

Authority of Indonesia Investment Authority (INA) in Optimizing SOE Assets in Indonesia

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ABSTRACT

National economic development is jointly by various parties. One of them is SOE which has assets that support the value and productivity of its business. However, most of these assets become idle/unproductive and even add to the financial burden on SOEs. After enacting the Law on Cipta Kerja, the Indonesia Investment Authority (INA) was present, intended to increase and optimize the value of government assets, one of which was SOE assets. This research was conducted using a legal method juridical-normative through literature study. The results showed that the legal status of the Investment Management Institution is legally formal as the public legal entity. The authority of Indonesia Investment Authority in optimizing SOE assets is one of the functions and tasks are given by the process of income for these assets that the institution with capital participation can own. And the transfer of assets. However, the authority to manage SOE assets is owned by INA and is the responsibility of each SOE.

Keywords: *Asset Optimization, Indonesia Investment Authority, SOE.*

1. INTRODUCTION

The state, which in its implementation is represented by the government on the mandate of the people, continues to strive to advance economic development in the context of general welfare based on economic democracy. To realize this, it is the mandate in Article 33 paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia that (1) The economy is structured as the joint effort based on the principle of kinship. (2) Production branches that are very important to the state and affect the people's livelihood are controlled by the state. One of the business actors that organizes the national economy in realizing the community's welfare is a State-Owned Enterprise (SOE).

State Owned Enterprises (SOEs) themselves derive two different goals for the companies they own. For example, a Limited Liability Company (Persero) aims to pursue profit (profit), and a Public Company (Perum) aims for public benefit but still seeks profit. Each SOE has assets (both tangible and intangible) that are owned and used in carrying out the productivity of their respective work achievements. Over time, many SOEs cannot optimize their assets to become "idle assets" and may not even become a financing burden in their operations and worsen the company's management. The total assets of SOEs in December 2020, which amounted

to Rp. 8,400 trillion were greater than assets owned by the government, and the total revenues of SOEs were Rp. 2,400 trillion. Thus, the company's burden also increases. *The Asian Development Bank* (ADB) noted that the profitability of SOEs in terms of *return on assets* (ROA) and *return on equity* (ROE) has continued to decline since 2012. To note, ROA refers to the ratio of net income to the total assets, while ROE is about the ratio of income net compared to the equity. Justifying in the attachment to the general explanation of the Regulation of the Minister of State-Owned Enterprises Number: PER-13/MBU/09/2014, some of the fixed assets owned by SOEs are less productive and have not been utilized because of the low ROA of some SOEs.

There are assets of substantial value. However, with bad corporate governance, the company loses money and must be restructured (restored) or utilized assets not to impact state losses. So, in order to be able to manage SOE assets *idle* and to create a good climate in today's business world and to realize people's welfare, the government based on Law Number 11 Year 2020 concerning Job Creation Article 159 CHAPTER X Central Government Investment and Ease of Strategic Projects Nationally stipulates the presence of a new institution, namely the Indonesia Investment Authority (INA), which in the same rules refers to Article 165

number (2) that the establishment of Indonesia Investment.

Authority appears to optimize the value of assets and to support sustainable development. One of the assets in question can come from SOE assets, if it refers to Government Regulation of Indonesia Number 74 in 2020 with regard to Indonesia Investment Authority.

Based on the regulation known as the *omnibus law*, this study will analyze the legal, institutional, and authority status of the Indonesia Investment Authority (INA) in optimizing SOE assets in Indonesia. The formulation of the problem that can be discussed in this study is What is the Authority of the Indonesia Investment Authority (INA) in Optimizing SOE Assets in Indonesia?

2. METHOD

The research method used in this research is law juridical-normative, with library materials that include primary legal materials, that is, the 1945 Constitution, Law of Republic of Indonesia Number 19 in 2003 with regard to State-Owned Enterprises, Law No. 11 in 2020 concerning Job Creation, Government Regulation of Indonesia Number 74 in 2020 regarding Indonesia Investment Authority, Regulation of the Minister of State-Owned Enterprises of Indonesia Number PER-03/MBU/03/2021 with regard to the Third Amendment to Regulation of the Minister of State-Owned Enterprises Number PER -02/MBU/2010 concerning Procedures for Write-off and Transfer of Fixed Assets of State-Owned Enterprises. Secondary legal materials refers to previous legal studies, legal books, scientific journals, and other legal materials, and finally, tertiary legal materials are Indonesian dictionary and encyclopedia.

3. RESULT AND DISCUSSION

3.1 Authority of Indonesia Investment Authority (INA) in Optimizing SOE Assets in Indonesia

3.1.1 Legal Status of Indonesia Investment Authority (INA)

In terms of terminology, according to *the Big Indonesian Dictionary* (KBBI), the word *status* means a state or position (person, body, etcetera.) in relation to the surrounding community; condition or position of a person or thing in the eyes of the law. So, it can be said that the legal status here is a position where the body or institution is related to the existing law.

Indonesia Investment Authority, hereinafter abbreviated as INA, are institutions that are given special authority (*sui geneis creation*) in organizing Central Government Investments as in Law Number 11 in 2020 concerning Job. Where the legal standing of this institution can be traced in Employment Creation Law

(*omnibus law*) Chapter X Central Government Investment and Ease of National Strategic Projects through 1). Article 154 number 1 stipulates that Central Government Investment is carried out in the context of increasing investment and strengthening the economy to support strategic policies for job creation. 2) Article 154 number 3 which stipulates that Central Government Investment is carried out by one of the institutions given special authority (*sui generis*) in the framework of investment management, hereinafter referred to as the institution. 3) Article 156 states that the institution in this respect is Indonesian legal entity owned by the government and has the right to the President. The establishment of the institution and organization is based on Article 165 to Article 169.

Even in establishing the institution, it can be sourced from state assets, assets of state-owned enterprises, and/or other legal sources. Of course, institutional capital is obtained from the state through equity participation and/or other sources. The initial capital of the institution is obtained from:

- a. Cash fund;
- b. State property;
- c. State receivables from state owned company or limited liability companies; and/or
- d. State owned shares in state owned company or limited responsibility companies. Back to the search related to the status of Indonesia Investment Authority. It was found that the stipulation given to this institution is a "legal entity" in which the legal entity will give birth to the rights and obligations of the authority it has. The definition of a legal entity itself can be taken from several expert opinions, namely:
 1. In the legal subject itself, it is not only humans themselves who have a relationship with the law. There are also bodies, foundations, associations, and associations of people who do it. The issue of INA's authority will be discussed in the subsequent discussion separately.
 2. Regarding representation in court, INA is given authority to the Board of Directors based on Article 30 number 2 letter (f) PP No. 74 of 2020.
 3. Legal entity is about the rights and obligations of its members jointly and, there are joint assets that cannot be separated.

According to Retnowulan Sutantio, a legal entity itself can be formed by circumstances such as:

1. Based on a concession system or ratification, an institution will obtain a position or status as a legal entity because it is legalized by an agency appointed by specific laws and regulations.
2. Based on the law, according to this system, the law has determined for itself that the institution

mentioned in the law in question is a legal entity.

3. Based on a hybrid system, according to this system, the status of a legal entity is obtained because the law itself determines it and after approval from the authorized agency.
4. Based on jurisprudence (judge's decision), where the legal entity status of an institution is based on jurisprudence.

Even in another view, a legal entity can be based on statutory provisions (which does not only refer to the law but also below or above the law by the hierarchy of laws and regulations), customary law (looking at the elements forming a legal entity such as the separation of wealth, the appointment of a particular goal and a specific organization) and doctrinal views (see the views of experts).

Legal entities themselves are divided into 2 (two) categories, namely:

- a. A public legal entity (*Publiek Rechts Person*) whose nature is as an element of public interest handled by the state.
- b. Private legal entities (*privaat Rechts persoon*) refers to the elements of individual interests in private legal of entities.

Furthermore, public legal entities themselves are divided into 2 (two) types, namely:

- a. The law firm that has territorial, a legal entity, in general, should pay attention to or effectuate the purposes of those who live in the area or region.
- b. A legal entity with no territory is formed by the authorities only for specific purposes.

In relation to the statements above, it can be said that the Indonesia Investment Authority (INA) itself is a public legal entity that has no territory, and its formation comes from the Act. *First, it is* said to be a public legal entity by statutory regulations because in Article 156 number (2) Chapter X Central Government Investment and Ease of National Strategic Projects Law Number 11 of 2020 concerning Job Creation and Article 2 number (1) of Government Regulation of the Republic of Indonesia Number 74 of 2020 concerning Indonesia Investment Authority clearly states the nomenclature even though it is an Indonesian legal entity in full. This resulted in forming an Investment Management Institution as a legal entity because it was derived from the existing regulations. *Second*, when referring to the definition of a public legal entity that does not have territory, this Indonesia Investment Authority can be related to the purpose and form of the legal entity found. 1) The purpose of establishing INA is motivated by a need by the government in managing investment, namely, central government investment which aims to “public interest” such as creating jobs, obtaining economic benefits, social benefits, contributing to the

development of the national economy, obtaining profits for revenue. The state and its administration for the public benefit and 2) the institutional form provided is an institution that uses state assets in its formation and implementation. The basis for this can be found in the Government Regulation of the Republic of Indonesia Number 73 of 2020 concerning Initial Capital for Indonesia Investment Authority which in the preamble said that to support operational activities and investment activities of Indonesia Investment Authority, it is necessary to provide initial capital to Indonesia Investment Authority sourced from the Revenue and Expenditure Budget. State for the Fiscal Year 2020. The arrangement for the presence of this Management Institution is then regulated in the form of Government Regulation of the Republic of Indonesia Number 74 in 2020 concerning Indonesia Investment Authority based on Article 171 point (3) Chapter X Central Government Investment and Ease of National Strategic Projects Law Number 11 the Year 2020 with regard to Job Creation which stipulates “Further provisions about Indonesia Investment Authority are organized in the Government Regulation”. The last paragraph has fulfilled one of the principles forming legislation, namely the institutional principle.

3.2 Authority of Indonesia Investment Authority for Optimizing SOE Assets

In the Big Indonesian Dictionary, Authority comes from authority, which means 1) authority and 2) the right and power to do something. Authority is as the power owned by the attachment of rights and obligations.

In carrying out its role, the Investment Management Institution (INA) has its authority, regulated by the government regulations that formed it. The powers granted include:

- a. Place funds in financial instruments;
- b. Carry out asset management activities;
- c. Cooperate with other parties, including fund entities *trust*;
- d. Determine potential investment partners;
- e. Provide and receive loans; and/or f. administer assets.

Furthermore, Article 7 number (2) states that authority, as paragraph (1), INA may cooperate with Investment partners, Investment Managers, SOE, government agencies or institutions, and/or other entities both domestically and abroad. While in Article 159 Chapter X Central Government Investment and Ease National Strategic Project Law Number 11 in 2020 with regard to Job Creation, INA itself has the authority (1) to increase asset value, the institution can manage assets through cooperation with third parties, and (2) Cooperation with third parties as referred to in paragraph (1) conducted by the Institute through a. the power of governance; b. the establishment of a joint venture; or c. other forms of cooperation.

In exercising authority which is still said to be in the form of rights above the word "assets" as in related rules, one of which is assets belonging to state-owned enterprises (SOE) with the process of earning these assets into institutional assets as the result of the process of capital participation. State-owned enterprises. The assets refers to fixed assets, like tangible assets used in the operation of SOEs that does not intend to be sold in the context of normal company activities and have a useful life of more than one year. First, the transfer of assets does not include assets: a. management of production branches that are important and affect the livelihood of many people; and/or b. management of the earth, water, and natural resources contained therein. This is match with the mandate given by the 1945 Constitution of Indonesia in Article 33. SOE assets can be transferred into INA assets by: a. buy and sell; or b. another legal way where both are done commercially, and INA gets the right of preference while still prioritizing the principle of fairness through a fair price assessment of assets, and the joint venture company has the same transfer process. The transfer is an act of transferring the Fixed Assets of a SOE that transfers ownership rights to the said Fixed Assets to another party. Even in the regulation of the Minister of SOEs Number PER — 02/MBU/2010, the method of transferring assets is not only through buying and selling, but there is also an exchange, compensation, and fixed assets as the capital participation. The explanation of each method is below:

1. Sales refers to any act of transferring by accepting payment in the form of money. Transfer can be done if it meets one of the requirements and carried out as long as it gives better impact for SOE as follows:
 - a. Technically and/or economically, it is no longer profitable for SOE if the existence is kept;
 - b. Technically and/or economically, some alternatives or substitutes are more profitable for SOEs;
 - c. Allotment for the Public Interest by the provisions of laws and regulations and RUTR/RUTRWK that the provisions of laws and regulations have ratified;
 - d. Required by the ministry or State/Government Institution in the context of carrying out the duties and functions of the state or government;
 - e. Part of the restructuring and restructuring program for SOEs;
 - f. Required by Indonesia Investment Authority established under Law Number 11 of 2020 concerning Job Creation, either directly or indirectly to Joint Ventures established by Indonesia Investment Authority as regulated in Government Regulation Number 74 of 2020 concerning Indonesia Investment Authority; or
 - g. Alternative source of funding for SOEs of very urgent needs.
2. Exchange is about any act of transferring by accepting the primary/principal replacement of goods, by being

carried out in the conditions that become the most profitable alternative for SOE.

3. Indemnity means any act of transferring by receiving a replacement of money and/or goods. Compensation can only be created for the Transfer of Fixed Assets in the Public Interest.
4. Other methods are carried out with conditional provisions, one of which is not to interrupt with operational activities/non-productive Fixed Assets of SOEs, and the implementation of other methods as referred to is carried out after obtaining approval from the GMS/Minister and taking into account the interests of the company.

As for the transfer of assets, INA is given the authority to make direct appointments of asset management due to the transfer of rights belonging to and responsibilities of the institution.

With regard to the equity participation, it has been organized in the Government Regulation of of Indonesia Number 73 in 2020 about Initial Capital. In the current situation of the Covid-19 pandemic, the handling of which cannot be controlled and cases that continue to soar impact the economy and people's prosperity. The government quickly issued this regulation, and even the state budget was directly used in the initial capital to form the INA. This is based on the consideration "that in order to encourage the operational activities and investment activities of the Investment Management Institution, it is necessary to provide initial capital to the Investment Management Institution originating from the State Revenue and Expenditure Budget for Fiscal Year 2020 as redefined in the Changes in Posture and Details of the State Revenue and Expenditure Budget. The fiscal Year 2020. The value of the equity participation is not small, namely Rp. 75,000,000,000.00 (seventy-five trillion rupiahs) with an initial capital of Rp. 15,000,000,000.0000.000.00 (fifteen trillion rupiahs) at the beginning, and the fulfillment of INA's capital after the initial capital deposit is carried out in stages until 2021.

Preferably, the two government regulations governing the INA must be seen at the current condition of the content in it, especially considering the existence of Law Number 2 in 2020 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2020 concerning Policies State Finances and Financial System Stability for Handling the 2019 CoronaVirus Disease Pandemic and/or In Passing Threats That Endanger the National Economy and/or Financial System Stability become law.

4. CONCLUSION

Based on the analysis above, the conclusions of this research are as follows:

1. Authority of Indonesia Investment Authority (INA) in Optimizing SOE Assets in Indonesia has been formal in the status or even its position as the institution in the form of public legal entity that is liable to the President by basing its formation on Law Number 11 of 2020 concerning Job Creation Chapter X Central Government Investment and Ease of National Strategic Projects. The basis for institutional formation is revealed through the implementing regulations of Government Regulation of the Republic of Indonesia Number 73 of 2020 concerning Initial Capital for Indonesia Investment Authority and Government Regulation of the Republic of Indonesia Number 74 of 2020 concerning Indonesia Investment Authority.
2. The purpose of establishing an Investment Management Institution is motivated by a need by the government in managing investment, namely, central government investment, which aims to "public interest" such as creating employment opportunities, obtaining economic benefits, social benefits, contributing to the development of the national economy, obtaining profits for state revenues and administration for the public benefit. Has the authority to carry out its roles and functions, one of which is to carry out asset management activities. One of these assets refers to assets belonging to SOEs, which now have assets that are not productive/idle and add to the burden on the SOEs themselves. Thus, INA is present as the "optimizer" of these assets. Institutions can own the process of income from these assets with equity participation or asset transfers. However, given the current pandemic conditions that have made the country's economic decline, it is wise that the provisions underlying the formation of the INA can be postponed because the initial capital charged to the APBN is too large. Furthermore, the authority to manage SOE assets does not belong to INA alone but the respective SOEs.

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