



Single Presence Policy in Indonesian Banking

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ABSTRACT

The sole ownership policy in Indonesian banking is regulated in Bank Indonesia Regulation Number 14/24/PBI/2012 concerning Sole Ownership in Indonesian banking which is then supplemented by Bank Indonesia Circular Letter Number 15/2/DPNP dated 4 February 2013 concerning Sole Ownership in Indonesian Banking. This research was created to find out about the regulations and implementation of sole ownership policies in banking in Indonesia. The research uses normative juridical research methods. The research results state that the implementation of the sole ownership policy in banking in Indonesia is carried out through the merger or consolidation of controlled banks, forming a Holding Company in the Banking Sector (Bank Holding Company/BHC), forming a Holding Function. There is a need for further study regarding the implementation of the sole ownership policy in banking in Indonesia.

INTRODUCTION

The formation of the single presence policy was inseparable from the 1998 crisis in Indonesia which prompted regulations that could strengthen the fundamentals of the national banking industry after being hit by the monetary crisis. First published in 2006 as a step in implementing the Indonesian Banking Architecture (API) with the aim of increasing the competitiveness and resilience of banking, especially for banks that are experiencing difficulties and need rescue. However, it is felt that this policy is no longer appropriate to the current economic conditions. Especially with the pandemic resulting in changes in people's behavior, one of which is in terms of transactions. The pressure for digitalization is increasing following technological developments, including in the banking sector. Capital, as an important factor that banks must have, must also be increased in connection with the digital transformation being carried out. Small banks need sufficient capital to be able to compete amidst the changes that are occurring. However, the single presence policy actually hinders and makes it difficult for controlling shareholders who want to take corporate action to carry out banking restructuring or rescue banks in trouble. (Marshall and Laurensius,2019)

Banks as financial institutions that have an intermediary function play an important role in national economic growth. 1 When compared with other types of institutions, the banking sector is referred to as "the most highly regulated industry" (Muhammad Djumhana, 2008: 216). Regulatory factors are important to implement for the development of the banking sector. This cannot be separated from the systemic risk that banking has, namely the risk that occurs if a financial institution experiences difficulties or downturns, which can cause the banking sector to experience difficulties, which can result in the collapse of the bank and have an impact on the national economy in the long term. For this reason, improving the rules for the banking system as a whole is urgently needed in order to make Indonesian banking healthy. 4 Integration of the banking industry requires the availability of adequate regulations and their consistent application. Efforts that can be made to create a banking system that is capable and stable require regulations that can be used as a reference for the overall implementation of banking functions.

Single Presence Policy (SPP) or sole bank ownership is one of the policies of Bank Indonesia which aims, among other things, to increase the economic scale and supervision of banks in Indonesia, as well as being one of the prerequisites for realizing a healthy and sound Indonesian banking structure. strong. The Single Presence Policy arrangement itself was previously regulated through Bank Indonesia Regulation Number 8/16/PBI/2006 concerning Sole Ownership in Indonesian Banking which was then supplemented by Bank Indonesia Circular Letter Number 9/32/DPNP dated 12 December 2007 concerning Sole Ownership in Indonesian Banking However, as time went by and as a result of the lack of effectiveness of these regulations, Bank Indonesia again issued new regulations regarding sole ownership, namely through Bank Indonesia Regulation Number 14/24/PBI/2012 concerning Sole Ownership in Indonesian banking which was then supplemented by a Bank Indonesia Circular Letter

Number 15/2/DPNP dated 4 February 2013 concerning Sole Ownership in Indonesian Banking, the two regulations actually have the same substance, however there are slight changes contained in the new PBI.

The purpose of issuing the Bank Indonesia Regulation is in line with the Bank Indonesia Regulation which regulates the provisions on the Minimum Core Capital Amount for Commercial Banks, namely to direct banks in Indonesia to have a strong capital structure. One way that can be taken is by consolidation (separation), merger (merger), or acquisition (takeover).

Article 2 paragraph (1) of Bank Indonesia Regulation Number 14/24/PBI/2012 concerning Sole Ownership in Indonesian Banking states that each party can only become a Controlling Shareholder (PSP) in only one bank. Then paragraph 2 mentions excluded parties or parties who may not comply with Bank Indonesia regulations. Then in Article 3 paragraph (2) states the steps for adjusting the ownership structure in the form of options that must be chosen by Controlling Shareholders who own shares in more than one bank, these options are:

1. Carrying out a merger or consolidation of the banks it controls.
2. Form a holding company in the banking sector.
3. Establish a holding function.

Bank Indonesia's step in creating Single Presence Policy regulations for banking in Indonesia is also seen as an effort to reduce the number of banks in Indonesia, where Indonesia itself has quite a few banks and quite a few banks which are in an unhealthy condition. The number of banks in Indonesia for the 2014 period reached 120 and is considered to be the majority. Many of these banks are no longer efficient. The reason is, what is needed now and in the following years is a large amount of non-bank assets. This is to encourage banking.

Ryan Kiryanto, a banking observer, believes that the number of banks in Indonesia is too large, and many banks are in an unhealthy condition and therefore inefficient. He also explained that banking in Indonesia in conditions like this is not yet able to compete with foreign banks which have begun to mushroom. in Indonesia. He also said that there are many lower middle class banks whose asset ownership and capital are still relatively low. It is necessary to consolidate with large banks so that the continued development of these banks becomes bigger and healthier.

Based on the description above, the author would like to explain how the sole ownership policy in banking in Indonesia is regulated in Indonesian laws and regulations as well as the implementation of the sole ownership policy in banking in Indonesia itself.

LITERATURE REVIEW

Since the enactment of Bank Indonesia Regulation Number: 14/24/PBI/2012 concerning Sole Ownership in Indonesian Banking, provisions regarding ownership of more than 1 (one) bank operating in the same field are no longer permitted. This policy also aims to reduce the number of banks in Indonesia.

Article 2 paragraph (1) of Bank Indonesia Regulation Number 14/24/PBI/2012 concerning Sole Ownership in Indonesian Banking states that each party can only be a Controlling Shareholder in 1 (one) bank. 20 Article 1 number 1 Bank Indonesia Regulation Number 14 /24/PBI/2012 concerning Sole Ownership in Indonesian Banking states that in Bank Indonesia regulations what is meant by bank is a commercial bank as intended in article 1 point 3 of Law Number 7 of 1992 concerning Banking as amended by Law Number 10 1998, excluding foreign branch offices.²¹

Parties who must comply with the Single Presence Policy are parties who own more than one bank or in other words control more than one bank as Controlling Shareholders. If there are parties who are still controlling shareholders in more than one bank, they are required to make structural adjustments to the controlled banks.

A merger/consolidation is a fusion of one company into another company where one company maintains its original identity by taking over the assets, responsibilities and power of the merging company. According to Article 1 number 25 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, a merger in the banking sector is a merger of two or more banks by maintaining the existence of one bank and dissolving the other banks by or without liquidation.

METHODOLOGY

This research uses normative juridical research methods, which are included in the layer of legal science in the form of legal dogmatics, because the focus studied in this research is the application aspect of positive law, both in the form of laws and in the form of other statutory regulations as derivatives of that law. Alone. Normative legal research or library research is carried out by examining library materials or secondary data alone. Normative legal research includes research on legal principles, legal systematics, legal synchronization, legal comparison and legal history. This research was carried out by means of a literature study of laws and regulations related to value added tax and coal mining. In carrying out this research, the type of data used is secondary data obtained through literature study. Secondary data is primary data that has been further processed and presented either by the primary data collector or by another party. Legal research at the level of legal dogmatics or research for the purposes of legal practice uses a statutory approach. In this research, the author uses several primary legal materials, namely legal materials that have binding force, including statutory regulations.

RESEARCH RESULT

Sole Ownership Policy Regulations on banking in Indonesia

The Single Presence Policy arrangement itself was previously regulated through Bank Indonesia Regulation Number 8/16/PBI/2006 concerning Sole Ownership in Indonesian Banking which was then supplemented by Bank Indonesia Circular Letter Number 9/32/DPNP dated 12 December 2007 concerning Sole Ownership in Indonesian Banking However, as time went by and as a result of the lack of effectiveness of these regulations, Bank Indonesia

again issued new regulations regarding sole ownership, namely through Bank Indonesia Regulation Number 14/24/PBI/2012 concerning Sole Ownership in Indonesian banking which was then supplemented by a Bank Indonesia Circular Letter Number 15/2/DPNP dated 4 February 2013 concerning Sole Ownership in Indonesian Banking, the two regulations actually have the same substance, however there are slight changes contained in the new PBI.

One of the differences that can be noticed in the two regulations can be seen from the time period or grace period given by Bank Indonesia. The following are the main things contained in the Bank Indonesia Regulation concerning the regulation of Single Presence Policy Number 14/24/PBI/2012:

1. Regulations regarding Bank Ownership
 - a. Article 2 paragraph (1) states that each party can only become a Controlling Shareholder (PSP) in 1 (one) bank;
 - b. Article 3 paragraph (1) states that the party referred to in accordance with the provisions of article 2 paragraph (1) is: 1) Has become a controlling shareholder in more than one bank; or 2) Purchasing shares in another form so that the person concerned becomes a controlling shareholder in more than one bank. Then the person concerned is obliged to fulfill the provisions as intended in Article 2 paragraph (1).
2. Regulations regarding structural adjustments. According to Article 3 paragraph (2), fulfillment of the provisions referred to in Article 3 paragraph (1) is carried out by:
 - a. Merger or consolidation of banks under its control;
 - b. Forming a holding company in the banking sector, or
 - c. Establishing a Holding Function
1. Regulations regarding exceptions to the Minister of Finance in Article 2 paragraph (1) provisions regarding sole ownership are excluded for:
 - a. Controlling Shareholders in 2 (two) Banks, each of which carries out business activities with different principles, namely conventionally and based on Sharia Principles; and
 - b. Controlling Shareholder in 2 (two) banks, one of which is a Joint Venture Bank.
2. Settings regarding options or choices taken in structure adjustments.

Merger or Consolidation

 - 1) According to Article 4 paragraph (1), banks that choose to carry out a merger or consolidation as intended in Article 3 paragraph (2) letter a are given incentives in the form of: a) Temporary easing of the fulfillment of the Minimum Statutory Reserve (GWM); b) Extension of the settlement period for exceeding the Maximum Credit Limit (BMPK); c) Ease of opening branch offices; and/or d) Temporary easing of the implementation of Good Corporate Governance (GCG).
 - 2) According to Article 4 paragraph (2), the procedures for providing incentives as intended in Article 4 paragraph (1) refer to Bank Indonesia regulations governing incentives in the context of banking consolidation.

In its development, regulations or arrangements regarding Sole Ownership in Banking experienced a shift along with the transfer of functions, duties and authority for the regulation and supervision of financial services in the banking sector from Bank Indonesia to the Financial Services Authority. This is confirmed by the provisions of Article 18 of the Financial Services Authority Regulation (POJK) Number 39/POJK.03/2017 Sole Ownership in Indonesian Banking which reads:

"When this Financial Services Authority Regulation comes into force, Bank Indonesia Regulation Number 14/24/PBI/2012 concerning Sole Ownership in Indonesian Banking (State Gazette of the Republic of Indonesia of 2012 Number 284, Supplement to the State Gazette of the Republic of Indonesia Number 5382), is revoked and declared not applicable."

Referring to the sound of this Article, it can be seen that the regulatory function of Bank Indonesia regarding Sole Ownership in Banking in Indonesia has shifted to a function controlled by the Financial Services Authority, marked by the birth of Financial Services Authority Regulation 39/POJK.03/2017 (POJK) Regarding Sole Ownership Numbers in Indonesian Banking which revokes the enactment of Bank Indonesia Regulation Number 14/24/PBI/2012 concerning Sole Ownership in Indonesian Banking.

The role of sole ownership policy in banking in Indonesia

The Single Presence Policy or what is usually called sole ownership is contained in Bank Indonesia Regulation Number 14/24/PBI/2012 concerning Sole Ownership in Indonesian Banking on December 26 2012, which initially took effect in October 2006 through a Bank Indonesia Regulation Number 8/16/PBI/2006 concerning Sole Ownership in Indonesian Banking is a policy that regulates that each party can only be a controlling shareholder (PSP) in one bank in Indonesia.

The Single Presence Policy or sole banking ownership policy first appeared with the issuance of Bank Indonesia Regulation Number 8/16/PBI/2006 concerning Sole Ownership in Indonesian banking with a term determined by Bank Indonesia which states that the deadline for structural adjustments for the parties referred to by This policy was in 2010. Then two years after the deadline given by Bank Indonesia, Bank Indonesia again issued a new Single Presence Policy in 2012 replacing the old regulation, namely Bank Indonesia Regulation Number 14/24/PBI/2012 concerning Ownership Sole in Indonesian Banking.

State-owned banks or state-owned banks are parties affected by the Single Presence Policy as a result of government ownership of 4 state-owned banks in Indonesia. Implementation of the Single Presence Policy policy in government-owned banks begins with the formation of concepts and plans carried out by various parties to comply with the Single Presence Policy policy. In the old Single Presence Policy period, namely from 2006 to 2010, all private commercial bank owners were bound by the Single Presence Policy policy. This can be seen from the occurrence of several major events in the form of the sale of most of the shares of Bank International Indonesia by Temasek Holdings from Singapore to Maybank owned by Malaysia due to Temasek Holdings' ownership of more than

one bank, namely Bank BII and Bank Danamon, the merger between Bank Niaga and Bank Lippo due to the same ownership by Malaysia's Khazanah of the two banks, the merger of UOB Buana and Bank Indonesia banks also due to the same ownership, and so on.

After the implementation of the Single Presence Policy policy, National banking made many structural adjustments and changes to fulfill the obligations of the Single Presence Policy policy, especially for banks subject to Bank Indonesia regulations. Fulfillment of obligations at non-BUMN Commercial Banks was quite good because the controlling parties in the of one bank has made structural adjustments. Fulfilling the obligations of BUMN Bank in the Single Presence Policy policy did not go well, at the end of the deadline given by Bank Indonesia, BUMN Bank created a Virtual Holding concept where this concept was not an option for structural adjustments according to Bank Indonesia Regulations so it could be said that the formation of the holding function was unfounded.

However, after the issuance of the new Bank Indonesia Regulation in 2012 which regulates sole ownership of banks, the steps taken by state-owned banks in the form of establishing Virtual Holding have been accommodated in the Bank Indonesia Regulation, however, the issuance of the new Bank Indonesia regulation does not eliminate the existing legal fact that State-owned banks cannot implement the provisions of the Single Presence Policy perfectly. After the issuance of the new regulations, state-owned banks began implementing and taking concrete steps to create a Bank Holding Company (BHC). This incident proves that the formation of a holding company in the banking sector is indeed necessary for state-owned banks in accordance with what has been regulated in Bank Indonesia regulations since 2006. The steps taken by state-owned banks in fulfilling the obligations of the sole bank ownership policy are considered not to reflect justice and legal certainty in legal science. This proves that on the one hand, the authorities, namely Bank Indonesia, are in a hurry in making policies and do not take into account the capabilities and readiness of the regulated parties and on the other hand, state-owned banks do not show readiness or can be said to be not ready to fulfill the sole ownership obligations regulated by Bank Indonesia.

DISCUSSION

Single Presence Policy is regulated through Bank Indonesia Regulation Number 14/24/PBI/2012 concerning Sole Ownership in Indonesian Banking. In principle, the sole ownership policy in Indonesian banking applies to share ownership in Commercial Banks, excluding foreign bank branches, by Controlling Shareholders acquired after the enactment of the provisions of Bank Indonesia Regulation Number 14/24/PBI/2012 concerning Sole Ownership in Indonesian Banking. However, to support the achievement of the objectives of this policy, Controlling Shareholders (PSP) of Commercial Banks who have controlled more than one Commercial Bank at the time the provisions of Bank Indonesia Regulation Number 14/24/PBI/2012 come into force are required to adjust their share ownership structure. on the Commercial Banks it controls.

The implementation of the sole ownership policy in the banking world in Indonesia is also regulated in Bank Indonesia Circular Letter Number 15/2/DPNP concerning Sole Ownership in Indonesian Banking.

Sole Ownership is a condition where a party can only be the controlling shareholder in 1 (one) Bank. Controlling Shareholders, hereinafter abbreviated as PSP, are legal entities, individuals, business groups that:

- a. owns shares in a company or bank amounting to 25% (twenty five percent) or more of the number of shares issued and has voting rights; or
- b. owns shares in a company or bank of less than 25% (twenty five percent) of the total shares issued and has voting rights but the person concerned can be proven to have exercised control over the company or bank, either directly or indirectly.

Holding Company in the Banking Sector (Bank Holding Company), hereinafter abbreviated as BHC, is a legal entity formed and/or owned by PSP to consolidate and directly control all activities of the Bank which is its subsidiary. BHC can stand alone as 1 (one) legal entity or in the form of a financial holding company that consolidates financial institutions owned by PSP. The Holding Function is a function that is owned by a PSP in the form of a Bank incorporated as an Indonesian legal entity or a Central Government agency to consolidate and directly control all of its company's Bank activities. In Indonesia, the term Universal Banking is not known as a bank that carries out Commercial Banking business activities and carries out Investment Banking activities through its subsidiaries (business groups).

Based on POJK Number 39/POJK.03/2017, the Financial Services Authority has the following roles:

- a) carry out a fit and proper test of prospective members of the board of directors and prospective members of the board of commissioners of BHC in accordance with the provisions of the Financial Services Authority which regulates fit and proper tests.
- b) regulate and supervise the BHC and the Holding Function as an inseparable part of the Bank's regulatory and supervisory duties.
- c) can carry out inspections of the BHC and Holding Function either periodically or at any time if necessary.

Based on POJK Number 39/POJK.03/2017, several things are regulated that must be done by the Controlling Shareholder (PSP) in consolidating and directly controlling all activities of the Bank which is its subsidiary. The following are matters regulated in the POJK concerning Sole Ownership in Indonesian Banking, including Article 2 POJK Number 39/POJK.03/2017 which states that each party can only become a PSP in 1 (one) Bank.

There are exceptions to this, namely for:

- a. PSP at 2 (two) banks, each of which carries out business activities with different principles, namely conventionally and based on sharia principles; And
- b. PSP at 2 (two) banks, one of which is a joint venture bank.

In the event that a party that becomes a PSP purchases shares of another Bank so that it becomes a PSP at more than 1 (one) Bank, and because each party can only become a PSP at 1 (one) bank, then the party concerned is obliged to fulfill the provisions as intended in Article 2 paragraph (1), which is carried out in the manner as regulated in Article 3, among others:

- a) carry out a merger or consolidation of controlled Banks;
- b) forming BHC;
- c) form a Holding Function

CONCLUSIONS AND RECOMMENDATIONS

The single presence policy in banking in Indonesia is one of the methods used to realize banking consolidation, which is one of the prerequisites for realizing a healthy and strong Indonesian banking structure. The Sole Ownership Policy in Indonesia is regulated in Financial Services Authority Regulation Number 39/POJK.03/2017 concerning Sole Ownership in Indonesian Banking which revokes the enactment of Bank Indonesia Regulation Number 14/24/PBI/2012 concerning Sole Ownership in Indonesian Banking, where in the POJK determine the provisions and mechanisms that need to be followed by PSP and Banks in the formation of a Bank Holding Company (BHC) and the Implementation of Holding Functions.

The implementation of the sole ownership policy in banking in Indonesia is carried out by:

1. Merger or consolidation of controlled Banks
2. Form a Holding Company in the Banking Sector (Bank Holding Company/BHC)
3. Establish a Holding Function.

Until now, the implementation of the single ownership policy in the banking world in Indonesia is considered to be less than optimal in its implementation. There is a need for commitment and commitment to be able to fulfill the provisions of sole ownership of the bank so that all parties can fulfill the obligations of these provisions in accordance with the options and methods determined by the authorities so that they can reflect legal certainty and justice for all parties. Also, there is a need for a thorough assessment and study to be carried out by Bank Indonesia before issuing a policy regarding the capabilities and readiness of the parties regulated in the policy so that all parties are able to fully fulfill these obligations, the targets to be achieved.

ADVANCED RESEARCH

This research is limited to examining how the sole ownership policy in the banking world in Indonesia is regulated in applicable laws and regulations as well as the implementation of the sole ownership policy itself in the banking world in Indonesia.

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