

## Legal Analysis Of State Financial Loss In State Owned Business Entity (BUMN)

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### Abstrak

Penelitian ini mengkaji kerugian negara pada Badan Usaha Milik Negara (BUMN). Kekayaan negara pada BUMN adalah Keuangan Negara yaitu uang negara yang dipisahkan pengelolaannya sebagai bentuk penyertaan modal langsung dari Keuangan Negara pada perusahaan BUMN yang diwujudkan dalam kriteria jika seluruh modal berasal dari kekayaan negara yang dipisahkan, dan jika sebagian besar (mayoritas) modal berasal dari kekayaan negara yang dipisahkan. Kedua kriteria tersebut menunjukkan adanya kekayaan negara pada perusahaan BUMN sehingga sepenuhnya tunduk pada ketentuan hukum BUMN menurut Undang-Undang Nomor 19 Tahun 2003 tentang BUMN. Metode yang digunakan dalam penelitian ini adalah hukum empiris dengan menggunakan pendekatan perundang-undangan dan pendekatan kasus. Adapun penelitian ini, peneliti menggunakan pendekatan live case study sebagai pendekatan terhadap suatu peristiwa hukum yang prosesnya masih berlangsung. Hasil penelitian menunjukkan bahwa kriteria keuangan negara pada Badan Usaha Milik Negara (BUMN) dapat berupa: bagian dari keuangan negara atau bukan bagian dari keuangan negara, hal ini didasarkan atas adanya kontradiksi dengan Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas, dimana keuangan perseroan terbatas adalah milik perseroan, sedangkan Pasal 2 huruf g Undang-Undang Nomor 17 Tahun 2003 tentang Keuangan Negara masih mengkategorikan modal BUMN sebagai bagian dari keuangan negara, sehingga dimaknai sebagai milik umum. keuangan, padahal BUMN itu jelas perusahaan dan bukan lembaga negara. Bahwa Implikasi dari tidak tegasnya pemisahan status negara dalam pengelolaan kekayaan BUMN/Persero dalam hal kerugian negara Kekayaan BUMN sebagai bagian dari keuangan negara merupakan pengertian yang salah. Jika penafsiran ini terus berlanjut, maka sebenarnya telah terjadi penyimpangan dari ketentuan Undang-Undang Perseroan Terbatas yang menjadi dasar keberadaan kegiatan BUMN itu sendiri. Oleh karena itu, sudah sepantasnya ke depan ada revisi terhadap ketentuan UU Keuangan Negara khususnya mengenai kekayaan BUMN yang masuk dalam kategori keuangan negara. Akibat hukum apabila terjadi kerugian negara akibat salah urus keuangan BUMN/Persero dapat disebabkan oleh 1) risiko usaha (rugi usaha), 2) kesalahan administrasi atau 3) atau kerugian yang disebabkan oleh perbuatan melawan hukum.

**Kata Kunci:** *Kerugian, Keuangan Negara, Badan Usaha Milik Negara.*

### Abstract

This study examines state losses in State-Owned Enterprises (BUMN). State assets in BUMN are State Finances, namely state money which is separated in its management as a form of direct capital participation from the State Finance in BUMN companies which is manifested in the criteria if all of the capital comes from separated state assets, and if the majority (majority) of the capital comes from separated state assets. These two criteria indicate the existence of state assets in BUMN companies so that they are fully subject to the legal provisions of BUMN according to Law No. 19 of

2003 concerning BUMN. The method used in this study is empirical law using a statutory approach and a case approach. As for this research, the researcher uses a live case study approach as an approach to a legal event whose process is still ongoing. The results of the study show that the criteria for state finances in State-Owned Enterprises (BUMN) can be: part of state finances or not part of state finances, this is based on the reason that there is a contradiction with Law Number 40 of 2007 concerning Limited Liability Companies, where the finances of limited liability companies are those owned by companies, while Article 2 letter g of Law Number 17 of 2003 concerning State Finances still categorizes BUMN capital as part of state finances, so that they are interpreted as public finances, even though SOEs are clearly companies and not state institutions. That Implications of the lack of strict separation of state status in the management of BUMN/Persero wealth in terms of state losses The wealth of SOEs as part of state finances is an incorrect meaning. If this interpretation continues, then in fact there has been a deviation from the provisions of the Limited Liability Company Law as the basis for the existence of the activities of the BUMN itself. Therefore, it is appropriate that in the future there will be revisions to the provisions of the State Finance Law, especially regarding the assets of SOEs which are categorized as part of state finances. The legal consequences if there is a loss to the state due to mismanagement of the SOE/Persero's finance can be caused by 1) business risk (business loss), 2) administrative error or 3) or losses caused by unlawful acts.

**Keywords:** *Losses, State Finances, State Owned Enterprises.*

## INTRODUCTION

State-Owned Enterprises (BUMN) are business entities whose ownership is partly or wholly owned by the state. According to Law Number 19 of 2003 Article 1, the definition of BUMN is a business entity whose entire or most of its capital is owned by the state through direct investment originating from state assets. SOEs can also be interpreted as actors in economic activities that are important in the national economy, together with other economic actors. Some examples of companies BUMN, such as Pegadaian, PLN, Garuda Indonesia and various national banks that have a role in developing the nation's economy. In essence, SOEs have a goal to open and expand employment opportunities for the working population and prevent private sector monopolies. However, not only that, there are various other goals that are also owned by SOEs.

Various forms of BUMN have been explicitly affirmed in the Law of the Republic of Indonesia Number 19 of 2003 concerning BUMN, State-Owned Enterprises consist of two forms, namely the company business entity (Persero) and the general business entity (Perum). The Company's Business Entity (Persero) is a BUMN in the form of a limited liability company whose capital is divided into shares, which are wholly or at least 51 percent of the shares are owned by the Republic of Indonesia and 49 percent are owned by private parties whose main purpose is to pursue profits and subsequently is a General Business Entity (Persero). Perum), a general business entity (perum) is a state-owned enterprise whose entire capital is owned by the state and is not divided into shares. General business entities have the purpose and objectives supported according to the approval of the minister to make capital participation in other businesses.

As a business entity, it is a business entity whose business orientation is focused on efforts to gain profit (profit). BUMN in the phrase "BUMN is the entire capital owned by the state"; and the phrase "SOEs are mostly owned by the state". These two phrases determine the criteria, namely to be considered a BUMN if all the capital is owned by the state, and to be said to be a BUMN if most of the capital is owned by the state.

Furthermore, SOEs are normal business entities if at a certain time they get large, medium, or less profits, even at one time they suffer losses. From the aspect of capital, the capital of BUMN companies is sourced or originating from the state, namely from separated state assets.

State assets in BUMN are State Finances, namely state money which is separated in its management as a form of direct capital participation from the State Finance in BUMN companies which is manifested in the criteria if all of the capital comes from separated state assets, and if the majority (majority) of the capital comes from separated state assets. These two criteria indicate the existence of state assets in BUMN companies so that they are fully subject to the legal provisions of BUMN according to Law No. 19 of 2003 concerning BUMN.

The problem is that not all SOEs in Indonesia are said to be good and healthy SOEs, because a number of SOEs still suffer considerable and even very large losses. Not a few of the SOEs in question suffer losses due to various factors, so that if a loss occurs to the SOE, then the loss is a loss to the State Finances, besides that the Persero State-Owned Enterprises (BUMN) always give birth to problems. This is inseparable from the different views on the position of the wealth of BUMN Persero. Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption classifies BUMN assets as part of state finances. But on the other hand, Law Number 19 of 2003 concerning State-Owned Enterprises jo. Law Number 40 of 2007 concerning Limited Liability Companies places the wealth of SOEs as not part of state finances because of the principle of separation of shareholder wealth from the company. Based on the description of the background above, the researchers are interested in researching further about the problems of state finances that exist in State-Owned Enterprises (BUMN).

Based on the background of the research problem above, the researcher draws the formulation of the problem, namely how are the criteria for state finances in BUMN companies? and whether the wealth of BUMN/Persero is part of state finances or not part of state finances and what are the implications of the lack of strict separation of state status in managing the wealth of BUMN/Persero in terms of state losses?

## **METHODS**

### **Types of research**

The type of research that will be used is normative legal research or what is known as library research. Where in doctrinal law research because this research is only aimed at written regulations so that this research is called library research because it will require secondary data in the library.. In a normative study, the written law is studied in a statutory approach which is used to support the writing that is carried out, namely as the initial basis for conducting an analysis. The positive law approach is a very basic preliminary activity. Therefore, before finding legal norms, it is necessary to know in advance what positive law applies.

### **Data source**

This study uses a literature study or known as legal materials, namely data obtained from the results of a literature review of various literatures or library materials related to the problem or research material. On that basis, the purpose and usefulness of library research is basically used to show the way to solve research problems.

### **Data collection technique**

The technique of collecting legal materials used by researchers is library research, which is a method of collecting legal materials by conducting a search on library materials, namely collecting and reviewing legislation, legal books, opinions of legal scholars. As well as the results of previous research related to the research problem under study, namely in the form of journals, articles, the legal basis of the engagement originating from an agreement where the act is contrary to the law and other materials that support this research.

### **Data analysis technique**

The analysis of legal materials in this study will use deductive logic analysis methods with qualitative normative analysis methods. The method of deductive logic analysis is to draw conclusions from a general problem to the concrete problem under study. While the qualitative normative analysis method, namely the discussion and explanation that is arranged logically on the results of research on norms, rules, and legal theoretical foundations that are relevant to the subject matter.

## **RESULTS AND DISCUSSION**

### **Criteria for State Finance in State-Owned Enterprises (BUMN)**

State-Owned Enterprises or BUMN is one of the business entities that can take the form of a company that can be owned by the state. BUMN is a "business entity whose capital is wholly or most of the capital is owned by the state through direct participation originating from separated state assets". The legal umbrella for the existence of this BUMN is regulated in "Law Number 19 of 2003 concerning BUMN" (hereinafter referred to as the BUMN Law). The state as an entity that provides services to the community has a company that aims to gain profit, which is used as a source of state revenue. This is known as state finance. The meaning of state finances according to Law Number 17 of 2003 concerning State Finance in Article 1 states that state finances are all rights and obligations of the state that can be valued in money, as well as everything in the form of money or goods that can be used as property of the state in connection with the implementation of rights and obligations.

Based on the mandate of Article 23 C of the 1945 Constitution, Law Number 17 of 2003 concerning State Finance was born. The scope of state finances is also explained in Article 2 of the Law, namely:

- a. The right of the state to collect taxes, issue and circulate money, and make loans.
- b. the state's obligation to carry out public service tasks for the state government and pay third party bills.
- c. State Revenue.
- d. State Expenditures.
- e. Regional Revenue.
- f. Regional Expenditures.
- g. state assets/regional assets managed by themselves or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated from state/regional companies.
- h. the assets of other parties controlled by the government in the context of carrying out government duties and/or public interests.
- i. wealth of other parties obtained by using facilities provided by the government.

Article 2 of Law Number 17 of 2003 determines the scope of state finances which includes, among others, assets separated from state/regional companies and assets of other parties obtained using facilities provided by the Government. The approach used in formulating state finances is in terms of objects, subjects, processes, and objectives.

The field of state financial management is so broad based on this approach that it can be grouped into sub-fields of fiscal management, sub-sectors of monetary management, and sub-sectors of management of state assets which are separated. In the context of providing public services as mandated in the preamble to the 1945 Constitution, it is the idea that state assets are separated from state enterprises as part of state finances. According to the provisions of Article 4 (1) of the BUMN Law, it is stated that BUMN capital comes from separated state assets. In its

development, the provision of separated wealth has become a polemic for some parties, if it has been separated, it will no longer belong to the state. In the explanation of Article 4 paragraph (1) it is stated that:

“What is meant by segregation is the separation of state assets from the State Revenue and Expenditure Budget to be used as state capital participation in BUMN for further development and management no longer based on the State Revenue and Expenditure Budget system, but the guidance and management is based on sound corporate principles.”

On the other hand, "Law Number 17 of 2003 concerning State Finance (hereinafter referred to as the State Finance Act)" as a regulator and legal umbrella for the concept of state assets, which explains the meaning of state finances based on "Article 1 number 1 which states are all rights and obligations of the state that can be valued in money, as well as everything in the form of money or in the form of goods that can be used as state property in connection with the implementation of these rights and obligations. Then Article 2 describes what the criteria for state finances are, namely in letter g which states "state assets or regional assets managed by themselves or by other parties in the form of money, securities, receivables, goods, and other rights that may be valued in money, including assets that are separated from state/regional companies". Then in Article 2 letter i which states "the wealth of other parties obtained by using facilities provided by the government".

The State Finance Law in Article 11 confirms that the APBN is a manifestation of the management of state finances. So that means, in the Law on State Finances it recognizes that State Companies are owned by the State, not private. Thus, the State Finance Law recognizes that SOEs are business entities with state-owned status. Meanwhile, the "State-Owned Enterprises Law recognizes that state-owned companies are business entities with private status, because being a private legal entity means that they are subject to the Law on PT".

So with this, there are differences in understanding and there is overlapping of laws and regulations which can have an impact on legal uncertainty for the parties involved in managing state finances. A significant impact is that if a BUMN is managed domestically and if there is a loss to the business entity, then this can lead to a criminal event which in this case is a criminal act of corruption. Meanwhile, if a BUMN is managed based on the principles carried out in healthy corporate governance, then this will be subject to the Law on PT.

### **Criteria for State-Owned Enterprises (BUMN) Part of State Finance**

BUMN was born because of the government's interest in carrying out economic activities which are the pillars of the country's development. After the Presidential Decree 5 July 1959, the government led by Soekarno made efforts to nationalize foreign companies left by the Dutch in 1960 in almost every sector such as plantations, transportation, trade, and banking. The national economy at that time was structured based on the Guided Economy which was a State Monopoly, so that everything that was done by State-Owned Enterprises (BUMN) in their business activities, both in the banking sector was regulated and supervised by the State, in accordance with Law Number 19 1960 concerning State Enterprises, however since June 19, 2003 this Law was declared invalid through Article 94 of Law Number 19 Year 2003 concerning State-Owned Enterprises. SOEs cannot immediately stand up and carry out operations,

Regarding BUMN finance, this provision has been regulated in Article 4 of Law Number 19 of 2003 concerning BUMN which states that BUMN Capital is and comes from separated state assets and State capital participation in the context of establishment or participation in BUMN can be

sourced from the State Revenue and Expenditure Budget. , capitalized reserves and gains on asset revaluation.

The state first separates state assets that will be used as SOE capital, with the aim of not being mixed with certain assets, this is because SOE finances as part of SOEs have business risks that can be profitable at any time and can also lose (Fluctuate).

### **Criteria for State-Owned Enterprises (BUMN) Not Part of State Finance**

In the SOE itself there is a separation of wealth, namely where the Limited Liability Company is a legal entity that has its own wealth and the assets of the company are separated from the wealth of its shareholders. The separation of wealth has an impact on the shareholders in terms of limited liability in the event of a loss. Shareholders are only responsible for the shares they own. In principle, the company is responsible for the activities carried out by the company as a legal entity.

State finances which have been separated and become the capital of SOEs in the form of limited liability companies, are in contradiction with Law Number 40 of 2007 concerning Limited Liability Companies, in which the finances of limited liability companies are those owned by companies, while Article 2 letter g of Law Number 17 of 2003 concerning Finance The state continues to categorize BUMN capital as part of state finances, so that it is interpreted as public finance, even though BUMN is clearly a company and not a state institution. The theory of legal entities states that the separated state assets belong to SOEs as private legal entities and the state obtains shares on the paid-up capital. These shares are listed as state assets. Furthermore, SOE finances cannot be treated as state finances because naturally managing state finances is different from managing SOE finances.

Professor of the Faculty of Law UI (FHUI) Erman Radjagukguk said that the wealth of BUMN Persero and the wealth of BUMN Perum as a legal entity are not part of the wealth of the state. This is because the 'separated state assets' in SOEs are only in the form of shares. This means that the wealth of SOEs does not become state assets.

Erman refers to Article 1 Paragraph (2) of Law no. 19 of 2003 concerning State-Owned Enterprises which states that a Persero Company, hereinafter referred to as Persero, is a BUMN in the form of a limited liability company whose capital is divided into shares which are wholly or at least 51 percent owned by the state whose main purpose is to pursue profits. Furthermore, Article 11 states that all provisions and principles that apply to Limited Liability Companies apply to Persero as stipulated in Law no. 1 of 1995 concerning Limited Liability Companies. BUMN in the form of Perum is also part of a legal entity based on Article 35 paragraph (2) of Law no. 19 of 2003 concerning BUMN which states that Perum has obtained the status of a Legal Entity since the promulgation of a Government Regulation concerning its establishment.

Article 7 Paragraph (6) of Law Number. 1 of 1995 concerning Limited Liability Companies also explains that SOEs can obtain legal entity status after their deed of establishment is ratified by the Minister of Law and Human Rights. Based on some of the things above, Erman considers that SOEs are not part of the state's wealth. As a result of misunderstanding the meaning of "state wealth".

Law No. 31 of 1999 concerning the Crime of Corruption does explain that all state assets in any form, whether separated or not separated, are part of state finances. However, Erman emphasized that the "separated state assets" in the BUMN in question are physically in the form of shares held by the state. However, the assets owned by SOEs are not part of the state's wealth.

There is Article 56 of Law no. 1 of 1995 concerning Limited Liability Companies which states that within five months after the company's financial year is closed, the Board of Directors prepares an annual report to be submitted to the GMS, which contains at least the annual calculations

consisting of the last financial year-end balance sheet and calculations profit/loss from the relevant savings book as well as an explanation of the document. Thus, the loss suffered in one transaction does not mean the loss of the limited liability company because there are other profitable transactions. If the balance sheet shows a loss figure, it does not mean that it will automatically become a state loss because there may be profits that have not been shared in the past year or are closed from the company's reserve funds.

### **Implications of the Indecisive Separation of State Status in the Management of State Owned Assets/Persero in terms of state losses**

State assets are a source of state assets and state assets in meeting the needs of state administration. The higher the amount of state wealth, the higher the level of the state's ability to manage various aspects of development. The development in question is the development of infrastructure and several state-owned enterprises (BUMN) which aim to gain profits in their management. The purpose of State-Owned Enterprises is stated in Article 2 of Law Number 19 of 2003 concerning State-Owned Enterprises. The objectives of the establishment of SOEs are as follows:

1. Contribute to the development of the national economy in general and state revenues in particular.
2. The pursuit of profit.
3. Organizing public benefits in the form of providing high-quality and adequate goods and/or services to fulfill the needs of many people. d. Become a pioneer in business activities that cannot be carried out by the private sector and cooperatives.
4. Actively participate in providing guidance and assistance to entrepreneurs from economically weak groups, cooperatives, and the community.

One of the characteristics of a legal entity is the separation of assets of a legal entity from the personal assets of its founder/manager. This is a juridical consequence of the company's position as a separate legal entity. This means that a legal entity in the form of a Limited Liability Company has its own assets separate from the assets of its organs. Considering the position of BUMN Persero as an independent legal entity with all its juridical consequences, for the sake of state law it must be interpreted in its position as a shareholder like a shareholder in a PT. As a shareholder, the state is prohibited from doing any intervention or interference in the management/management of BUMN Persero (separation between ownership and control).

The wealth of SOEs as part of state finances is an incorrect meaning. If this interpretation continues, then in fact there has been a deviation from the provisions of the Limited Liability Company Law as the basis for the existence of the activities of the BUMN itself. Therefore, it is appropriate that in the future there will be revisions to the provisions of the State Finance Law, especially regarding the assets of SOEs which are categorized as part of state finances.

Juridically, the capital included in the Company is no longer the private property of its founders/shareholders. By law, there has been a separation of wealth originating from the personal wealth of shareholders into the assets of the Company. Based on these characteristics, it is very logical if the Limited Liability Company law applies limited liability for shareholders.

### **CONCLUSION**

State financial criteria for State-Owned Enterprises (BUMN) can be part of state finances or not part of state finances, this is based on the reason that there is a contradiction with Law Number 40 of

2007 concerning Limited Liability Companies, where the finances of limited liability companies are those owned by companies, while Article 2 letter g of Law Number 17 of 2003 concerning State Finances still categorizes BUMN capital as part of state finances, so that they are interpreted as public finances, even though SOEs are clearly companies and not state institutions.

Implications of the lack of strict separation of state status in the management of BUMN/Persero wealth in terms of state losses. The wealth of SOEs as part of state finances is an incorrect meaning. If this interpretation continues, then in fact there has been a deviation from the provisions of the Limited Liability Company Law as the basis for the existence of the activities of the BUMN itself. Therefore, it is appropriate that in the future there will be revisions to the provisions of the State Finance Law, especially regarding the assets of SOEs which are categorized as part of state finances.

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- Undang-Undang Nomor 1 tahun 2004 tentang Pembendaharaan Negara.
- Undang-Undang Nomor 15 Tahun 2004 Tentang Pemeriksaan Pengelolaan Dan Tanggung Jawab Keuangan Negara.
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