Notary's Role in Business Purpose Test Requirements in the Framework of Consolidation of a Limited Liability Company for Taxation

Muhammad Fatha Permana[1], Fully Handayani Ridwan[2]
fatha.permana@gmail.com[1], fullyhandayani@gmail.com[2]
Faculty of Law, Master Of Notary Law, Universitas Indonesia, Depok, Indonesia.

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Abstract
Restructuring of a Legal Entity, in this case, a Limited Liability Company, is known in four forms, namely consolidate, consolidation, takeover, and separation. The restructuring has implications for various aspects, including capital structure and share ownership, the composition of management and supervisors, articles of association, and taxation. In this article, we will discuss the Consolidation of the Company, and specifically regarding the implications for the taxation of Limited Liability Companies. Likewise with the role of a notary regarding the requirements of the Business Purpose Test. The research method used in writing this article is a normative juridical research method, namely by conducting a literature study. The results of the study showed that the Government has set a policy regarding the requirements of the business purposes test for company consolidation and there is a notary role that is needed to support all the requirements of the business purposes test. In addition, the results of this study also provide advice and solutions for the government, notaries, and of course, a company that will consolidate.

I. Introduction

Entering the era of globalization and free markets, business competition among companies is getting tighter. Such conditions require companies to always develop their corporate strategies, to survive, be competitive, or even more developed. Companies need to develop the right strategy to maintain their existence and improve their performance. One of the efforts to become a large and
strong company is through mergers, mergers, acquisitions, spin-offs, and takeovers of a company by other companies called takeovers.[1]

Corporate restructuring is one strategy that can help companies deal with poor performance, adopt new strategies, and achieve credibility in the capital market. Defines restructuring as the act of rearranging the structure, ownership, operations, or other structure of a company to make it more profitable and better for current needs.

Restructuring is an activity to change the structure of the company[2] . Thus, the notion of restructuring can be in the sense of getting bigger or leaner. If interpreted in the first sense, the acquisition activity is also an effort to restructure. Companies that carry out vertical integration, clearly restructure their company's business. In this way, companies can secure the source of raw materials or the distribution of their production. In addition, restructuring can also be interpreted as an appropriate business strategy to be implemented in companies that are categorized as underperforming.

Restructuring is an inbound process for company management, while outbound generated by restructuring tends to be different for each company. The diversity of intended outbound results depends on management's perception of restructuring. In general, several results of the restructuring implementation were presented, namely the empowerment of idle capacity in the production and operation processes in installed utilities, the scheduling of short-term and long-term debt payments, the empowerment of potential markets targeted by the company, and the maximum empowerment of the company's managerial functions.

Restructuring, according to Alan H. Seed is "a substantial change in business strategy and or financial structure of the 2 underperforming enterprises".
3The nature of the restructuring according to the Restructuring Committee of the Polish Ministry of Privatization includes "... Organizational, managerial, financial, product and technical adaptation of companies to market conditions to increase their operation effectiveness"[4] From these two understandings, it can be said that restructuring is a business strategy for companies that are considered underperforming, both including organizational, managerial, financial, and
operational restructuration, whose final recommendations tend to lead to

[1] Helmalia, ANALISIS STRATEGI AKUISISI DAN RESTRUKTURISASI DALAM BISNIS PERUSAHAAN, Al Masraf (Jurnal Lembaga Keuangan dan Perbankan)-Volume 1, No.1, Januari-Juni 2016, hlm 49.

[2] Husnan, Suad. Dasar-dasar Teori Portofolio dan Analisis Sekuritas. Ed 3. Yogyakarta: AMP YKPN, 2002. Hlm 405

[3] Darryanto, Robertus. Analisis Rekapitalisasi Sebagai Program Penyehatan Perbankan di Indonesia pada Bank BPD Jawa Tengah. Tesis, Pascasarjana Magister Manajemen Universitas Diponegoro, 2000.

[4] Edgerly dalam Darryanto, Robertus. Analisis Rekapitalisasi Sebagai Program Penyehatan Perbankan di Indonesia pada Bank BPD Jawa Tengah. Tesis, Pascasarjana Magister Manajemen Universitas Diponegoro, 2000.

privatization. In general, there are 4 types of corporate business restructuring models:[5]

1. Expansion covers Mergers and acquisitions, Tender Offers, and Joint Ventures.
2. Sell-offs cover Spin-offs (Split offs and split-ups) and Divestitures (Equity Carve-outs);
3. Corporate Control, covers Premium Buy-back, Standstill agreement, Anti take over Amendement, and Proxy Content.
4. Change in Ownership Structure, covers Exchange Offers, Share Repurchases, Going Private, and Leverage Buy-out (LBO)

Based on the 4 (four) mentioned above, the expansion model, especially acquisitions, is more often used by management in restructuring the company. In general, acquisitions are in the form of purchasing other existing companies. The main reason for many acquisitions or mergers is to create synergies, both financial and operational, that add value to the combined company. According to the theory, a combined business should provide higher revenues and/or lower operating expenses (one plus one is more than two). The value of a combined company should be greater than the value of the previous independently operated company. Thus, synergies should be considered in quantitative terms and not in qualitative terms such as strategic reasons. Revenue improvements, such as cost savings, higher growth, and debt capacity, should be determined in measurable units. The company must make changes that result in profits compared to other companies.

From the restructuring practices above, Gunadi further summarized several methods and methods of restructuring commonly used in the business world, namely:[6]

1) Rescheduling is a method of extending the time to repay debts or rescheduling debtors. Rescheduling is carried out by changing the repayment period stipulated in the receivable debt agreement.
2) Hair Cut is the provision of deductions or deductions on interest payments and/or debt. This method is done to prevent even greater losses if the debtor cannot pay the debt.
3) Debt-to-asset swap is the transfer of assets owned by debtors to be controlled by creditors. The assets controlled are only temporary until later purchased by other parties and the proceeds are used to pay off debtors' debts.
4) Debt-to-equity swap is done by converting debt into part of capital, this can be done if creditors see debtors have good value and business prospects.

According to Scholes and Wolfson, there are at least four major reasons for acquisitions: (1) to increase economic efficiency, (2) to increase the basic strength of management, (3) to influence the transfer of wealth from one class of stakeholders to another, (4) to obtain tax benefits.[7]

[5] Weston. The Logic of Intiutive Decesion Making. New York: Quorum Books, 1986.
[6] Gunadi, Restrukturisasi Perusahaan Dalam Berbagai Bentuk Dan Pemajakannya (Jakarta: Salemba Empat, 2001).

The reasons why companies merge (mergers and acquisitions) according to Moin[8] , namely:

1. Get cash flow quickly because the product and market are clear.
2. Obtaining ease of funds/financing because creditors have more confidence in established and established companies.
3. Acquire experienced employees.
4. Get established customers without having to start from scratch.
5. Acquire an established operational and administrative system.
6. Reduce the risk of business failure because you don't have to find new customers.
7. Save time entering new businesses.
8. Acquire infrastructure to achieve faster growth.

Meanwhile, the reasons for the merger according to Beams and Jusuf are[9] :

1. Cost advantage. It is often cheaper for companies to acquire needed facilities through mergers than through development. This is especially true in inflationary periods.
2. Lower risk. Buying established product lines and markets is usually less risky than developing new products and markets. A merger is less risky especially when the goal is diversification.
3. Fewer operating delays. Factory facilities acquired through the merger can be expected to be operational immediately and comply with environmental and other government regulations. Building a new company facility may cause some delays in its construction due to the need for government approval to begin operations.
4. Prevent avoidance of takeovers. Some companies merge to be acquired by other companies. Because smaller companies tend to be more vulnerable to takeover, some use aggressive buyer strategies as expropriations. The best defense against takeover attempts by other companies. Companies with high debt-to-equity ratios are usually not attractive takeover candidates.
5. Acquisition of intangible assets. A merger involves combining both intangible and tangible resources. Thus, the acquisition of patents, mineral rights, customer databases, or management expertise may be the main factors motivating a merger. Compared to other forms of business expansion, companies may choose mergers to obtain tax benefits, personal income tax building tax benefits, and personal reasons.

In terms of restructuring in Indonesia, several terms are known, namely:

Business merger often known as a Merger is a legal act carried out by one or more companies to merge with other existing companies which results in the

[7] Myron S. Scholes, & Mark A. Wolfson. Taxes and Business Strategy: A Planning Approach. (Prentice Hall, New Jersey, 1992), hlm. 486
[8] Abdul Moin. Merger, Akuisisi & Divestasi (Edisi pertama). (Ekonisia, Yogyakarta, 2003), hlm 13
[9] Floyd A. Beams & Jusuf, Amir Abadi. Akuntansi Keuangan Lanjutan Di Indonesia, Buku satu. Edisi Revisi (Jakarta: Salemba Empat, 2004), hlm. 329.

a. assets and liabilities of the merged company switching because of the law to the company that accepts the merger and then the status of the legal entity of the merging company ends because of the law [10] . Example: [Company X + Company Y = Company X or Company Y].
b. Business Merger or Consolidation is a legal act carried out by two or more companies to merge themselves by establishing a new company which due to law obtains assets and liabilities from the merged company and the status of the merged Company's legal entity ends[11] . Example: [Company X + Company Y = Company Z][12] .
c. Separation or spin-off is a legal action carried out by the Company to separate a business that results in all assets and liabilities of the Company switching due to law to 2 (two) or more Companies or part of the Company's assets and liabilities transferring due to law to 1 (one) or more Companies. [13]
d. Business Takeover or Acquisition is a legal action carried out by a legal entity or individual to take over the Company's shares which results in the transfer of control over the Company. [14]

It can be implied that restructuring is quite broad in type. One of them, the process of business merger (consolidation) is a company restructuring that has tax implications. Therefore, to ensure legal certainty for consolidation, it is necessary to have tax provisions governing consolidation. The consolidation process is also related to the role of the Notary because the deed regarding consolidation must be made in a Notary Deed.

Consolidation is one of the efforts made to form a legal relationship to create legality, it is also done to achieve legal certainty as a reference for the running of legal functions. In the consolidation process, it is carried out to create legal certainty for a Limited Liability Company (PT), therefore, to create legal certainty in the consolidation, authentic written evidence is needed regarding legal circumstances, events, or actions. An authentic deed is made before or by a Notary. Today, a legal relationship requires evidence of the civil law relationship that occurs between those who make a legal relationship. A notary is considered an institution assigned by public power (openbaar gezag) and the law requires that it is or desired by the public, to produce written evidence that has the power of authentic evidence. 15 A notary is an official who has the authority to make authentic deeds under the Law. Everything that is written and established or in the constellation is something that is considered true. 16

Consolidation is an economic reality that has tax implications. Therefore, a country needs to have a Tax Law that regulates these economic transactions. The provisions of tax law in Indonesia do not specifically regulate the tax treatment of business mergers. The merger also has implications for tax regulations such as income tax, BPHTB, and VAT

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10 UUPT, Pasal 1 ayat (9).
11 UUPT, Pasal 1 ayat (10).
12 Perbedaan Merger, Konsolidasi dan Akuisisi, https://sis.binus.ac.id/2021/08/19/perbedaan-merger-konsolidasi-dan-akuisisi/ , diakses tanggal 26 Oktober 2023.
13 UUPT, Pasal 1 ayat (12).
14 UUPT, Pasal 1 ayat (11).

And also regulated in an implementing regulation. In general, the merger process for the transition uses market value, but it turns out that the government allows a PT to use book value in the merger process.

The Minister of Finance has several times issued provisions regarding the use of book values, starting with the issuance of Minister of Finance Decree (KMK) Number 637/KMK.04/1994 and finally Minister of Finance Regulation (PMK) Number 56/PMK.010/2021. This provision regulates matters regarding the type of reorganization and taxpayers who are allowed to use book value, conditions, formal and material, which must be met by taxpayers who will consolidate to obtain permission to use book value, as well as the treatment of the remaining loss compensation and tax credits from the expropriated company. [17]

The last provision is PMK Number 56/PMK.010/2021, containing requirements that must be met by taxpayers to obtain a permit to use book value. In the PMK, there are requirements, namely in the form of business purpose requirements. To further regulate the requirements and procedures for using book value in the context of consolidation, the Directorate General of Taxes has issued Regulation of the Director General of Taxes Number PER-03/PJ/2021 dated February 18, 2021, including the elaboration of the business purpose requirements themselves. [18]

For the Consolidation process, a deed of consolidation is made by a Notary for the process carried out by the parties, attended by both parties who are merging, and also by the recipient of the merger, witnesses, and Notaries as officials who make the deed of merger property. The preparation of this Notary Deed is carried out according to the correct events, status, and data and following laws and regulations and is supported by documents that are required to exist and according to the research of the Notary concerned is correct. Therefore, the Notary as a general official authorized to make the consolidation deed has a role and responsibility to prevent this, including carefully checking all supporting documents that will be used in making the consolidation deed, checking, the source of the merged asset and whether the tax has been paid, and whether the property was indeed given by the joining party, Because if it is used for other than the party who merged the business, it must be subject to income tax.

To consolidate there is a requirement for the fulfillment of the Business Purpose Test that a transaction, to be respected, must have a separate business purpose and be independent of the associated tax advantages. The Business Purpose Test can be viewed as having two elements that, if met, would prevent government scrutiny and adjustment of a transaction based on doctrine: (1) the acquisition is motivated by a non-tax business purpose; and (2) the acquisition method is motivated by non-tax business objectives.

The business purpose requirements arise from legal cases surrounding government challenges to corporate reorganization. Today, its use is wider—and not limited to corporate reorganization. Corporate divisions are also closely scrutinized as tax-free reorganizations under the Business Purpose Test because

15 G.H.S Lumban Tobing, Peraturan Jabatan Notaris, (Jakarta: Erlangga, 1996), hlm. 2

16 Tan Thong Kie, Studi Notariat dan Serba Serbi Praktek Notaris, cet. 1, (Jakarta: PT Ichtiar Baru Van Hoeve, 2007), hlm. 3

17 Peraturan Menteri Keuangan Tentang Perubahan Kedua atas Peraturan Menteri Keuangan Nomor 52/PMK.010/2021 tentang Penggunaan Nilai Buku atas Pengalihan dan Perolehan Harta dalam rangka Penggabungan, Peleburan, Pemekaran, atau Pengambilalihan Usaha, PMK Nomor 56/PMK.010/2021, Pasal 1.

they can easily be used to convert dividend distributions into capital gains distributions.

The Business Purpose Test, as a judicial doctrine, is a precursor to certain provisions of the Code that exist today to deny the use of a target company's net loss if the primary reason for the acquisition is to secure a net loss benefit. In other words, if there are only tax reasons for the acquisition. This set of rules prevents the acquiring company from capitalizing on net operating losses before acquisition to reduce taxable income on the related consolidated group's returns. The policy behind the terms of this reorganization is to allow the continuation of ongoing business under the modified corporate form without the current tax impact. However, in the absence of a legitimate business purpose underlying the modification of the corporate form, the government may consider a tax violation and the government will ask whether the modification was improperly used to generate non-taxable sales or dividend distribution.

Further complicating matters, even strict literal adherence to the statutory provisions surrounding reorganization laws may not be enough to achieve tax-free reorganization. The Court has consistently required that the underlying business objectives of the reorganization provisions must be adhered to. The IRS has used the business purpose test as a sword to ban transactions deemed unlawful on several occasions.

Whenever an exchange purported to be tax-exempt results in a materially different exchange of property, there is a realization of a gain or loss, and this should usually be recognized for tax purposes unless such tax-exempt exchange "unrecognized" provisions apply. To qualify as a tax-exempt corporation, reorganization must be driven by the circumstances of the business—not solely a desire to lower the company's tax burden.

Based on the background of the problems mentioned above, the author formulates several main problems, namely:

1. What are the requirements of tax regulations to meet the business purpose test?
2. How is the Notary's Role in fulfilling the requirements of the business purpose test in the framework of taxation?

2. Research Method

This research is legal (doctrinal research). According to Abdulkadir Muhammad, doctrinal research focuses on the inventory of positive law, legal principles, and doctrines of legal discovery in cases in concreto, legal systematics, level of legal synchronization, comparative law, and legal history to answer the legal issues analyzed. [19] The approach used in this article is the statutory approach (statute approach), and conceptual approach (conceptual approach). Peter Mahmud Marzuki, stated that the statute approach is carried out by reviewing all laws and regulations related to the legal issues being discussed. [20] Meanwhile, the conceptual approach is an approach that departs from the views, and doctrines that develop in legal science. [21]

18 Peraturan Direktur Jendral Pajak Tentang Tata Cara Pengajuan dan Penerbitan Keputusan Mengenai Penggunaan Nilai Buku Atas Pengalihan dan Perolehan Harta Dalam Rangka Penggabungan, Peleburan, Pemekaran, atau Pengambilalihan Usaha, Peraturan Nomor PER-03/PJ/2021. Selanjutnya disebut Per-03/2021.

In legal research, generally, the legal materials used consist of two, namely primary legal materials and secondary legal materials.[22] Primary legal material is legal material obtained from laws and regulations in the Indonesian legal system. Secondary legal materials are obtained from legal literature, research, theses, dissertations, articles, legal journals, legal dictionaries, internet media, or comments on court decisions that are related to the formulation of the problem under study. The legal materials collected are legal materials that are relevant to answer legal issues.

3. Results and Discussion

A. Overview of the use of book value in the consolidation process.

Consolidation which comes from the word "consolidation", which means "merge" refers to the provisions of Article 1 paragraph 10 of Law No. 40 the Year 2007 concerning Limited Liability Company is a legal act carried out by two or more companies to merge themselves by establishing a new company which due to law acquires assets and liabilities from the merged Company and the status of the merged Company's legal entity ends due to law.[23]

The implementation of consolidation also affects taxation, because minimal consolidation will affect tax revenue to the state. One example is the merging of the book value of two or more companies into one book value. Regarding the use of Book Value, there are differences in its use in the consolidation process of limited liability companies according to tax provisions.

According to tax provisions, the use of Book Value in the consolidation process can be carried out if the consolidation process is carried out according to tax provisions, namely by liquidating other companies/business entities that merge. If the consolidation process is not accompanied by the liquidation of the merged company, it must use Market Value.

About the use of Book Value, based on the provisions of Article 28 paragraph (1) of Law Number 28 of 2007 concerning General Provisions and Tax Procedures (hereinafter referred to as the "KUP Law"), individual taxpayers who carry out business activities or independent work and corporate taxpayers in Indonesia are required to maintain books.

Bookkeeping at least consists of records of assets, liabilities, capital, income, and expenses, as well as sales and purchases so that the amount of tax payable can be calculated. According to the provisions of Article 1 number 29 of the KUP Law, what is meant by Bookkeeping is:

> "A recording process carried out regularly to collect financial data and information including assets, liabilities, capital, income, and costs, as well

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19 Abdulkadir Muhammad, Hukum dan penelitian hukum (Bandung : Citra Aditya Bakti 2004).

20 Peter Mahmud Marzuki, "Penelitian Hukum: Edisi Revisi" (2017).hlm 133

21 Ibid, hlm 135.

22 Ibid, hlm 181

23 Bastian Harijanto, Kajian Yuridis Ketentuan Perpajakan Mengenai Penggunaan Nilai Buku Dalam Penggabungan Perseroan Terbatas, Tesis Universitas Diponegoro, hlm 29

as the amount of the price of acquisition and delivery of goods or services, which is closed by preparing financial statements in the form of balance sheets, and income statements for the Tax Year period."

The definition of bookkeeping according to KUP is identical to the notion of accounting, that is, the process of recording, classifying, summarizing, and presenting in a certain way financial transactions in a company or organization and interpretation of the results in the form of value. Value is an economic concept that refers to the financial relationship between goods and services that are available to buy and those that buy and sell them. Value is not a fact, but rather an estimate of the economic benefits of goods and services at a given time about a particular definition of value. A market is a system and/or place where goods and services are traded between buyers and sellers through a price mechanism.

Market Value is an estimate of the amount of money at the valuation date, which can be obtained from a sale and purchase transaction or the result of the exchange of an asset, between a buyer who is interested in buying and a seller who is interested in selling, in a bond-free transaction, where the offer is made properly and both parties each know, act carefully and without coercion.[24]

Market value for existing use is the market value of an asset based on the continuation of existing use, assuming that the asset can be sold on the open market for the current use, but still fits the definition of market value regardless of whether the existing use represents the best and highest use of the asset. Book Value is the historical cost reduced by the amount of depreciation that has been charged that arose during the life of the asset

B. Define Business Purpose Test

According to IBFD International Tax Glossary (2015), the business purpose test is a criterion that is often used to determine whether a transaction should be prevented by antiavoidance measures or not. This criterion is often linked to the motive for tax avoidance, but the burden of determining tax avoidance will be returned to the provisions of each country.

Generally, the business purpose test is one of the deepest elements. This is like what has been implemented in Spain or inadequate transactions in Germany (Taboda, 2016). Judging from its history, the majority of countries in Europe have long used the doctrine of the business purpose test as one of the assessment materials in applications for the use of book value for taxpayers who will transfer the average in the context of merger, merger, or business expansion. This provision can be found in Minister of Finance Regulation Number 56/PMK.010/2021 concerning the Second Amendment to Minister of Finance Regulation Number 52/PMK.010/2017 concerning the Use of Book Value for the Transfer and Acquisition of Property in the Context of Merger, Merger, Expansion, or Business Takeover (PMK 56/2021).

Often, taxpayers who will transfer their assets want to use book value in the context of mergers, mergers, or business expansions to do tax avoidance. Therefore, a business purpose test is needed to ensure that the use of book value is intended solely for business development purposes.

Business purpose test must be fulfilled by taxpayers who merge or expand businesses, both in the same business field and in business fields that are not the

24 Ibid, hlm 38.

same or different. Three things must be considered in the results of the business purpose test, especially for applications for the use of book values.

First, business mergers or business expansions aim to create strong business synergies, and strengthen capital structures and are not carried out for tax avoidance. Second, inform about losses or remaining fiscal and commercial losses, main business fields, products or services produced, market segments, number of branches or networks, composition of ownership, total assets, and corporate income tax owed. Third, specifically for business mergers, if the taxpayer who receives the transfer of assets (surviving company) has a loss or residual loss, the loss must be smaller than the loss or remaining loss of the taxpayer who transferred assets (transferor company) based on the remaining fiscal and commercial losses.

C. Tax Regulation Requirements for Business Purpose Test

Based on the provisions of Article 3 paragraph (2) PMK 56/2021, the application submitted by the Taxpayer in the context of consolidation must be completed with the following documents:[25]

a. statement letter stating the reasons and purposes for merging, merging, expanding, or taking over a business;
b. A statement letter explaining that the merger, merger, expansion, or takeover of the business carried out meets the requirements of the business objectives. (business purpose test) as referred to in Article 2 paragraph (2); and
c. fiscal certificate from the Director General of Taxes for each domestic taxpayer and related permanent establishment.

25 The requirements for business purpose or business purpose test that must be met by Taxpayers who incorporate a business are regulated in Article 2 paragraph (2) of the Minister of Finance Regulation Number 52 / PMK.010 / 2017 concerning the Use of Book Value for the Transfer and Acquisition of Property in are as follows:[26]

a. The main objective of the merger is to create strong business synergies and strengthen the capital structure and not to be done for tax avoidance;
b. The business activities of the Taxpayer who transferred the assets are still ongoing until the effective date of the merger;
c. The business activities of the Taxpayer who transferred the assets before, must be continued by the Taxpayer who received the transfer of assets no later than 5 (five) years after the effective date of the business merger;
d. The business activities of Taxpayers who receive assets in the context of a permanent merger take place no later than 5 (five) years after the effective date of the merger; and
e. Assets in the form of fixed assets owned by Taxpayers who receive assets derived from business mergers are not transferred by Taxpayers who receive assets no later than 2 (two) years after the effective date of the business merger unless done for the efficiency of the Company for improvement.

26 PMK 56/2021, Pasal 3.

27 the Framework of Merger, Merger, Expansion, or Business Takeover (PMK 52/2107)

The business purpose test must at least demonstrate that:

a. Business mergers or business expansions aim to create strong business synergies, and strengthen capital structures and are not carried out for tax avoidance.
b. Especially for business mergers. If the Taxpayer receiving the transfer of assets (surviving company) has a loss or residual loss, the loss must be less than the loss or remaining loss of the Taxpayer who transfers assets (transferor company) based on the remaining fiscal and commercial losses.

In addition, the fulfillment of the business purpose test is supervised by the Head of the Regional Office of the Directorate General of Taxes. Referring to the provisions of Article 3 paragraph 1 letter b juncto Article 3 paragraph 2 letter c of the Regulation of the Director General of Taxes Number Per-03/PJ/2021 concerning Procedures for Filing and Issuance of Decisions regarding the Use of Book Value for Transfer and Acquisition of Assets in the Framework of Merger, Merger, Expansion, or Business Takeover, the business purpose test is one of the general requirements to be able to use the book value of the transfer of assets in the context of consolidating Limited Liability Companies in the form of merger, merger, business expansion, or business takeover. The business purpose test is presented in the form of a statement letter equipped with supporting documents in the form of a list of contents regarding losses or remaining fiscal and commercial losses, main business fields, products or services produced, market segments, number of branches or networks, composition of ownership, total assets, corporate income tax payable.

The tax implications of consolidation are as follows:

TYPES OF TAXES	FARE	TAX PROVISIONS
Income Tax on Capital Gains	0%	Articles 4 and 10 of Law Number 36 of 2008 Income Tax
BPHTB	5%*	Law Number 1 of 2022 concernin g
Final income tax on the transfer of land and building s	2,5%	PMK 261/PMK.03/2016
VAT on the transfer of taxable goods	N/a	does not include taxable good s as Article 1A paragraph (2) letter d of Law number 42 of 2009.

Table 1 Implications of Consolidation and Its Arrangement

D. The Role of Notaries in Fulfilling Business Purpose Test Requirements in the Framework of Taxation;

A Notary Public is one of the General Officers authorized to make an Authentic Deed regarding all deeds, agreements, and determinations required by a

26 PMK 52/2017, Pasal 2 ayat (2).

general regulation or by the interested person desired to be stated in an authentic deed, guarantee the certainty of the date, keep the deed and give grosse, copies, and quotations, all so long as by a general regulation it is not also assigned or exempted to other officers or persons.[27] Also, according to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position (UUJN-P) Notaries are general officials who are authorized to make authentic deeds and have other authorities as referred to in this Law or based on other laws.

A Notary Deed as an authentic deed has perfect evidentiary power, every legal act must have evidentiary power, in the process of consolidation closely related to the deed made by and/or before a Notary. Before the implementation of the merger as stated in Article 123 of the Law, the Board of Directors will prepare a merger plan. The Merger Plan shall contain the following:

a. the name and place of residence of each Company that will conduct the Merger;
b. Reasons and explanations of the Board of Directors of the Company who will carry out the Merger and the requirements of the Merger;
c. Procedures for valuation and conversion of shares of the merged Company against the shares of the Company that received the Merger; as in the explanation that in the procedure for converting shares, the fair price of shares of the merging Company and the fair price of the shares of the Company receiving the Merger are determined to determine the comparison of share exchange in the context of share conversion.
d. Draft amendments to the Company's articles of association that accept the Merger if any; The amendment of the articles of association in this case is only required as part of the proposal if the merger causes a change in the articles of association.
e. Financial statements as referred to in Article 66 paragraph (2) letter a of the Law covering the last 3 (three) financial years of each Company that will merge;
f. Continuation or termination of the business activities of the Company that will carry out the Merger;
g. The pro forma balance sheet of the Company accepting the Merger following generally accepted accounting principles in Indonesia;
h. How to resolve the status, rights, and obligations of members of the Board of Directors, Board of Commissioners, and employees of the Company who will merge;
i. How to resolve the rights and obligations of the Company that will merge with third parties;
j. How to resolve the rights of shareholders who disagree with the Company Merger;
k. Names of members of the Board of Directors and Board of Commissioners as well as salaries, honorariums, and allowances for members of the Board of Directors and Board of Commissioners of the Company who receive the Merger;
l. Estimated period of execution of the Merger;

27 GHS Lumban Tobing, Peraturan Jabatan Notaris [Jakarta, Erlangga,1996]

c. Reports on the conditions, developments, and results achieved by each Company that will conduct the Merger;
m. The main activities of each Company that carry out the Merger and changes that occur during the current financial year; and
n. Details of problems arising during the current financial year that affect the activities of the Company that will carry out the Merger.

There are also consolidation steps that are often found in society, namely:[28]

a. Meet Consolidation Requirements
b. Drawing Up a Merger Plan
c. Request GMS approval
d. Making a Deed of Consolidation at a Notary Public
e. Announced the consolidation plan in the newspaper

The above plan must be stated in a General Meeting of Shareholders (GMS). Notaries play a role in making GMS, GMS can be made under and can also be made in a Deed of Relaas, in the Deed of Relaas Notaries are obliged to explain everything seen in the Report Card and put it in a Deed. For this reason, in the framework of the consolidation process, Notaries must pay attention to everything related to the draft GMS as well. As the obligation of Notaries in Article 16 paragraph (1) letter of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions which states that Notaries in carrying out their positions must act trustfully, thoroughly, honestly, independently, not taking sides with any party and safeguarding all the interests of parties who carry out a legal relationship before them. The word carefully describes the Notary must be careful in every deed making, the notary needs to master all the requirements in a consolidated process and ensure all these requirements have been met.

A definite consolidation process through the stages of the General Meeting of Shareholders (GMS). In the process of carrying out corporate actions, Notaries have several roles where one of the two roles is quite important, namely in terms of making deeds related to corporate actions to be carried out and changes to the Company's Articles of Association if there are changes as a result of the company's actions. Of course, it is not only in the matter of making the deed that Notaries participate. Notaries also participate in every stage, both during the preparation, implementation, and later after the implementation of corporate actions carried out by the company. For example, in consolidation activities, at the preparation stage, in terms of business competition, Notaries are expected to play an active role in being able to notify or notify the company, if the value of assets and/or transactions has met the threshold and the consolidation has been juridically effective. In addition, Notaries are also the only officials who are authorized to be able to carry out their management, represent the company in the management of legal entity ratification, and apply for approval of changes to the articles of association and submission of amendments to the articles of association.

The consolidation process must be related to the processes before the consolidation is effective, one of which is regarding taxes. In Per-03/PJ/2021,

28 5 langkah merger, https://www.hukumonline.com/klinik/a/simak-ini-5-langkah-merger-pt-lt4d1358d8a0a80/ , diakses tanggal 28 Oktober 2023.

there is a list of supporting evidence that must be owned by a Limited Liability Company that will merge a business, namely:
Photocopy of Merger/Merger/Expansion/Takeover plan document;
Photocopy of announcement of the plan for Merger/Merger/Expansion/Business Takeover (which has been published in Indonesian daily newspapers circulating nationally);

a. Photocopy of Financial Statements that have been audited by the Public Accounting Firm of the Taxpayer who transferred the asset and the Taxpayer who received the asset for the period ending one day before the Effective Date;
b. Photocopy of Proforma Financial Statements as of Effective Date of Merger/Merger/Expansion/Business Takeover reviewed/reviewed/assessed by independent experts;
c. Chart/Scheme of organizational structure before and after Merger/Merger/Expansion/Business Takeover, along with the composition of shareholder ownership;
d. Projected income and Income Tax payable before and after the Merger / Pele buran / Pemekaran / Business Takeover;
e. Letter of explanation regarding the details of the calculation of elimination estimates between companies (reciprocal accounts) carried out in the context of Merger / Merger / Expansion / Business Takeover;
f. Photocopy of the Policy Stand and Estimate Act and its changes;
g. Photocopy of the latest statement of Extraordinary GMS Resolution relating to the decision of Merger / Merger / Expansion / Business Takeover;
h. Photocopy of Approval Letter, Merger/ Merger/ Expansion/ Business Takeover License Decree, and similar documents issued by the authorized agency;
i. Registration of the Merger/Smelting/Acquittal/Acquisition of Ventures*) Act and the Policy Estimate Change Act in the Enterprise Register;
j. The list of corporate taxpayer income tax loss compensation for the last 5 (five) years for each business entity contains at least information about the tax year, tax assessment number and date, objection decision, appeal decision, review decision, and amount of fiscal loss;
k. For domestic corporate taxpayers who carry out business expansion whose business entities are the result of the expansion get additional capital from foreign investors of at least IDR 500,000,000,000.00 (five hundred billion rupiahs): a. photocopy of company bank account; b. a photocopy of the deed of establishment or amendment of the Taxpayer resulting from the business expansion that includes the amount of new investment from foreign investors; and c. a statement letter of willingness to realize the foreign investment plan if the amount of foreign investment has not been stated in the deed of establishment;
l. Photocopy of recommendation letter from the Minister who organizes government affairs in the field of development of State-Owned Enterprises (for Taxpayers of State-Owned Enterprises who carry out a business expansion that receives additional capital participation of the State of the Republic of Indonesia as long as the expansion is carried out related to the establishment of a holding company).

Among some of the conditions mentioned above, there are several related to Notaries, namely:

a. photocopy of merger plan document;
b. Photocopy of merger plan announcement;
c. Photocopy of the Act of the Stand and Budget of the Policy and its Changes;
d. Photocopy of Statement of Resolution of Extraordinary GMS with Merger Resolution;
e. Photocopy of approval letter, Business Merger Principle license from the authorized agency;
f. Registration of the Venture Merger Act.

The following requirements certainly require the role of a Notary, the Notary is the one who is authorized to make deeds regarding limited liability companies, and the Notary confirms the Articles of Association of the PT in an Authentic Deed. Usually for all merger processes, directors or representatives of the PT must entrust it and ask for assistance from a Notary for these documents to meet the requirements of the business purpose test.

4. Conclusion

The business purpose test represents a fundamental requirement imposed by the Directorate General of Taxes (DGT) to evaluate whether taxpayers are eligible to apply the book value method in corporate restructuring transactions, including mergers, consolidations, spin-offs, and acquisitions that are intended to obtain tax-neutral treatment. The primary objective of this test is to ensure that such transactions are carried out based on genuine commercial considerations and sound economic rationale, rather than as mechanisms designed primarily to avoid, reduce, or defer tax liabilities. By applying the business purpose test, the DGT seeks to maintain fairness within the tax system and prevent potential abuses of tax facilities, while at the same time providing an avenue for taxpayers to reorganize their businesses efficiently when supported by legitimate business needs. This approach reflects the broader principle of substance over form, under which the tax authority examines not only the legal structure of a transaction but also the real intentions, economic substance, and expected business outcomes underlying the restructuring.

Furthermore, the business purpose test encourages taxpayers to adopt a more disciplined and transparent approach when planning corporate restructuring activities. Taxpayers are expected to demonstrate clear business motivations, such as improving operational efficiency, streamlining organizational structures, enhancing competitiveness, achieving economies of scale, facilitating business expansion, or strengthening financial positions. In doing so, taxpayers must be able to provide comprehensive supporting evidence, including feasibility studies, business plans, financial projections, and internal analyses that substantiate the commercial rationale behind the transaction. This requirement promotes accountability and ensures that restructuring decisions are aligned with long-term strategic objectives rather than short-term tax considerations.

The role of a notary is also critical in ensuring compliance with the legal and administrative requirements stipulated under PMK 56 and PER-03. Notaries serve as public officials who formalize legal acts and provide assurance that corporate actions are properly documented and legally enforceable. Their involvement is essential in preparing and authenticating key documents, such as merger or consolidation deeds, shareholders' resolutions, amendments to articles of association, and other corporate approvals required by law. Through this role, notaries help ensure that the restructuring process is conducted in accordance with applicable regulations and accurately reflects the parties' intentions. Proper legal

documentation not only supports the taxpayer's application for the use of book value but also strengthens the credibility of the transaction in the eyes of the tax authority.

Compliance with documentation and procedural requirements is of paramount importance because failure to meet these requirements may lead to significant consequences. The DGT has the authority to deny the use of the book value method if it determines that the taxpayer has not satisfied the business purpose test or has failed to provide complete and accurate documentation. In such circumstances, the transaction may be recharacterized and taxed based on fair market value, potentially resulting in substantial additional tax liabilities, administrative penalties, and increased exposure to tax audits or disputes. This underscores the need for taxpayers to conduct thorough due diligence, ensure proper coordination among tax, legal, and finance functions, and seek professional advice where necessary to minimize risks associated with restructuring.

Moreover, the implementation of the business purpose test highlights the importance of robust tax governance and risk management within organizations. Companies are encouraged to establish internal controls and documentation processes that support compliance with tax regulations and demonstrate transparency in decision-making. Clear documentation of business considerations, board deliberations, and expected economic benefits can serve as important evidence in the event of a tax review or audit. In addition, proactive engagement with the tax authority, including timely submission of applications and open communication, can help facilitate the approval process and reduce uncertainty.

From a broader perspective, the business purpose test also plays a role in promoting sound corporate governance and fostering a fair business environment. By requiring taxpayers to justify their restructuring decisions based on legitimate business reasons, the regulation helps ensure that tax incentives are used appropriately and supports the development of sustainable business practices. This contributes to maintaining public trust in the tax system and ensures that tax policies achieve their intended objectives without creating opportunities for misuse.

In conclusion, the business purpose test serves as an essential safeguard that balances the provision of tax facilities with the need to prevent abuse. Taxpayers seeking to utilize the book value method must not only comply with formal documentation requirements but also demonstrate genuine commercial intent supported by credible evidence. The involvement of notaries and professional advisors plays a significant role in ensuring legal validity and administrative completeness, while careful planning and thorough analysis help mitigate potential risks. By adhering to these requirements, taxpayers can successfully implement restructuring

transactions that are both tax-efficient and compliant with regulatory expectations, ultimately supporting long-term business sustainability and alignment with good corporate governance principles.

5. Suggestion

1. The government is expected to intensify socialization and outreach efforts related to the implementation of PMK 56/2021, particularly to taxpayers, tax consultants, and other relevant stakeholders. Given that each type of business entity—such as corporations, partnerships, and group structures—faces different practical challenges in implementing consolidation, comprehensive and continuous dissemination of information is necessary to ensure proper understanding of regulatory requirements. This socialization should not only focus on explaining procedural aspects but also provide practical guidance, case studies, and technical interpretations to reduce ambiguity and minimize compliance risks. In addition, strengthening coordination between the Directorate General of Taxes and professional associations can help ensure that information is conveyed consistently and effectively, thereby supporting smoother implementation of consolidation rules and enhancing voluntary compliance among taxpayers.
2. To enhance legal certainty and provide stronger binding authority, it is recommended that more comprehensive regulations governing the use of book value in taxation aspects related to consolidation be established at a higher regulatory level, such as through a Presidential Regulation. Such regulation should clearly define the scope, criteria, and forms of consolidation eligible for book value treatment, as well as provide detailed provisions regarding tax consequences, administrative procedures, and compliance obligations. Clearer and more detailed rules would help reduce differing interpretations between taxpayers and tax authorities, prevent potential disputes, and create a more predictable legal environment that supports business restructuring activities. Moreover, a stronger regulatory framework would reinforce consistency in enforcement and ensure that tax policies align with broader economic objectives.
3. For companies planning to undertake consolidation, it is advisable to conduct comprehensive risk assessments before executing the transaction. Companies should carefully evaluate potential exposure to interest costs, administrative penalties, and other sanctions that may arise from tax audits, particularly in relation to entities that will be liquidated or have their Taxpayer Identification Number (NPWP) revoked. Consideration should also be given to the statute of limitations for tax assessments and audits, as well as the possibility of historical tax issues that may surface during the examination process. Implementing thorough tax due diligence, maintaining adequate documentation, and seeking professional advice can

help companies identify and mitigate risks, ensure compliance with applicable regulations, and avoid unexpected financial burdens in the future.

4. Notaries, in performing their role in preparing merger or consolidation deeds, are encouraged to pay close attention not only to formal legal requirements but also to broader aspects related to consolidation, including tax implications and regulatory compliance. Notaries should provide legal counseling to ensure that companies understand their rights and obligations, verify that all corporate actions comply with applicable laws and regulations, and ensure that required approvals and documentation are complete. By adopting a proactive and comprehensive approach, notaries can contribute to minimizing legal risks, enhancing the quality of corporate governance, and supporting the successful implementation of consolidation transactions.
5. Overall, collaboration among regulators, taxpayers, tax professionals, and notaries is essential to create a regulatory environment that is clear, predictable, and supportive of legitimate business restructuring. Continuous evaluation and improvement of regulations, combined with strong compliance practices and professional oversight, will help ensure that consolidation activities are conducted in a manner that balances business efficiency with tax compliance and legal certainty.

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