

## PROVISION OF CREDIT FACILITIES TO SUBSIDIARIES BY THE PARENT COMPANY IN VENTURE CAPITAL COMPANIES

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Received 25 May 2023 • Revised 30 May 2023 • Accepted 30 May 2023

### Abstract

The Government in developing and improving companies in BUMN by establishing several strategies, one of which is in the form of a BUMN Holding Company which has a strategy in a corporation, in which companies in the context of BUMN Holding are engaged in the same business activities, under one holding company that oversees the companies. Through a holding company is considered to provide more economic benefits compared to a single company. The parent company's business activities will usually determine the type of business license that must be fulfilled by the parent company. One of the BUMN holding companies that becomes a financing institution in increasing added value in a sustainable manner for Micro, Small, Medium Enterprises and Cooperatives (UMKMK) which is based on the principles of good corporate governance (GCG) or good corporate governance. The method of research is normative legal research. Result of the research is during the Covid-19 pandemic, of course, extra funds were needed to meet the company's finances where subsidiaries experienced delays in making loans due to the Covid -19 pandemic, so subsidiaries needed to borrow funds from the holding company.

**Keywords:** Ventura capital, parent company, credit facilities

## INTRODUCTION

The country's economic growth was accompanied by business entities that began to emerge and show their existence, business entities owned by the state are known as Limited Liability Companies (Persero) and Public Companies (Perum) (Restyana & dkk, 2019). The company has a very important role in Indonesia, namely as a supporter of national economic development which is organized based on economic democracy to maintain balance, the more businesses that are built into a company, the more advance the country's economy will be (Muhammad, 2010). The efficiency and effectiveness of the company's operation is the key to winning the competition here, bearing in mind that international connectivity often brings much higher economies of scale than connectivity which is only concentrated in one country (Bressier, 2012).

The government in developing and improving companies in BUMN by establishing several strategies, one of which is in form of a BUMN Holding Company which has a strategy in a corporation, in which companies in the context of BUMN Holding are engaged in the same business activities, under one holding company that oversees the companies. The government is currently running the program through a plan that has been prepared with SOEs by implementing strategic policies in an effort to increase performance by implementing a policy of forming BUMN Holding Companies in prioritized sectors, namely the oil and gas sector, the banking sector, the mining sector, the construction sector, the food sector, the housing, and others. The emergence of this group company was marked by a change in the organizational structure of a single company with a simple business model to a group company with a more complex business model (Sulistiowati, 2010).

Holding company comes from American legal terminology, according to M. Manullang, a holding company is a business entity in the form of a corporation which owns part of the shares of several business entities (Sipayung & dkk, 2013). Through a holding company is considered to provide more economic benefits compared to a single company (Fuady, 2002). Then the parent company's business activities will usually determine the type of business license that must be fulfilled by the parent company (Sulistiowati, 2013). The general objectives of holding SOEs include (Pranoto, 2017):

- a. Increasing efficiency because each origin company is more focused on operational activities while marketing, funding and other strategic policies are drawn to the parent company,
- b. The creation of synergies between the original companies, such as the creation of new downstream industries;
- c. Increasing the company's economic scale with better competitiveness;
- d. Improving the capital structure and opening up funding opportunities for business expansion;
- e. Creating value creation through improving the capital structure and increasing production capacity.

On the other hand, group companies are deemed necessary to accelerate the economy of a developing country (Sufmi Dasco Ahmad). Holding company aims to identify reasons for grouping companies, identify impacts and determine the correlation between the level of association and company performance (ibid).

BUMN as one of the pillars of the economy in carrying out its activities can form a subsidiary or subsidiary, as Article 1 number 2 of the Minister of BUMN Regulation Number 3 of 2012 concerning guidelines for the Appointment of Directors and Members of the Board of Commissioners of Subsidiaries of State-Owned Enterprises that:

*"BUMN subsidiaries are limited liability companies whose shares are mostly owned by BUMN or limited liability companies controlled by BUMN".*

One of the BUMN holding companies is a financing institution in increasing added value in a sustainable manner for micro, small, medium enterprises and cooperatives (MSMEs) which are based on the principles of good corporate governance (GCG) or good corporate governance. Has two subsidiaries namely PT. PNM Investment Management is engaged in investment management, especially mutual funds, then PT. PNM Venture Capital engaged in venture capital business. During the Covid-19 pandemic, of course, extra funds were needed to meet the company's finances, where PT PNM Venture Capital is hampered in carrying out lending due to the Covid-19 pandemic, so PT. PNM Venture Capital requires a loan from PT PNM as the holding company. Furthermore, this journal will discuss holding companies in this case funding or providing financing and/or loans to their subsidiaries as venture capital companies.

## RESEARCH METHOD

This type of research is normative legal research, namely research focused on placing law as a building system of norms (ND & Achmad, 2010). Research is carried out by conducting studies and searching for materials based on laws and regulations as well as books and articles that are relevant

to the object of this research. Data collection techniques obtained in the form of: (i) primary legal materials, namely laws and regulations; (ii) secondary legal materials in the form of legal books and legal articles relating to the juridical facts to be analyzed; and (iii) tertiary legal materials, which include legal dictionaries, Indonesia language dictionaries, and encyclopedias. This research approach is a statutory approach or statue approach, which means it is carried out by examining various laws and regulations or jurisprudence related to the legal issues studied. Researchers also conduct research by interpreting and studying a written law from various aspects, starting from aspects of theory, history, philosophy, comparison, structure and composition, scope and material, consistency, general explanation, and article by article (Muhammad A. , 2004).

The type of data analysis used is a qualitative approach with literature studies which are then systematically and analyzed to find clarity of the problem (Soekanto, 1986). This type of data analysis is described as analyzing and processing data with reference to the data or information obtained after which it is narrated to obtain research conclusions. The type of data needed in this research is secondary data obtained through literature search or literature study (Mamudji & dkk, 2005). It aims to understand the conceptualization of law in legal texts or sources. The results of this research are analytical descriptive, which focuses on solving problems and implementing descriptive methods not limited to the stages of collecting and compiling data which includes analysis to find answers to the problems posed (ibid).

## RESULTS AND DISCUSSION

Based on the aims and objectives of the company in casu PT PNM refers to Article 3 of the Articles of Association concerning the Purpose and Objectives and Business Activities of PT PNM, namely:

*“To achieve the above mentioned aims and objectives the Company may carry out business activities:*

- 1) Financing Services including but not limited to program credit and/or joint responsibility system financing;*
- 2) Investment in micro or sharia financial institutions and rural or sharia credit banks (BPR/S);*
- 3) Management services and partnerships”.*

By taking into account the aims and objectives of PT PNM, funding or loans and/or financing that will be provided by PT PNM to PT PNM Venture Capital is included in the business activities of PT PNM or not. Furthermore, the funding provided by PT PNM to PT PNM Venture Capital can be categorized as a type of loan (only) or subordinated loan.

Subordinated loans are provided in cash or by converting existing loans into subordinated loans provided that the intent and purpose of using the loan is the same as the intent and purpose of using funds originating from capital through the issuance of shares. In the case of PT PNM provides loans to subsidiaries that do not require approval from the Board of Commissioners of PT PNM but it is enough to report to the Board of Commissioners.

### **Funding Provided by PT PNM to PT PNM Venture Capital can be categorized as a type of loan (only) or subordinated loan.**

PT PNM Venture Capital is a legal entity that conducts business activities in the filed of Venture Capital, and therefore in carrying out its business activities it must comply with and pay attention to the applicable regulations including the Regulations of the Venture Capital Company Business Financial Services Authority.

In carrying out its business a Venture Capital Company (PMV), in this case requires a source of funding. Article 36 paragraph 1 POJK PMV Business stipulates those sources of PMV funding can come from:

- a. Venture Funds;
- b. Loan;
- c. Asset securitization in accordance with statutory provisions in the capital market sector;
- d. Issuance of medium-term notes;
- e. Subordinated loans or funding;
- f. Issuance of shares;
- g. Waqf; and/or
- h. Grant.

Meanwhile, based on Article 36 paragraph 2 of the PMV Business POJK, it is known that parties who can provide the above funding include:

- a. Government;
- b. State-owned enterprise or regionally-owned enterprises;

- c. Finance company;
- d. Indonesian export financing institutions;
- e. Bank;
- f. Other financial institutions'
- g. Multilateral financial institutions;
- h. Other business entity; and/or
- i. Individuals.

Futhermore, in Article 38 paragraph (1) POJK PMV regulates as follows:

*“Loans or subordinated funding received by PMV or PMVS as referred to Article 36 paragraph (1) letter f must meet the following conditions:*

- a. *The shortest term is 5 (five) years;*
- b. *In the event of liquidation, the right to collect applies at the end of all existing loans; and*
- c. *It is stated in the form of a notarial deed agreement between PMV and PMVS with the lender.”*

Referring to the provisions above, a subordinated loan or funding (SOL) is a loan or funding that fully meets the three conditions as stated in Article 36 paragraph (1) of the POJK Business PMV above.

Thus, as long as the loan or funding that will be provided by PT PNM to PT PNM Venture Capital does not meet one or more of these the conditions, so the said loan or funding cannot be categorizes as SOL.

In the elucidation of Article 38 paragraph (1) of the PMV Business POJK it is explained as follows:

*“Loans or subordinated funding can come from affiliated or unaffiliated parties. Affiliated parties include directors and commissioners of PMV or PMVS shareholder business entities, and others. Parties are not affiliated between parties that do not have a direct relationship with PMV or PMVS business operators”.*

Referring to the explanation above, it is known that PT PNM as a shareholder of PT PNM Venture Capital can provide SOL to PT PNM Venture Capitalm provided that the loan or funding meets all three requirements of the provisions of Article 38 paragraph (1) of the POJK PMV Business referred to. Based on the decisions statement of the shareholders of PT PNM Venture Capital Number 24 dated 08 May 2013 drawn up before Hadijah, SH, Notary in Jakarta, principally states that the Board of PT PNM Venture Capital in obtaining a loan requires a written response from the Board of Commissioners and through the approval of the GMS.

### **Different between SHL and SOL**

Inconnection with the difference between SHL and SOL, what needs to be considered is regarding one of the conditions for SOL, namely that it must be stated in the form of a notarized agreement, while SHL is not regulated it must be stated in a notirized deed. In addition SHL should have low interest, while SOL, because the lender may not be a shareholder, it is possible to provide higher interest than other types of loans.

Futhermore, with the loan interest and/or funding that will be given, taking into account the provisions in the regulations, as follows:

- 1) Interest-free loans from shareholders received by taxpayers in the form of a limited liability company are permitted if:
  - a. The loan originates from the funds belonging to the shareholders themselves and not from other parties;
  - b. The capital that should have been paid up by the lender's shareholders has been fully paid up by the lender's shareholders has been fully paid up;
  - c. The lender's shareholders are not at a loss; and
  - d. The company paid off the recipient of the loan is experiencing financial difficulties to continue its business.
- 2) If the loan received by a taxpayer in the form of a limited liability company from its shareholders does not comply with the provisions referred to in paragraph (2), interest is payable on the loan at a reasonable interest rate.

In this case PT PNM Venture Capital as the party that will later receive funding or loans is not experiencing financial difficulties for the continuity of its business, so that in the event that funding or loans are to be made from PT PNM to PT PNM Venture Capital will still bear interest at a reasonable interest rate.

## CONCLUSION

PT. Permodalan Nasional Madani (PT. PNM) as the holding company or BUMN holding company has two subsidiaries, namely PT. PNM Investment Management and PT. PNM Venture Capital engaged in venture capital business. PT. PNM Venture Capital in this case can receive funding or loans and/or financing that will be provided by PT. PNM. PT. PNM provides loans to subsidiaries that do not require approval from the Board of Commissioners but only by reporting to the Board of Commissioners as stated in Article 11 paragraph (8) point C of the Articles of Association of PT. PNM.

As long as the loan or subordinated funding (SOL) fulfills the three conditions in Article 36 paragraph (1) of the PMV Business POJK, the loan can be categorized as SOL which PT. PNM gave to PT. PNM Venture Capital. As a party that will later receive funding or loans from PT. PNM, then PT. PNM Venture Capital will continue to bear interest at a reasonable interest rate.

Before taking action, in this case, funding or financing from the parent company to the subsidiary company is expected to comply with what has been stipulated in the law and also the articles of association of each company so that there are no violations and sanctions for this funding or financing.

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