

# The Separated State Property in State-Owned Enterprises

## La Propiedad del Estado Separada en las Empresas del Estado

---

RENI ANGGRIANI,

Universitas Muhammadiyah Yogyakarta, Indonesia

Universitas Diponegoro, Indonesia

Jl. Prof. Sudarto No.13, Tembalang, Kec. Tembalang, Kota Semarang, Jawa Tengah 50275, Indonesia

anggriani@umy.ac.id

<https://orcid.org/0000-0003-2079-0946>

F.X JOKO PRIYONO,

Universitas Muhammadiyah Yogyakarta, Indonesia

JL. Brawijaya, Kasihan, Bantul, Yogyakarta, 55183.

fransiskusjoko893@gmail.com

<https://orcid.org/0000-0002-0699-0864>

NANIK TRI HASTUTI

Universitas Muhammadiyah Yogyakarta, Indonesia

JL. Brawijaya, Kasihan, Bantul, Yogyakarta, 55183.

naniktrihastuti@gmail.com

<https://orcid.org/0000-0003-0377-8259>

DOI: <https://doi.org/10.24197/st.1.2023.26-43>

RECIBIDO: 03/03/2022

ACEPTADO: 14/07/2022

**Resumen:** El Estado Unitario de la República de Indonesia tiene uno de los principales objetivos para lograr el bienestar de las personas, mientras que un estado de bienestar se centra en la distribución equitativa a la comunidad. La regulación de las finanzas estatales separadas como capital en empresas estatales es muy importante para desarrollando la economía del país. El problema a menudo ocurre que muchos de los directores de empresas estatales atrapados por casos de corrupción han causado pérdidas al estado debido a la posición poco clara de las finanzas estatales en esas organizaciones. La investigación fue de carácter normativo a través de las leyes y reglamentos vigentes. Además, los activos

**Abstract:** The Unitary State of the Republic of Indonesia has one of the primary objectives to realize the welfare of the people, while a welfare state focuses on equitable distribution to the community. Regulating the separated state finances as capital in state-owned enterprises is very important for developing the country's economy. The problem often occurs that many of the directors of state-owned enterprises caught for corruption cases have caused losses to the state due to the unclear position of state finances in those organizations. The research was a normative one through the prevailing laws and regulations. Also, the separated state assets will be the wealth of state-owned

estatales separados serán la riqueza de las empresas estatales, por lo que la pérdida pertenece únicamente a las empresas estatales.

**Palabras clave:** Activos Estatales Separados, Empresas Estatales, Pérdidas Estatales.

enterprises, so the loss belongs solely to the state-owned enterprises.

**Keywords:** Separated State Assets, State-Owned Enterprises, State Losses.

## 1. BACKGROUND

A country's Constitution is the highest source of guidelines in developing state and government policies in all fields. The source of approaches in developing market economic policy and *civil society* is a social contract in developing collective life in the state, civic society and market. The three collective domains have an integral relationship and must be connected by the Constitution. [1]

The Unitary State of the Republic of Indonesia has the objective as contained in the fourth paragraph of the opening of the 1945 Constitution containing the basis of the State of Pancasila, "... based on the One True God, a just and civilized Humanity, the Association of Indonesia and the People led by wisdom in consultative/representative, and by realizing a social justice for all Indonesians." The five precepts of Pancasila are a complete circle and an inseparable unity.

According to the founders of the nation, a welfare state is a form of democratic government that asserts that the state is responsible for the welfare of the people (at least at a minimum), that the government should regulate the distribution of state wealth so that no people are starving, no people meet their death because they do not get social security. In the Indonesian welfare state, what is required by its political ethics is not the abolition of private property, but rather that personal property has a social function and the state is responsible for the general welfare in society. [2]

According to Franz Magnis-Suseno [3], the country's Constitution is to seek common ground. The state must strive for all prerequisites, conditions, and infrastructure to live fairly and prosperously [3], as contained in the 5th precept of Pancasila. Pancasila being the ideal of law, the highest basic norm, and the philosophy of the Indonesian nation is stated in the Explanation of the 1945 Constitution, which states:

"... these points of thought include the spiritual atmosphere of the Constitution of the Republic of Indonesia." These points of mind embody the ideals of the law (*rechtsidee*) that rules the state's basic law, both written (Constitution) and unwritten law. The Constitution emphasizes these points of mind in the articles.

The state's role is not limited only as a regulator but also to take the necessary actions and even as a direct actor in the event of negative externality, failure in market mechanisms, economic inequality, or social inequality. All regulations related to the empowerment of natural and human resources are the state's authority (Ismiyatun, 2017). The value system imposed is a moral and social responsibility, aimed at advancing and empowering economic actors in a balanced and sustainable manner towards quality economic growth that ensures fair equality, which is a characteristic of the ideal populist financial and economic

system based on the 1945 Constitution [1], so that all state and government policies in the economic field, should refer to the provisions of the Constitution.

Constitution is one of the means of control (social control) to the dynamics of market economic change, but on the other hand, it is a means of engineering (socio-economic engineering) on economic development towards the ideals of shared life. The Constitution is a common consensus that should be a balancing factor between country, society and markets.

The relationship between the state versus the market is bridged by the Constitution, namely the economic Constitution, to develop economic activities constitutionally [1]. The Constitution is one form of the duty or role of the state to make it. The sign of authority is when social harmony can be achieved, and there is no unrest in people's lives. Community unrest is a sign of a lack of social harmony. *Budi luhur* of a ruler can be seen in the way of running the government. The nature of power itself and its use must be dignified. The government is expected to realize a prosperous, just, and thriving state [4].

Economic development depends heavily on the involved parties in carrying out the economy. For the economy to be good, the state's role is needed as a regulator or Constitution that will make regularity in a country and the perpetrator of economic development itself. Accordingly, the economic Constitution in the world continuously regulates at least: 1. on the possession and ownership of natural resource wealth as a legacy of life, 2. about the conception of individual property rights, and 3. on the role of state and state companies in business activities. and one of the primary impediments to efficient corporate governance systems has been identified as the ownership structure [5]

Intervention or role of the State is realized in the form of arrangements and briefings from the state on people's lives so that the movement of people's lives will be in line with the development carried out by the state to realize the welfare of society social justice for all Indonesians. The people's welfare is an ideal seen in the 1945 Constitution.

The state's control over a branch of production that is important for the state and power over lives of the people and management of the state over the earth and water and natural wealth contained therein which is mandated to be used as much as the prosperity of the people as stipulated in Article 33 paragraph (2) and paragraph (3).

One of the functions of the state is to develop juridical instruments to conduct arrangements, services, and protection for the community, namely by making normative rules about how the government is carried out to carry out its functions, so that in the [6]. The measure of governance is the ruler's authority when social harmony can be achieved, and there is no unrest in people's lives. Community unrest is a sign of a lack of social harmony. *Budi luhur* of a ruler will be seen in the way of running the government. The nature of power itself and its

use must be dignified. The government is expected to realize a prosperous, just, and thriving state [4], including in the economy. The national economy of the Unitary State of the Republic of Indonesia has been regulated in Article 33 of the 1945 NRI Constitution and after amendments, Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia

Constitution affirms that the national economy is organized based on economic democracy with the principle of togetherness, the efficiency of justice, sustainability, environmentally sound, self-reliance, the balance of progress, and national economic unity. Explanation of Article 33 paragraph (4) of the 1945 Constitution post-reform contains the idea of political and economic democracy, meaning the highest power holders in our country are the people, both in the political and economic fields

Economic activity is driven by market mechanisms controlled by the government towards an efficient but fair market economy (efficiency-fairness), as referred to in Article 33 paragraph (4) of the 1945 Constitution. [1]According to A. Effendy Choirie [6], [7] amendments to Article 33 of the 1945 Constitution resulted in a new constitutional legal language: economic democracy. Economic democracy is the opposite of the constitutional law language of "people's democracy" and "Pancasila democracy." The reason is that the national economy organized in economic democracy has several basic rules: fair efficiency.

One of the efforts of the state, to participate in building the national economy or experience in business activities along with the establishment of State-Owned Enterprises (SOEs), which is a legal entity as stipulated in Law No. 19 of 2003 on State-Owned Enterprises hereinafter referred to as the SOE Law, which has a strategic position for improving the welfare of the people. For the government to run well, the state established SOEs to strive for the natural wealth for the prosperity of the [8] to carry out economic development. In carrying out economic growth, a Corporate governance structure is necessary to support the company's ability to create value in the short, medium, and long term. This content requires information such as the organizational leadership structure, including expertise, skills, diversity, and how incentives and remuneration affect value creation [9]

Referring to article 1 paragraph (1), State-Owned Enterprises is a business entity whose entire or most of its capital is owned by the state through direct participation derived from the state's wealth that is separated. Considerations established by SOEs in the Unitary State of the Republic of Indonesia, as in the Law of SOEs, are [10]:

1. that State-Owned Enterprises are one of the actors of economic activities in the national economy based on economic democracy;
2. that State-Owned Enterprises have an essential role in the implementation of the national economy to realize the welfare of the community;

3. that the implementation of the part of State-Owned Enterprises in the national economy to realize the welfare of the community has not been optimal;
4. that to optimize the role of State-Owned Enterprises, its management and supervision must be carried out professionally;
5. that the laws and regulations governing State-Owned Enterprises are no longer following the rapid development of the economy and business world, both nationally and internationally;

State-Owned Enterprises, as stipulated in Article 9 of the SOE Law, consists of Public Companies (Perum) and Company Companies (Persero). The government forms public Companies to carry out efforts to provide certain goods and services to meet the community's needs. Perum's business form, although carrying out public benefits, as a business entity is pursued must remain independent and earn profit for the sustainability of its business, while the Company formed by the government to seek profit and fully comply with the provisions of Law No. 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the Law of [11]).

Referring to Article 1, number 2 of the SOE Law, SOEs are companies in the form of limited liability companies whose capital is divided into shares that are all or at least 51% (fifty-one percent) of their shares owned by the Unitary State of the Republic of Indonesia. And, whose primary purpose is to pursue its profits, refer to article 2 paragraph (1) letter a. It has been mentioned that one of the objectives of State-Owned Enterprises Persero is to pursue profit. Based on Article 1 No. 2 of the SOE Law, the remaining shares can be owned by other than the Unitary State of the Republic of Indonesia, thus mixing the shares held by the Unitary State of the Republic of Indonesia with additional shares owned by private or other public. Therefore, the rights and obligations of the state with other shareholders are the same. The mix of capital will bring implications in supervision, which in the regulation of the Law of SOEs and business entities of legal entities is different from Limited Liability Company Law. Economic motivations drive the formation of business entities. Every participant in the corporate entity is valued and positioned based on their contribution amount. The quantity of each party's contribution determines the roles, tasks, obligations, and possibilities to earn economic rewards, as well as the duty to bear risk/loss [12]

Referring to Article 11 of the SOE Law, State-Owned Enterprises Persero is subject to the rules of limited liability companies and applies all provisions and principles. They all apply to limited liability companies as stipulated in Law No. 1 of 1995 concerning Limited Liability Companies, so that Persero SOEs, *in carrying out their business*, must comply with all regulations applicable to Limited Liability Companies, namely Law No. 40 of 2007, concerning Limited Liability Companies (PT Law). State-Owned Enterprises Persero is a State-

owned enterprise, and its Board of Directors is a public official who must comply with all regulations applicable to public officials. The obligation of the Board of Directors of Persero as a public official is to carry out the company as stipulated in the SOE Law. Because the wealth of state-owned enterprises is state property, it must be managed in an orderly manner under the law, efficient, economical, effective, transparent and responsible by paying attention to the sense of justice and propriety is so based on Article 3 paragraph (1) of Law No. 17 of 2003 on State Finance. However, on the other hand, the Board of Directors of Persero must also carry out obligations as stipulated in the PT Law, be responsible for the company's management, generate profit, and do not cause losses to the state. State/Regional losses are a lack of money, securities, and goods, which are precise and specific amounts as a result of unlawful acts either intentionally or negligently, as stipulated in Article 1 number 15 of Law Number: 15 Of 2006 concerning the Audit Board of Finance hereinafter referred to as the Financial Auditing Body Law, namely: what actions are considered to have harmed the state is not regulated in detail to cause many differences in interpretation of law enforcement, and it is a legal void to the difference of understanding of state losses has not been clearly regulated, so in its implementation, it has also made the Directors of SOEs become not brave in making decisions that with such actions also make SOEs undeveloped as entwined by the SOE Law that is chasing profits, and the prosperity of the people as much as possible becomes unrealized. A state-owned legal entity in carrying out business activities, in the current reality, financially State-owned enterprises including State-Owned Enterprises Persero, refers to Article 6 of the CPC Law, its management is supervised by the Audit Board of the Republic of Indonesia (BPK). However, on the other hand, the Board of Directors of State-Owned Enterprises Persero is subject to the Law of PT, as stipulated in Article 11 of the SOE Law, which based on Article 108 of the limited company Law, the Board of Commissioners conducts its supervision where it causes obscurity in the supervision of Persero.

For Example, in Pertamina Case, Karen Agustiawan, as President Director, was charged with corruption when PT Pertamina invested in Baster Manta Gummy Block (BMG) in Australia in 2009. For her actions, Karen was charged with violating Article 2 or 3 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes Jo Article 18 paragraph 1 letter b Jo Article 55 paragraph 1-1 of the Criminal Code. Karen Agustiawan has been found guilty of corruption crimes together and sentenced to a criminal offence, therefore against defendant Karen with a prison sentence of 8 years, a fine of 1 billion rupiahs subsided four months [13]. This kind of corruption impacts the system, and it is more commonly referred to as systemic corruption since it obstructs the free flow of administrative procedures for progress, and those who engage in this type of corruption do so for personal gain and profit [14]. Karen Agustiawan appealed but was rejected, then filed and

appealed to the Supreme Court. The Supreme Court struck down the verdict by releasing the accused from all lawsuits, as conveyed by Andi in a written statement, with consideration of the cassation tribunal, among others, that what the defendant Karen [Agustiawan](#) did was "business judgment rule," and it is not a criminal act [15].

The decision of the Constitutional Court Number: 48/PUU-XI/2013, decided differently, and stating that State-Owned Enterprises Persero is subjected to public law, Article 23 of the 1945 Constitution governing the provisions on state finances cannot be interpreted separately without relating to other Articles, since the 1945 Constitution must be fully understood, including in analyzing the state's finances. The formulation of the understanding of state finances in Article 1 number 1 of Law 17 of 2003 uses a broad and comprehensive understanding formulation to secure the wealth of the state, which is sourced from people's money obtained through taxes levies and non-tax State revenues. According to the Court, the provision of Article 2 letter g and letter i of Law 17 of 2003 aims to allow the state to supervise that the management of state finances is carried out openly and responsible for the greatest prosperity of the people following the mandate of Article 23 of the 1945 Constitution, where financial auditing body can enter as a financial supervisor of SOEs.

The two different rulings are evidence that there is no common understanding in interpreting the finances of SOEs and state losses, resulting in legal uncertainty and legal protection for the Directors of State-Owned Enterprises Persero in carrying out their duties. Karen case, as evidence there is no one common understanding of state losses that can ensnare directors to be suspected of corruption so that there is a legal void that has made the Directors can be trapped with acts of corruption.

The two decisions have caused disparity, disharmony and inconsistency of the authority of the CPC in carrying out its duties and functions based on Article 23 paragraph (1) and Article 23 E paragraph (1) of the 1945 Constitution with the CPC Law. This law reaches SOEs as objects of examination, can result in any business losses in SOEs classified as state losses, and causes legal uncertainty regarding the finances of State-Owned Enterprises Persero, which results in supervision.

According to Article 108 of the limited liability company laws, the Supervision of the Company is carried out by the Board of Commissioners, as per the contents of Article 108, namely:

1. The Board of Commissioners supervises management policy, the course of management in general, regarding the Company and the Company's business, and advises the Board of Directors.



2. Supervision and provision of advice as referred to in paragraph (1) shall be conducted for the benefit of the Company and following the purposes and objectives of the Company.

Supervision is also regulated in the SOE Law. Supervision of SOEs is carried out by commissioners and supervisory boards, which are stipulated in Article 6 of the Law, which reads:

1. Commissioners and supervisory boards carry out supervision of SOEs.
2. Commissioners and the Board of Trustees are fully responsible for the supervision of SOEs for the interests and objectives of SOEs.

And it is also stipulated in Article 71, it reads:

1. The examination of the company's financial statements shall be conducted by external auditors determined by the GMS for Persero and the Minister for Perum.
2. The Financial Examiner's Board shall be authorized to conduct inspections on SOEs following the provisions of the laws and regulations.

The Law of the Financial Supervisory Agency in Article 6 of the CPC Law reads:

- (1) The financial auditing body shall be responsible for examining the management and financial responsibility of the state conducted by the Central Government, Local Government, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, Regional Owned Enterprises, and other institutions or entities that manage state finances.
- (2) The implementation of financial auditing body examination, as referred to in paragraph (1), shall be conducted based on the law on the review of the management and financial responsibility of the state.
- (3) Financial auditing body examination includes financial examination, performance check, and examination with specific objectives.

Supervision Regulation of Article 108 of the limited liability company laws and Article 6 of the CPC Law creates uncertainty in supervision, mainly State-owned enterprises Persero. Referring to Article 6 of the CPC Law will have implications for State-Owned Enterprises Persero, with the emergence of injustice for other shareholders since the shares of State-Owned Enterprises Persero are not only state-owned, and implicate the Board of Directors because they are worried that corruption if in deciding on the Company will later result in losses. That concern will hinder the development of State-Owned Enterprises Persero.

Differences in supervision arrangements stipulated in the SOE Law, the limited liability company laws and body financial examiner Law, especially for Persero SOEs, result in legal uncertainty. There is no definite legal protection for the Board of Directors in running the Company. The implication is that it can

cause the Board of Directors of State-Owned Enterprises Persero to make investments or transactions to obtain revenue and growth; the company is faced with a dilemma that causes doubts in decision making [16]. The problem is how the State Financial Position in State-Owned Enterprises Persero? There is legal certainty and legal protection for the Board of Directors of State-Owned Enterprises Persero, causing the Company's SOEs cannot develop as the original goal, one of which is to seek profit, and cause losses for shareholders, so that the purpose and purpose of the Company in obtaining profit cannot be achieved. This study uses a legal, conceptual and comparative approach, namely inventorying and analyzing laws or regulations related to the problems in this study, as well as conducting comparisons between the supervision regulations of Persero SOEs that are based on legal principles and the basis of prevailing legal philosophy, customary law and moral values.

The legal material in this study was based on the principles of law and the basis of prevailing legal philosophy, customary law and moral values also based on primary legal material, secondary legal material. Primary Legal Materials are legal materials that have the power to bind juridically, consisting of the first basic norms (Pancasila), the second basic regulation, and the Constitution of the Republic of Indonesia 1945. The fourth is uncodified laws of customary law and Islamic Law, while the fifth is jurisprudence. Finally, the sixth is treaty. In this study, the primary legal materials were:

1. The fifth precept of Pancasila of social justice for all Indonesians as the basic norm,
2. 1945 Constitution,
3. Law No. 17 of 2003 on State Finance,
4. Law No. 19/2003 on State-Owned Enterprises,
5. Law No. 15 of 2006 concerning Financial Supervisory Agency
6. Law No. 40 of 2007 concerning Limited Liability Companies
7. The decision of the Constitutional Court No. 48/PUU-XI/2013, concerning The Testing of Law No. 17 of 2003 on State Finances against the 1945 Constitution of the Republic of Indonesia.

Secondary Legal Materials are closely related to primary legal materials and can help analyze and understand the primary legal materials that can be in the form of legislation draft, legislation that does not apply, the scientific work of scholars, the results of research, journals and others that are related to research objects.

## 2. RESULTS AND ANALYSIS

The state that embraces Modern Welfare places the country's financial law as central. In Indonesia, the state finance law based on the Constitution of the

Republic of 1945 is a mandate that cannot be ruled out in the nation and state to achieve the state objectives. State Finance is stipulated in Law Number: 17 of 2003, on State Finance, hereinafter referred to as the State Finance Law. State financial law based on its content or substance governs the state's interests. Article 1 No. (1) [17], state finances are all rights and obligations of the state that can be assessed with money, as well as everything either in the form of money or in the form of goods that can be made state property in connection with the implementation of such rights and obligations. In a broad sense, state finances include state rights and obligations that can be assessed with money, including money and state property that are not covered by the state budget. In contrast, in a narrow sense, the state's finances are limited to the rights and obligations of the state that can be assessed with money, including money and state property listed in the state budget for the year in question.

The purpose of the division of the meaning of state finance is so that there is an understanding in interpreting the state's finances and has benefits for the authorities to carry out the management of state finances, so as not to commit acts that are not following state finance law. According to the division of law, state finances are in the state of public law, but that does not mean it has no offence to private law. When it comes to state finances, whose management is in state-owned enterprises or regional owned enterprises, the offence is in Article 11 of the SOE Law, which states that State-Owned Enterprises Persero is subject to the Law of Limited Liability Company.

State financial management conducted by State-Owned Enterprises and Regional Owned Enterprises always follow the regulations on state financial management, so it is undeniable that the law of state management has a position with the law subject to private law.[17]

### **2.1. Supervision of the Audit Board of Finance in State-Owned Enterprises**

The Constitution of the Republic of Indonesia in 1945 has undergone fundamental changes, including Article 23 paragraph (5) concerning the position and duties of the Audit Board of Finance. Examination of the management and responsibility of the government on state finances is a heavy obligation, so it is necessary to establish a Financial Audit Board that, regardless of the influence and power of the government, is realized by the Legislators of the Constitution of the Republic of Indonesia 1945. The demands of reform have demanded the realization of a clean and free state from Corruption Collusion and Nepotism (KKN) towards good governance, requiring changes in state laws and institutions.

One of the reforms in the Third Amendment of the Constitution of the Republic of Indonesia in 1945 is the provision of Article 23 paragraph (5) on the Audit Board of Finance has strengthened the existence and position of the CPC

as a free and independent country. The position of the CPC as the state public body of state financial examiners needs to be established, accompanied by strengthening its role and performance. Financial auditing body can carry out the duties mandated by the 1945 Constitution of the Republic of Indonesia, must be independent and free from dependence on the government in terms of institutional, examination, and reporting (Law of the Republic of Indonesia Number 15 of 2006).

Law of the Republic of Indonesia Number 15 of 2006 concerning The Audit Board of Finance, Article 6 paragraph (1): "Financial auditing body is tasked with examining the management and financial responsibility of the State conducted by the Central Government, Local Government, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, State-Owned Enterprises." State Finance is stipulated in the Law of the Republic of Indonesia Number 17 of 2003 concerning State Finance. State finances, as specified in Article 1 No. 1 are State Finances are all rights and obligations of the state that can be assessed with money, as well as everything either in the form of money or in the form of goods that can be made state property in connection with the implementation of such rights and obligations. And in Article 2, it reads: "State Finance as referred to in Article 1 number 1, includes state wealth / regional wealth that is managed alone or by other parties in the form of money, securities, receivables, goods, and other rights that can be assessed with money, including or separated wealth of state companies/regional companies."

Juridically the State Audit Board has the duty and authority in examining the wealth of SOEs. Article 6 paragraph (1) of Law No. 15 of 2006 concerning The Audit Board of Finance which reads: "Financial Auditing Body is tasked with examining the management and financial responsibility of the State conducted by the Central Government, Local Government, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Bodies, Regional Owned Enterprises, and other Institutions or entities managing State Finance", and Article 6 paragraph (4) states "if the examination is carried out by a public accountant based on the provisions of the law, the report of the results of the examination must be submitted to the CPC and published". Public accountants in auditing the wealth of SOEs as a Persero have been following the principles of good corporate governance[19].

## **2.2. State-Owned Enterprises (SOEs) as Business Actors**

The establishment of SOEs is an act of civil law of the State of Indonesia as a public legal entity so that at the same time, the State of Indonesia as a public legal entity is subject to and applies to the norms of civil law or the function of

private law, where instantly there is a transformation of the function and legal status of legal acts carried out by the state [8].

SOEs play a critical role in the economy of the Indonesian nation. The establishment of SOEs is the embodiment of the state's role as one of the economic actors in Indonesia and has an important role in the implementation of the national economy to realize the welfare of the community.

The definition of SOEs, in the provisions of Article 1 Prp No. 19 of 1960 concerning State companies as also stipulated in the Law of SOEs, the purpose of SOEs is all companies in any form of capital for the entirety of the State of the Republic of Indonesia, unless otherwise specified or based on the provisions of the law. The same is stated in the Decree of the Minister of Finance of the Republic of Indonesia Number: 740/KMK.00/1989 concerning The Improvement of Efficiency and Productivity of SOEs, where the definition of SOEs is a business entity whose entire capital is owned by the state and business entities that are not all shares owned by the state but whose status is equated with SOEs, namely SOEs which are joint ventures or cooperation between the government and local governments, SOEs that are joint ventures between the government and other SOEs, and SOEs that are joint ventures with national/foreign private enterprises, with a majority share with a minimum of 51%. From the formulation, State-Owned Enterprises is only based on criteria or limitations of capital or wealth owned by the state in state-owned enterprises.

Law No. 19 Prp Year 1960 concerning State-Owned Enterprises has been amended to Law No. 19 of 2003 concerning State-Owned Enterprises in Article 1 paragraph (1) is "State-Owned Enterprises, hereinafter referred to as SOEs, are business entities whose entire or most of their capital is owned by the state through direct participation derived from separated state assets"

State-Owned Enterprises in the form of limited liability companies whose capital is divided into shares or at least 51% owned by the state to seek profit. State-owned enterprises in the form of Persero, its capital is divided from claims, and the state must have at least 51% to seek gain so that other business entities or individuals can own additional shares.

State-Owned Enterprises as one of the publicly owned enterprises or government /state regulated in Law No. 19 Prp Year 1960 concerning State Companies and refers to Article 4 paragraphs (1) and (2) Prp Law No. 19 of 1960 on State Companies clearly stated the nature of the establishment of SOEs, where State-Owned Enterprises is a production unit that is:

1. Providing services;
2. Organizing public benefit; and
3. Cultivating income;

The purpose and purpose of the establishment of SOEs are to help build the national economy by the guided economy at that time by prioritizing the needs

of the community and peace and pleasure of work in the company towards the realization of a fair and prosperous society materially and spiritually.

The nature of SOEs based on its establishment's purpose is to provide services, organize public benefits, and foster revenues so that there is a fundamental difference between private businesses and cooperatives that base profit fertilization as the main thing. The formulation in the above provisions is intended to build a national economic order by prioritizing the interests of the people and the peace and pleasure of work in the company to realize a just and prosperous society.

Juridically, the State Audit Board has the duty and authority to examine SOEs' wealth. Article 6 paragraph (1) of Law No. 15 of 2006 concerning The Audit Board of Finance which reads: "Financial Auditing Body is tasked with examining the management and financial responsibility of the State conducted by the Central Government, Local Government, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Bodies, Regional Owned Enterprises, and other Institutions or entities managing State Finance," and Article 6 paragraph (4) states "if the examination is carried out by a public accountant based on the provisions of the law, the report of the results of the examination must be submitted to the CPC and published." Public accountants in auditing the wealth of SOEs as a Persero have been in accordance with the principles of good corporate governance [20].

According to Refli Harun [17], SOEs have two main functions: the first as a commercial function in seeking profit, and the second function is social as an extension of the state to realize the general welfare. [21]

Referring to Article 2 of the SOE Law, the purposes and objectives of SOEs are:

- a. contribute to the development of the national economy in general and state revenue in particular;
- b. pursuit of profit;
- c. conduct general benefits in the form of the provision of goods and/or services of high quality and adequate for the fulfilment of people's lives;
- d. to be a pioneer of business activities that the private sector and cooperatives cannot carry out;
- e. actively provide guidance and assistance to entrepreneurs of the weak economic class, cooperatives and communities

State-Owned Enterprises refers to Article 9 divided into 2:

1. Perum, which is a state-owned enterprise whose entire capital is state-owned, the capital is not divided into shares. Perum's total capital is from the state, and the capital is not divided into shares, so it is a whole unit that can not be split.

2. Persero, i.e., refers to Article 11, which reads: "Against Persero applies all provisions and principles applicable to limited liability companies as stipulated in Law No. 1 of 1995 concerning Limited Liability Companies," amended by Law No. 40 of 2007 concerning Limited Liability Companies.

Limited Liability Company as stipulated in The Law of Limited Liability Company No. 40 of 2007 concerning Limited Liability Companies in article 1 paragraph (1) is "Limited Liability Company, hereinafter referred to as a company, is a legal entity that is a capital alliance, established by agreement, conducting business activities with a basic capital that is entirely divided into shares and meets the requirements stipulated in this law and its implementation regulations."

Implementation of the form of state-owned enterprises in the field of construction and property, one of which is a limited company (PT) Pembangunan Perumahan hereinafter called PP (pesero) Tbk, applicable laws and regulations as stipulated in Article 11, which reads: "Against Persero applies all provisions and principles relevant to limited liability companies as specified in Law No. 1 of 1995 concerning Limited Liability Companies., meaning that for now applies the Law of PT, about Limited Liability Companies, the main purpose of the Persero in the Law of SOEs Part Two, Purpose and Purpose, Article 12, are as follows:

- a. provide high quality and highly competitive goods and/or services;
- b. profit to increase the value of the company.

State-Owned Enterprises, in conducting their business to achieve their purpose and objectives, must have guidelines so that the goals of the establishment of SOEs can be realized.

### **2.3. Limited Liability Company as the Basic Principle of State-Owned Enterprises Persero**

Limited Liability Company, as stipulated in Limited Liability Company Laws Article 1 No.1 is a legal entity that is a capital alliance, established under the agreement, conducting business activities with a primary capital that is entirely divided into shares and meets the requirements stipulated in this Law and its implementing regulations. Consideration of the Law of Limited Liability Company letter a, states that the national economy is organized based on economic democracy with the principle of togetherness, the efficiency of justice, sustainability, environmentally sound, independence, as well as by maintaining the balance of progress and national economic unity, needs to be supported by a robust financial institution to realize the welfare of the community; with that understanding, the establishment of PT should not only seek profit including State-owned enterprises Persero.

The Board of Directors as the head of the Company is stipulated in Article 92 paragraph (1) of the Board of Directors conducting the management of the Company for the benefit of the Company and per the purposes and objectives of the company and is responsible for the direction of the Company as stipulated in Article 97 paragraph (1) Limited Liability Company Law.

*The duty of care obliges the administrator to act in a very diligent way regarding the company's activity, applying to this task the necessary knowledge and the necessary time to achieve a favourable outcome that can benefit the company [22].*

In carrying out its duties, the Board of Directors shall be by the purposes and objectives in the Articles of Association of the Company. And based on Article 11 of the SOE Law, the state-separated wealth that becomes the investment of capital in so-called SOEs should be the company's wealth, but it is not because the state's separated financial position in State-owned enterprises Persero is part of the state wealth as stipulated in Article 2 letter g of the State Finance Law, Law No. 17 of 2003, about State Finances.

### 3. CONCLUSION AND FUTURE DIRECTION

The position of the state's wealth that is separated into the capital in State-owned enterprises Persero, based on Article 2 letter g of the State Finance Law, is part of the state's wealth. But when referring to article 11 of the Law on State-Owned Enterprises, which stipulates that SOE Persero is subjected to the principles of regulation of limited liability companies, then the state-separated wealth included as the capital of Persero's SOE is not a state property anymore, so until now there is still inequality of understanding between the Law of State-Owned Enterprises and the State Finance Law. Thus, it is necessary to understand the state's separated wealth included as capital in State-owned enterprises Persero whether it remains part of the state's wealth or has transformed into finance from State-Owned Enterprise Persero itself.

#### REFERENCES.

Jimly Asshiddiqie, *Konsultasi Ekonomi*. Jakarta: PT. Kompas Media Nusantara, 2010.

Y. Latif, *Negara Paripurna Historitas, Rasionalitas dan Aktualitas Pancasila*, no. Negara Paripurna Historitas, Rasionalitas dan Aktualitas Pancasila. Jakarta: Garmedia, 2011.

F. M. Suseno, *Etika Politik*. Jakarta, 2019.



- S. P. Airlangga, "Hakikat Penguasa dalam Negara Hukum Demokratis, (The Nature of the Authorities in a Democratic Rule of Law)," *Cepelo*, vol. 3, no. 1, p. 14, 2019.
- A. Musah, B. Okyere, and E. A. Boakye, "The Effect of Ownership Structures on Audit Fees of Listed Firms in Ghana," *J. Account. Invest.*, vol. 22, no. 2, pp. 392–409, 2021, doi: 10.18196/jai.v22i2.11337.
- A. S. F. Moh Rivai Anwar, M. Yunus Wahid, "Fungsi Negara Dalam Pelaksanaan Tanggungjawab Sosial Perusahaan Functions."
- A. E. Choirie, *Privatisasi Versus Neo-Sosialisme Indonesia*. Jakarta: Pustaka LP3ES Indonesia, 2003.
- I. M. A. D. Y. Arta, "Status Kepemilikan Badan Usaha Milik Negara (BUMN) Persero setelah dikuasai oleh Pihak Swasta Status of Ownership of State-Owned Enterprise (BUMN) Persero After Respected by Private Parties," *J. IUS*, vol. v, no. 2, p. 177, 2017.
- H. A. Mawardani and I. Harymawan, "The Relationship Between Corporate Governance and Integrated Reporting," *J. Account. Invest.*, vol. 22, no. 1, pp. 51–79, 2021, doi: 10.18196/jai.v22i1.9694.
- Negara Republik Indonesia, *Undang-Undang Badan Usaha Milik Negara*. 2003.
- A. A. K. S. Putu Anantha Pramagitha, "Prinsip Business Judgment Rule Sebagai Upaya Perlindungan Terhadap Keputusan Bisnis Direksi BUMN," *Kerthasemaya*, vol. 7, p. 3, 2019.
- I. T. Ritonga, "Public Accounting and Business Accounting: Two Different Upstream," *J. Account. Invest.*, vol. 21, no. 3, 2020, doi: 10.18196/jai.2103156.
- Arthur Gideon, "Kronologi Kasus Eks Dirut Pertamina Karen Agustiawan hingga Diputus Bebas," Jakarta, 2020.
- A. K. Abdulkareem, A. A. Ishola, and Z. J. Abdulkareem, "E-Government and Bureaucratic Corruption in Nigeria: Successes and Challenges," *J. Stud. Pemerintah.*, vol. 12, no. 1, 2021, doi: 10.18196/jgp.121125.

- A. Anugrahadi, "MA Lepaskan Eks Dirut Pertamina Karen Agustiawan dari Hukuman 8 Tahun Penjara," 2020.
- Prasetio, *Dilema BUMN Benturan Penerapan Business Judgment Rule (BJR) dengan Keputusan Bisnis Direksi BUMN*. Jakarta: Rayanna Komunikasindo, 2014.
- M. D. Saidi, *Hukum Keuangan Negara Teori dan Praktek*, Edisi Keti. Jakarta: PT. Rajagrafindo Persada, 2017.
- Negara Republik Indonesia, *Undang-Undang Badan Pemeriksa Keuangan*. 2006.
- S. Z. B. Nasution, "Nasution Analisis Hukum Atas Pemeriksaan Kekayaan Negara Pada Badan Usaha Milik Negara (BUMN) Mengenai Putusan Mahkamah Konstitusi Nomor 48 Dan 62/PUU-XI/2013," *USU Law J.*, vol. 4, no. 2, p. 113, 2016.
- A. Ilmar, *Hak Menguasai Negara Dalam Privatisasi BUMN*. Jakarta: Kencana Prenada Media Group, 2012.
- Refli Harun, *BUMN Dalam Sudut Pandang Tata Negara, Privatisasi, Holdingisasi, Kontrol dan Pengawasan*. Jakarta: Balai Pustaka, 2019.
- Marisa Catarina da Conceição Dinis, "Directors' Duties, Civil Liability, and the Business Judgment Rule under the Portuguese Legal Framework, World Academy of Science, Engineering and Technology International Journal of Social," *Behav. Educ. Econ. Bus. Ind. Eng.*, vol. 10, no. 10, p. 2, 2016.
- Ismiyatun, I. (2017). Pengembangan Kluster Industri Militer India dari Sudut Pandang Developmental State Theory. *Jurnal Hubungan Internasional*, 5(2), 147-160. doi:<https://doi.org/10.18196/hi.5293>