

THE IMPORTANCE OF ASSESSMENT IN BUMN RESTRUCTURING

“Always plan ahead, it wasn't training when Noah built the ark” - Richard Cushing.

The COVID-19 outbreak has caused a global health crisis and spread to the economic crisis, the role of State-Owned Enterprises (SOEs) is truly relevant to help improve the Indonesian economy. The government continues to improve the role and capability of SOEs so that they can more quickly overcome the challenges of the country's economic crisis. One effort that can be taken by the government is to restructure SOE. Restructuring efforts can be carried out by way of mergers, consolidations and acquisitions.



SOE Assets

Based on information from the Ministry of SOE's website, as of December 31, 2019, SOE companies totaled 114, SOE subsidiaries numbered 341 and SOE grandchildren totaled 317. By the end of 2018, BUMN's total assets had exceeded Rp8,200 trillion, up 42% from the year 2015 amounting to Rp5,670 trillion. In the same period, total profits reached Rp212 trillion, growing 32.5% from the previous Rp160 trillion. BUMN's contribution to the State Budget (APBN) also jumped 50% in 2018 to Rp454 trillion from Rp303 trillion in 2015.

With such a large amount of assets and the large number of companies making SOEs in Indonesia an extraordinary economic engine, so excellent management is an absolute requirement.

SOE Restructuring

In planning there is a part where one must think about the goals, pros and cons to be gained. Assessment is the process of investigating and analyzing it. Assessment in SOE restructuring is not only required in the applicable laws and regulations but is an essential part of the planning stage.

In the context of this restructuring, as explained in Government Regulation Number 43 of 2005 concerning Mergers, Consolidations, Acquisitions, and Changes in the Form of Legal Entity of a State-Owned Enterprise, the meaning of Merger is a legal act carried out by one or more SOEs to merge with other SOE that have existed and subsequently SOE that merged into shall be terminated. The definition of consolidation is a legal act carried out by two or more SOEs to consolidate by forming a new SOE and each SOE that consolidate becomes terminated. Whereas what is meant by Takeover is a legal act carried out by SOEs to take over

either most or all of the shares of SOEs or limited liability companies which may result in a shift of control over such SOEs or limited liability companies.

This restructuring needs to be planned, carried out and evaluated in a purposeful direction which is to increase efficiency, transparency and professionalism in order to improve SOEs, increase the performance and value of SOEs, provide optimal benefits to the country in the form of dividends and taxes, and produce products and services with quality and competitive prices to consumers.

Flow of Assessment as a basis for Decision Making

In the framework of decision-making to undertake a restructuring step, at least some important things must be considered, such as: design with a long-term vision and perspective of the big picture, the importance of coordination between institutions / ministries, comprehensive assessment, and attention to the interests of stakeholders.

Based on the applicable legal provisions, restructuring actions by Merger, Consolidation and Acquisition of SOEs proposed by the Minister of SOEs to the President must be accompanied by a basis of consideration after joint review with the Minister of Finance. The President's agreement is then formulated in the form of the issuance of a Government Regulation that decides Merger, Consolidation and Acquisition. With the issuance of this Government Regulation, the SOE Minister can carry out further legal steps for SOE Merger, Consolidation and Acquisition.

In the process of reviewing the restructuring plan, the Minister of SOE and the Minister of Finance may include the Technical Minister, that is, the Minister who has the authority to regulate the sector policies where the SOE conducts business activities and / or other ministers and / or leaders of other agencies deemed necessary, and / or uses independent consultants.

Important Aspects of the Overall Assessment

From the point of view of this assessment, it is indeed very important to consider aspects of the benefits to the corporation, namely to improve efficiency, transparency and professionalism in order to improve SOE and increase the performance and value of SOE. From the aspect of the government as the majority shareholder, what is expected is to gain tangible benefits to the state in the form of optimization of dividend and tax revenues.

But in addition to the above, it is also important to examine the implications for minority shareholders and the SOE employees concerned. Restructuring is certainly expected to create prosperity for SOE employees, especially in the current pandemic, restructuring options that cause termination of employment relationships need to be avoided.

The restructuring must also pay attention to the principles of fair business competition and the principles of community interests and the interests of creditors so that their implementation is not constrained or even causes legal problems in the future. Coordination between technical institutions / ministries is needed to align with sector policies related to SOEs conducting business activities.

There needs to be an understanding between agencies so that the restructuring measures undertaken do not crash into applicable sectoral provisions or policies. Looking at the things mentioned above, this is the role of independent consultants, both business / financial, technical and legal consultants in supporting the implementation of targeted and comprehensive assessments so that the objectives of SOE restructuring can be achieved.

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