversee the dissolution of SEO subsidiaries, economic efficiency is significantly enhanced. This efficiency manifests in several ways. First, the threat of dissolution by the Prosecutor's Office incentivizes better financial management and accountability within SEO subsidiaries, reducing the likelihood of financial losses. Second, it prevents prolonged and costly GMS proceedings, saving time and resources that can be better utilized elsewhere. Third, it ensures that state financial assets are protected and managed effectively, aligning with broader goals of economic efficiency and public interest.

The authority of the Prosecutor's Office to intervene in the dissolution of SEO subsidiaries also underscores the importance of law enforcement in safeguarding state financial assets. By prioritizing economic efficiency in legal proceedings, the Prosecutor's Office plays a crucial role in maintaining the financial health and stability of state-owned enterprises. This proactive oversight ensures that financial mismanagement is addressed swiftly and effectively, preserving the value of state investments and contributing to overall economic stability.

V. Conclusion

Efficient management of state finances by SOEs has become paramount during the post-pandemic recovery period. The government's focus on enhancing SOE management efficiency necessitates the dissolution of numerous financially unhealthy subsidiaries and affiliated companies that receive state funding. This dissolution aims to stem further financial losses and safeguard state finances. However, the current mechanism for dissolution solely through the GMS is hindered by procedural complexity and high costs. Therefore, there is an urgent need to enhance the authority of the Prosecutor's Office to petition for the dissolution of SOE subsidiaries through court applications. While this authority is outlined in existing legal frameworks, its implementation remains incomplete. SOE subsidiaries, classified as non-SOEs, are legally deemed private entities, resulting in their financial losses being categorized as business losses rather than state losses. Consequently, these losses do not inherently violate public interest or regulations as stipulated by the Limited Liability Company Law. However, the material impact of these losses directly affects state finances. Strengthening the Prosecutor's Office's authority to petition for the dissolution of SOE subsidiaries is crucial. This initiative can enhance cost efficiency in SOE dissolution processes and promote greater financial management responsibility among SOE subsidiaries. Additionally, by offering an alternative dissolution mechanism, alongside GMS, overseen by the Prosecutor's Office, the state can mitigate prolonged financial losses.

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