

## The Existence of Maslahah in the Establishment and Holding of State Owned Enterprises In Indonesia

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### ABSTRACT

*The holding of State Owned Enterprises (SOEs) policy in Indonesia tends to improve efficiency and competitiveness. Nevertheless, it is necessary to measure whether or not the policy provides prosperity for the people. This Research aims to measure the mashlahah in the policy based on Islamic perspective. Using the qualitative method, normative approach and literature study method, this research concludes that although there is Mashlahah in the formation of SOEs or holding of SOEs on the basis of Mashlahah Mursalah, the welfare of the community has not been evenly distributed and not yet optimally realized.*

**Keywords:** Mashlahah, Holding, State Owned Enterprises (SOEs).

### INTRODUCTION:

Efforts to form holding of State Owned Enterprises (SOEs) by the Indonesian government become more real. This is indicated by the approval of President Joko Widodo on the proposal of the Minister of State-Owned Enterprises (SOEs) related to the establishment of six sectors-based holding, namely mining, oil and gas, housing, toll roads, financial services and food. (<http://katadata.co.id>) Although the effort is not a very new policy, because there is already a holding of state-owned companies that have been formed, one of the existing holding of SOEs is PT Pupuk Indonesia Holding Company. ([www.pupuk-indonesia.com](http://www.pupuk-indonesia.com))

Holding of SOEs policy is a vital policy and needs to get special attention considering the essence and impact of the formation itself that can affect the livelihood of the people, especially when looking at the characteristic of SOEs actually it is created by the government as a "revenue generating unit" either for economic improvement of the country's economy or the welfare of the community.

Therefore, it seems that the formation of holding of SOEs is a vital policy that needs to be examined whether or not it brings a positive impact on the Indonesian people rather than other interest, because the government should not only impose the agenda of interest which in fact is a certain political order considering that the power according to Ibn Khaldun is a domination to rule based on violence. (Huda, 2014) Because of welfare state, the government should be able to create prosperity through the establishment of holding of SOEs.<sup>1</sup>

Islam teaches that prosperity is the pleasure in which God has prepared it for mankind, therefore prosperity should be achieved. Allah said in the Quran Surah Hud verse 6 which means: "And there is no creature on earth but that upon Allah is its provision, and He knows its place of dwelling and place of storage. All is in a clear register". Allah also said in Surah Ar Ra'd verse 11 that means "For each one are successive [angels] before and behind him who protect him by the decree of Allah. Indeed, Allah will not change the condition of a people until they change what is in themselves. And when Allah intends for a people ill, there is no repelling it. And there is not for them besides Him any patron". These two verses indirectly imply that prosperity has been

<sup>1</sup>In the Preamble of 1945 Indonesia Constitution, it states that one of the Indonesia State objectives is to create and provide the prosperity to the whole Indonesia People.

guaranteed by God's existence but no guarantee of the prosperity is given without effort. (Sodiq, 2015)  
This paper aims at examining the extent to which the policy of the State-Owned Holding plan by the Indonesian government can have an impact on the prosperity of the Indonesian people in terms of the relevant concepts in Islamic law. This is important to do and to strengthen *hubbul waton* (patriotism) and obedience to the leader. In addition, the Government of Indonesia acknowledges the existence of the Islamic law particularly in terms of the relationship between state and religion. Therefore, it is aimed to support the incorporation of Islamic values based on Syariah in constitutional process including in the policy making process. (Kumkelo, Luth, Ruba'i, & Ibrahim, 2015)

## LITERATUR REVIEW:

### Definition of Holding Company:

What needs to be understood in advance in the discussion of the *mashlahah* measurement, in the plan of holding a state-owned enterprise and in the perspective of Islamic law is to briefly identify the meaning and scope of the holding company. The concept of holding company emerges within the scope of corporate law, especially in the form of group companies, however, it is essentially devoid of clear rules because the main legal basis of corporate law, the Law on Limited Liability Companies, does not clearly govern the provisions of the holding company.

It is, therefore, necessary to know what is the meaning of a group company is. Many expert opinions restrict group companies. According to Christianto Wibisono, 'group company' is a form of business created from the process of merging or forming a group of two or more companies with a diversity of business focus. (Sulistiawaty, 2008) While according to S.M. Bartman, 'group company' is described as an arrangement of various companies that are legally stand-alone under a central leadership and are economically organized into a single entity. Meanwhile, (Simanjuntak, 1994) argues that group companies are a composite or composition of corporations that are legally independently, which illustrates the existence of close attachments and interconnections between one and another so that it can form an economic unity and it is subject to a leadership in which the parent company is considered as a central leader.

From several definitions of group companies mentioned above, it can be found the understanding that the term holding company or in the Indonesian language called the parent company appears in the context of group companies. Thus, a holding company (Parent Company) can be understood as a company that aims to own shares in one or more other companies and/or regulate one or more other companies to create an economic unity. This understanding is in line with the following explanation.

The Parent Company generally has many subsidiaries with diverse business fields. (Fuady, 1999) According to (Daniri, 2017), a holding company is a company that aims to own shares in one or more other companies and or manage one or more other companies. (<https://home.kpmg.com>) In the field of practice in several other countries, the holding company has at least two types: first, non-operational holding company or having no business activities but having lots of equity participation in other companies; second, operational holding company or owning a business activity and owning shares in another company.

In general, it can be said that the formation of holding companies has the same motives as the formation of group companies. According to Sulistyowati, the existence of group companies has been formed with the basis of strategic motives in addressing the needs of large-scale external business to support growth through integration and diversification. (Sulistyowati, 2010) Thus, it can be understood that the motive of the formation of Holding Company was more emphasized on economic reasons. It also illustrates the government's policy in encouraging the formation of group companies where the basic considerations of the formation of group companies, especially among the "red plate" (SOEs) companies are synergies in the context of economic integration and increase efficiency and competitiveness.<sup>2</sup>

It seems that the holding of SOEs practice is not a new breakthrough policy. Perhaps, the Government of Indonesia wants to make the same effort that has been practiced by the Chinese government in managing and developing its SOEs to be competitive. (Sang-Hun, 2017) China also runs a holding of SOEs pattern, which set that SOEs typically take the form of vertically integrated corporate groups, with each corporate group having a holding company known as the "core" company overlooking it. Below the core companies are many subsidiaries, including listed companies, finance companies, research institutes, and other entities. One of the examples of its holding of SOEs is ZTE Corporation, China's second largest telecommunications equipment

<sup>2</sup>See Article 2 Paragraph (4), Regulation of the Minister of SOE Number 15 / MBU / 2012 concerning Amendment to the Regulation of the Minister of State-Owned Enterprises No. 05 / MBU / 2008 concerning General Guidelines on the Implementation of State-Owned Goods and Services.

manufacturer. (Sappideen, 2017)

### State Owned Enterprises Meaning:

Broadly speaking, it is also necessary to describe the explanation of SOEs (State Owned Enterprises) for discussion on this paper in accordance with its focus. The emergence of SOEs is indirectly influenced by Article 33 paragraph (2) of the 1945 Indonesian Constitution where the state has the constitutional duty to control all sources of economic power such as branches of important production that intersect with the livelihood of the people of Indonesia. (Sipayung, et al. 2013) When referring to Article 1 point 1 of Act No. 19 of 2013 on State-Owned Enterprises, it is known that SOEs (BUMN) is a business entity wholly or partly owned by the State through direct participation derived from separated State property.

SOEs are formed with the aim of at least two objectives: the first is to contribute to the development of the national economy; second is to carry out public services.<sup>3</sup> The legal basis of SOEs classifies this business entity in two forms: The Company (Persero) and the Public Corporation (Perum). Currently, based on data from the website of the ministry of SOEs, there are 119 SOEs in Indonesia. But when referring to strategic plan data of Indonesia SOEs Ministry 2015-2019, the number of SOEs in Indonesia as much as 118. (<http://bumn.go.id>, 2017)

Thus, it can be understood that the formation of SOEs is also basically motivated by economic interests. The state creates a business unit through a state-owned enterprise to gain an economic advantage which will ultimately support the creation of community welfare.

However, it seems that the existence of SOEs has been seen not always in positive perspectives. It has also the drawbacks which make the SOEs become unconscious in terms of achieving the main objective of community welfare. Some scholars reveal that at least there are three major problems experienced by the SOEs in Indonesia, namely: the issue of political interference or agency issues, the matter of transparency and the problem of conflicting objectives. (Kamal, 2010)

The issue of agency is seen as the major problem of SOEs not only in Indonesia but also worldwide it is becoming a problem due to incompatibility between the interests of the agent and the public interest as the true owner. The agents usually mean the politicians or bureaucrats. For example, the agents push the SOEs to run its business activities without profit achievement target in their electoral district to be re-elected in the next election. Moreover, the agents are not carrying out their duties properly and totally when they do not benefit directly from SOEs. (Kamal, 2010)

The absence of transparency is also considered as a vital matter for SOEs because they do not reveal the information to the public as the valid owner of SOEs. This problem is deemed to cause the lack of social control and the inefficiencies in the SOEs. Another problem is conflicting objectives which means that there is a clash of responsibilities between realizing public servants and seeking business profits. SOEs not only in settings to target business profits, but also to create public services as their objectives like serving public interests, providing jobs and providing basic necessities. Accordingly, this situation can make SOEs lose in the face of business competition in national and global scope. (Kamal, 2010)

### The Concept of *Mashlahah*:

SOEs and *Mashlahah* can be brought together because of the link of both objectives. As it has been explained above that one of the top aims of state owned enterprises is to provide the prosperity to the Indonesia citizen. This is literally associated with the meaning of *Mashlahah* which is generally to benefit people. Moreover, the concept of *Mashlahah*, indeed can be measured by several parameters. Therefore, in this matter, it tends that the parameters in *Mashlahah* would be suited when they are applied to examine the achievement of prosperity in the establishing holding of SOEs.

The word *Mashlahah* is derived from the Arabic language that is then defined by al-Ghazali as an effort to realize goodness or bring benefits and avoid destruction. (Al-Ghazali, 1997) In addition, in the encyclopedia of Islamic law, it is explained that the word *Mashlahah* is defined as benefits or actions that bring benefits to humans. (Dahlan, 2001) Therefore, *Mashlahah* is actually the output of the realization of the goal of the *syara'* (*Maqasid al-Shari'ah*) by maintaining religion, soul, intellect, descent and wealth. (Rohman, 2010) Implementing the protection of religion, soul, mind, ancestry and property means guaranteeing the public interest. (Chapra, 2001) The use of *maslahah* as an independent legal source has been advocated by many contemporary jurists and reformists such as Muhammad Abduh, Rashid Rida, Ibn 'Ashur and Muhammad Sa'id Ramadan alButi. They support the principle based on the notion that Islamic law was revealed to serve, inter alia, human welfare. (Shaharuddin, 2010)

<sup>3</sup>See Article 2 of The Law No 19 Year 2013 concerning State Owned Enterprises.

Basically, the concept of *Mashlahah* is explained directly and indirectly in the Qur'an in relation to the scope of economic problems. In the Qur'an Surah Al-Nahl verse 97,<sup>4</sup> *Mashlahah* is described as a good life with the parameters of happy, relaxed, and satisfied with *halal* sustenance, which includes all forms of tranquility and any other kind of form. (Salim & Said, 1988) Moreover, *Mashlahah* is also described as a form of assurance of the availability of food, clothing and shelter (Salim & Said, 1988) in the Qur'an Surat Thaha verse (117-119)<sup>5</sup>. Whereas the Qur'an Surah Al-A'raf verse (10)<sup>6</sup> explains that the embodiment of *Mashlahah* is described in the form of earth as a place to live, a place to meet the necessities of life, to control the land, its crops, its animals, and its mines. (Bahreisy & dan Said Bahreisy, 1988)

The scholars agree that *Mashlahah* can be categorized based on hierarchical level, namely: the first is at the primary level (*ad-dharuriyah*) in which *Mashlahah* intersect with the basic human needs and includes keeping religion, soul, intellect, descent and wealth; the second is at the secondary level (*al-hajiyah*) means that *Mashlahah* is needed in order to perfect the primary *Mashlahah* in the form of relief (*rukhsah*) to preserve and maintain human basic needs; the third is the tertiary level (*at-tahsiniyah*) which means that *Mashlahah* is associated with the things that deserve from good habits of life that includes noble character. (As-Syatibi, 2003). In addition, *Mashlahah* can also be classified based on the changing nature of *Mashlahah*, namely: first, *Mashlahah tsabitah* is that does not change throughout the ages such as obligations of worship that includes prayers, fasting, zakat, and hajj. Second, *Mashlahah mutaghayyirah*, which does not keep adjusting the changing of time, place, and subject of law. A good illustration of this *Mashlahah* generally occurs in *muamalah* and custom matters. (Dahlan, 2001)

If it refers to the aspect of legality, Mustafa Asy-Syalabi classifies *Mashlahah* into three forms, namely: the first is *Mashlahah* that its legality refers to either the texts of the Qur'an or the Sunnah. (Dahlan, 2001) For example, in the provisions of the Qur'an Surah Al-Baqarah verse (275):

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ  
الشَّيْطَانُ مِنَ الْمَسِّ ذَٰلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ  
الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ  
إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ ﴿٢٧٥﴾

It means: "Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity. That is because they say, "Trade is [just] like interest." But Allah has permitted trade and has forbidden interest. So, whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. But whoever returns to [dealing in interest or usury] - those are the companions of the Fire; they will abide eternally therein."

The above verse explains emphatically that Allah justifies the sale and purchase and forbid usury (*Riba'*) where this provision becomes the legal basis of *Mashlahah* in related activities such as buying and selling, capital development, business run, and borrow lending. (Hariyanto, 2017)(<http://muhsinhar.staff.ums.ac.id>) This *Mashlahah* is also called *mashalahah mu'tabaroh*.

In the context of business activities, if the business contains *Riba'*, *Maisir*, *Gharar* and *Haram*, thus it does not cover *mashlahah*. Even though, if it does not contain the above four elements, it is considered as *mashlahah mu'tabaroh*. Therefore, it emphasizes the absence of the prohibited elements on the basis of texts (Qur'an or Hadist). According to Islamic Law, *Riba'* means unjustified additional payment (vanity), applied among others, in exchange transactions of similar goods that are not the same quality, quantity and time of delivery (*fadhli*) or in a borrowing and lending transaction that requires the debtor to pay the loan more than the amount received over a specific time (*nasi'ah*). Meanwhile, *Maisir*, is considered as a transaction suspended upon an uncertain circumstance and akin to gamble. While *Gharar*, is defined as a transaction upon an object which is unclear,

<sup>4</sup> QS Al-Nahl verse (97) states: "Whoever does righteousness, whether male or female, while he is a believer - We will surely cause him to live a good life, and We will surely give them their reward [in the Hereafter] according to the best of what they used to do."

<sup>5</sup> QS Thaha verse (117-119) states: "So We said, O Adam, indeed this is an enemy to you and to your wife. Then let him not remove you from Paradise so you would suffer. Indeed, it is [promised] for you not to be hungry therein or be unclothed. And indeed, you will not be thirsty therein or be hot from the sun."

<sup>6</sup> QS Al-A'raf verse (10) states: "And We have certainly established you upon the earth and made for you therein ways of livelihood. Little are you grateful."



unknown, unavailable when the transaction is made, unless otherwise stipulated in the Shariah. Whereas *Haram* has a meaning as transactions over objects which are prohibited based on sharia law. (Sudirman, 2017)

Secondly, *Mashlahah* that its legality is rejected by Syara', ie there is a prohibition of syara' on an activity which is judged by humans as a *Mashlahah*. For example, the provisions of the Qur'an Surah An-Nisa verse (161):

وَأَخَذَهُمُ الرِّبَا وَقَدْ نُهُوا عَنْهُ وَأَكْلِهِمْ أَمْوَالَ النَّاسِ بِالْبَاطِلِ وَأَعْتَدْنَا لِلْكَافِرِينَ  
مِنْهُمْ عَذَابًا أَلِيمًا ﴿١٦١﴾

It means: "And [for] their taking of usury while they had been forbidden from it, and their consuming of the people's wealth unjustly. And we have prepared for the disbelievers among them a painful punishment".

The above verse contains the prohibition of usury (*Riba'*), so if any activity that is considered to contain *Mashlahah* but the way of its execution uses the method of *Riba'*, then the application of *Mashlahah* in the activity is not appropriate. This form of *Mashlahah* is also called *Mashlahah mulghah*.

Thirdly, the form of *Mashlahah* that its validity is not regulated in the texts nor is there a nash prohibiting its non-behavior. An example is the establishment of a *Shariah* bank. There is no clear legal basis in the Qur'an or sunnah that legitimize the establishment of *Shariah* banks, on the contrary, the existence of *Shariah* banks is considered not against the syara' because there is no provision of the nash that prohibits it. This form of *Mashlahah* is also called *Mashlahah mursalah*.

In the opinion of Al-Buthi, there are five indicators in measuring something that whether contains *Mashlahah*, (Al-Buthi, 1973) namely: (1) it must be aligned within the scope of as-Syar'i purpose (*Maqasid Syari'ah*), which means not threaten religion, soul, intellect, descent and wealth, or on the other words, *Mashlahah* must protect the objectives of Syari'ah. Notably, in the rights of ownership to a property, syari'ah prohibits the unlawful means of acquisition of assets are through gambling, bribery and fraud; (Shidek, Lotpi, & Ali, 2014) (2) it is not contradictory to the Qur'an, especially in relation to the provisions of the law which are clearly written, for instance: buying and selling is lawful and *riba'* is haram; (3) it is not incompatible with the Sunnah, means that *Mashlahah* must be in line with sunnah in order to secure the benefit and to get rid of evil and corruption; (Shidek, Lotpi, & Ali, 2014) (4) not contrary to Qiyas; and (5) does not violate *Mashlahah* that contains the same level or higher in a hierarchical manner.

In fact, according to Al-Ghazi, to preserve the wealth which is one of the *Maqasid Syari'ah*, has evolved in the sense of meaning. To preserve the wealth is no longer just interpreted literally or traditionally, that is protecting money, nonetheless, preserving the wealth is also understood as social assistance, economic development, wellbeing of society and diminishing the economic gaps within the people in the community. Therefore, the benchmark of *mashlahah* in the context of safeguarding these assets is then a driving force to create economic growth particularly in most countries with most Muslims, like Indonesia. (Auda, 2007)

## METHODOLOGY:

The research imposes the legal approach method and applies descriptive analysis method. The data used in this research consists of two types, namely primary legal sources, such as (Law Number 19, 2013) on state owned enterprises; and secondary legal sources like relevant journal articles, books, newspapers and media online.

## FINDINGS AND DISCUSSION:

### Measuring *Mashlahah* in the reality of SOEs:

To measure the content of *Mashlahah* in the plan of holding a SOEs, it is possible to do a preliminary review on the reality of Indonesia SOEs performance which in this case will be measured based on the profit and the loss. Referring to the media, it was reported that at least 25 SOEs have recorded losses of IDR 3 trillion in the first quarter of 2017. (<http://bisniskeuangan.kompas.com>, 2017) However, according to the minister of SOEs of Republic of Indonesia, the situation above is still seen as a common trend and even the loss is considered smaller when it is compared to the first quarter of 2016 data that have recorded losses of only IDR 3.2 trillion within 27 SOEs. Meanwhile, the total loss suffered by SOEs in 2016 is as much as IDR 5.6 trillion especially from 22 SOEs. (<https://bisnis.tempo.co>, 2017)

However, the performance of SOEs as revenue generating unit seems to show a fluctuating performance cycle. Based on SOE ministry data, the performance of SOEs in the period of 2005-2010 has improved significantly

with the increase of net profit from IDR 26 Trillion in 2005 to IDR 101 Trillion in 2010. (Sipayung, Jhon, Bismar, & Mahmud, 2013) Positive trend in the net income for state-owned companies also occurred in the period of 2014-2016 with a record IDR 159 trillion up to IDR 172 Trillion. (<http://databoks.katadata.co.id>, 2017) Even though, behind the positive trend, it turns out the number of foreign loans by state enterprises (non-Bank) experienced an increasing trend of USD 7 billion in 2010 increased to USD 27 billion in 2016. (<http://databoks.katadata.co.id>)

In addition, the bad record has also been directed at the establishment of holding of Plantation SOE, which is Holding of PT Perkebunan Nusantara III (Persero) in 2014. The performance of this holding in the period of 2016 had experienced the greatest decline in the company's historical record with the increase of forest. (<http://www.suara.com>, 2017)

Despite the fluctuating performance, at least SOEs have recorded fantastic revenues for the state, but it seems that the track record of positive achievement of SOEs has not been directly proportional to the increase and equity of the economic welfare of the Indonesian people. As a proof, it can be seen that Indonesia is still lined up as a country with the fourth highest rank of economic gap in the world. The annual report "Global Wealth Report 2016" from Credit Suisse has stated that Indonesia's economic inequality has reached 49.3 percent. (<http://databoks.katadata.co.id>, 2017) It means that almost half the country's assets are controlled by one percent of the nation's richest group.

Accordingly, the realization of *mashlahah* in the context of the fulfillment of people's economic needs that is influenced by net income from SOEs in Indonesia seems to be not evenly well-distributed yet so far. Therefore, when referring to the indicator of *Mashlahah* as described above, it can be seen that the performance of SOEs has not yet presented *Mashlahah* in total and evenly.

In addition, the synergistic pattern in the economic unity applied to the legitimized holding of SOEs has resulted in the emergence of monopolistic practices and unhealthy competition in which this would be contrary to anti-monopoly laws and unhealthy competition. If it is referred to the views of Islamic teachings, the practice of monopoly by regulation that occurred in the Holding of SOEs tends to be equated with the practice of greed, which is actually prohibited in the Qur'an, as the content of Surah al-An'am verse (165) states the following:

وَهُوَ الَّذِي جَعَلَكُمْ خُلَفَاءَ الْأَرْضِ وَرَفَعَ بَعْضَكُمْ فَوْقَ بَعْضٍ  
دَرَجَاتٍ لِّيَبْلُوَكُمْ فِي مَا آتَاكُمْ إِنَّ رَبَّكَ سَرِيعُ الْعِقَابِ وَإِنَّهُ  
لَغَفُورٌ رَحِيمٌ

It means: "And it is He who has made you successors upon the earth and has raised some of you above others in degrees [of rank] that He may try you through what He has given you. Indeed, your Lord is swift in penalty; but indeed, He is Forgiving and Merciful".

This verse explains that Muslims are encouraged to use various methods to obtain property as long as it does not conflict with the provisions of *syara'* such as: not using a foolish way, not excessive, not tyrannical, does not contain elements of *riba'* and *gharar*. Therefore, the practice of monopoly that causes the emergence of harm to others can be interpreted as an effort to bring property in excessive ways and tyrannize others. Thus, it can be said that it does not contain *Mashlahah* because it is contrary to the command of the Qur'an.

Nevertheless, if it is reviewed from the legality aspect of *Mashlahah* in the formation of SOEs or Holding SOEs – on the basis of the concept of Islamic teachings – it can be seen that the construction of the formation of SOEs or holding SOEs can refer to the contract of *Syirkah Mudharabah*. It means that the establishment of SOEs and or holding SOEs get the legitimacy of *mashlahah* in it. Given the formation of SOEs or holding SOEs can be classified into the form of *Mashlahah Mursalah*, which means that neither texts command nor prohibit its existence.

Although the legal entities or corporations are not specifically regulated in Islam, there are several Qur'an verses state the legal entities which use *syirkah* term, for example as it is mentioned in Al Quran Surah An-Nisa verse 12; Al Quran Surah Shaad verse 24. (Hamidah, Bakri, Buidiono, & Winarno, 2017) Meanwhile, *mudharabah* means an agreement to participate in taking the advantage of a capital asset from one partner and management expertise from the partner. According to Muhammad Syafi'i Antonio, *Mudharabah* is business cooperation agreement between two parties, where the first party (shahibul mal) provides the whole capital, while the other (mudharib) becomes the business manager. Under *mudharabah*, a capital owner can demand

certain terms for the capital invested to be effective and efficient. The *mudharabah shari'a* foundation is expressed the *Al-Muzammil* Surah Verse 20 and *Al-Jumuah* Surah Verse 10. (Ghufron Az, 2015)

It is said that the formation of SOEs or holding SOEs can be based on the contract *Syirkah Mudhorobah* because *syirkah mudhorobah* is one type of *syirkah*. According to the meaning of language, *syirkah* is defined as a mixture (*al-ikhtilath*) or fellowship of two or more things. In terms of *fiqh* studies, *syirkah* means a partnership or partnership of two or more persons to do business together with the aim of gaining profit. (Nasution, 1992) In addition, according to the Compilation of Islamic Economic Law, *syirkah* is defined as cooperation between two or more persons in respect of capital, skill or belief in a particular enterprise with profit sharing based on a ratio agreed upon by the parties to the association. (Tim Penyusun, 2009) In addition, concerning *mudhorobah*, Article 20 (4) the cooperation between fund owner or investor and capital manager is to enter into a certain business with profit sharing based on *nisbah* or ratio. (Ghufron Az, 2015)

Meanwhile, the *syirkah mudhorobah* is defined as the partnership between the capital owner and the expert in the trade or the entrepreneur, in which the investor provides all working capital. (Mas'adi, 2002) In legal terms, *mudhorobah* is a business cooperation seeking for profit. This cooperation is entered between capital owner (*shahibul mal*) and business player. It is termed as business cooperation because the capital owner and business player are a partner which directly needs each other. (Ghufron Az, 2015)

From the definition of *syirkah mudhorobah* above, it can be seen that there is a suitability of meaning with the definition of SOEs or holding of SOEs as described in the previous section. This is also in line with the motive behind the emergence of both. In *syirkah*, there is a content of synergy motive (such as mutual cooperation based on trust, mutual help in goodness) (Rohman, 2010) which is also considered as the background of the formation of holding of SOEs. In addition, there is also a capital inflow of capital owners in *syirkah*, which implies to be in line with the SOEs where the state is as the owner of the main capital or holding of SOEs whose capital owner is the parent company.

It turns out that the synergy motive in *syirkah mudhorobah* has a positive meaning for the holding of SOEs, because the expected synergy in the holding body of BUMN can basically stimulate acceleration of coordination between corporations as an efficiency effort, and also to encourage corporations to exploit potential as development effort, and help to solve financial problems and to support with government programs. (<http://bisnis.liputan6.com>, 2017) Thus, these benefits can be viewed as *Mashlahah* plus that the existence of the holding institution is legitimized by *Mashlahah Mursalah*, because there are no texts that govern and also prohibits its existence.

## CONCLUSION:

To sum up, that *Mashlahah* with all levels of hierarchy covering primary, secondary and tertiary, is the aim of the implementation of *maqasid shari'ah* which includes maintaining religion, mind, descendant, soul and property. Islam teaches that something can be considered to contain *Mashlahah* if it is not contrary to the Qur'an, Sunnah, Qiyas, and is in line with the provisions of *syara'* and is not violate the level of *Mashlahah*. Although the formation of SOEs or holding SOEs is considered to contain *Mashlahah* based on *Mashlahah Mursalah*, the reality shows that people *Mashlahah* or the benefit of Indonesia Citizen has not been optimal and not evenly embodied yet.

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