

The Urgency of Synchronizing Regulations on the Concept of State Assets in State-Owned Enterprises

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ABSTRACT

The main issue raised in this paper is the urgency of synchronizing regulations on the concept of state assets in state-owned enterprises. It examines the synchronization of legal provisions concerning the status of assets owned by state-owned enterprises (SOEs), as regulated under various laws. The disharmony in these legal provisions regarding the status of SOE assets as part of state finances has resulted in legal uncertainty. The State Finance Law, the State Treasury Law, and the Law on Audit of the Management and Accountability of State Finances stipulate that state assets separated and placed in SOEs are considered part of state finances. Meanwhile, the SOE Law and its Third Amendment stipulate that state assets separated and placed in SOEs do not constitute state finances. This ambiguity regarding the status of SOE assets—whether they form part of state finances or belong to the SOEs as legal entities—gives rise to legal uncertainty. From the perspective of legal justice, treating SOE assets as state finances contravenes the principle of proportional equality, as it implies that the State does not recognize SOEs as private legal entities. Furthermore, from the standpoint of legal utility, the continued view that SOE assets are part of state finances creates confusion, particularly since SOE capital is not entirely sourced from state assets but also includes shares held by public investors. Therefore, it is imperative for the Government and the House of Representatives to revise the State Finance Law, the State Treasury Law, and the Law on Audit of the Management and Accountability of State Finances.

Keywords: SOE Assets; State Finances; synchronization of legal provisions

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INTRODUCTION

When drafting the 1945 Constitution, the nation's founders understood that Indonesia as a political entity did not have enough capital to encourage economic development. At that time, Indonesia was only supported by natural and human resources, while other factors of production such as financial capital and technology were still unavailable. Based on these conditions, a legal basis was prepared that emphasized the principle of justice in the field of economy and welfare, as stated in Article 33 of the 1945 Constitution.

From this article, the direction of Indonesia's political and economic policy was born, in which the state plays a central role in the economic sector to ensure the welfare of the people and meet public needs, one of which is through the establishment of State-Owned Enterprises (SOEs) which originated from the process of nationalization of companies left by the Dutch government (Ritonga, 2021).

The presence of State-Owned Enterprises and Regionally-Owned Enterprises (SOEs/D) in Indonesia reflects the real manifestation of state involvement in carrying out economic functions at the national level (Hartanto et al., 2021). This is philosophically reflected in the provisions of "Article 33 paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia, which states that: (2) Branches of production that are important to the state and that control the livelihood of the people are controlled by the state; and (3) The earth, water, and natural resources contained therein are controlled by the state and used to the maximum extent for the prosperity of the people."

This provision expressly provides a legal basis for the state to intervene in the economy, including having vital branches of production (Akyuwen, 2016). The state plays an important role in managing national assets, both from natural resources and from other strategic sectors that are closely related to the basic needs of the people. In this framework, SOEs and BUMDs function as state tools in carrying out the task of wealth management (Disyon & Sibarani, 2023).

The absence of the state in managing strategic production sectors can pose a risk to the inequality of welfare distribution in society. Therefore, the presence and active responsibility of the government is important to ensure the sustainability and effectiveness of the role of SOEs, so that they are able to make maximum contributions to the welfare of all Indonesian people (Nachrawi, 2021).

As a state-owned business entity, "SOEs are expected to be able to make concrete contributions through dividend payments, tax payments, and the provision of public services. SOEs also play a role as state instruments in harmonizing social and economic functions to achieve the goals of community welfare (Nachrawi, 2021). The realization of the role of SOEs is reflected in their involvement in carrying out business activities in various economic sectors, including agriculture, fisheries, forestry, plantations, manufacturing, mining, financial services, postal and telecommunications, transportation, electricity, industry and trade, to the construction sector (Asnawi, 2016).

As the dynamics and complexity of the business world increase, the government encourages SOEs to remain competitive through the expansion of business activities to achieve profits while providing the greatest benefits for the welfare of the community. However, in its implementation, not a few SOEs face serious problems in terms of governance, such as lack of professionalism, lack of openness, and weak application of corporate economic principles." As a result, the performance of SOEs is often perceived as negative, inefficient, and even considered to have a low level of profitability.

In one of its evaluations, "Indonesia Corruption Watch (ICW) noted that until the end of 2020, the performance of the majority of SOEs still did not show satisfactory results. Although the total assets of SOEs as a whole almost reached IDR 8,000 trillion, the profit obtained was only around IDR 150 trillion. This figure reflects a relatively low rate of return on assets, which is less than 2 percent. In addition, a large number of SOEs face various internal problems. Of the 107 existing SOEs, only a small number show financial health and stable performance.

This can be seen from the fact that only about 18 SOEs consistently contribute in the form of dividends to the state and play an active role in supporting the community's economy. In fact, every year the government allocates funds from the State Budget in the form of State Capital Participation (PMN) to SOEs." In the 2021 State Budget Draft, the allocation of PMN funds was recorded at IDR 37.38 trillion (Indonesia Corruption Watch, 2022).

In addition to their contribution to state revenue, SOEs are also faced with serious problems related to corrupt practices. Based on data from the Corruption Eradication Commission (KPK), there were 64 corruption cases involving SOEs during the period 2015 to 2020. Inefficiencies in management and high levels of corruption in SOEs have the potential to have a negative impact on economic growth and state revenue, including the risk of job losses which can ultimately increase poverty rates. In the long term, the weak performance of SOEs accompanied by rampant corrupt practices can affect the Gross Domestic Product (GDP)

and reduce the level of investment, which has an impact on various sectors that depend on domestic investment and consumption (Indonesia Corruption Watch, 2022)."

Another issue that is quite important is regarding the status of state wealth managed by State-Owned Enterprises (SOEs), especially in relation to corruption. Until now, this issue is still an important debate in the context of the constitutional system and law enforcement in Indonesia. Disharmony between various regulations creates ambiguity regarding whether assets owned by SOEs are included in the state's financial coverage.

State assets allocated as capital participation in SOEs are part of the state financial coverage, as stipulated in "Article 2 letter g of Law Number 17 of 2003 concerning State Finance (hereinafter referred to as the State Finance Law) which determines that state finance includes state wealth/regional wealth managed by itself or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued with money, including wealth that is separated from state companies/regional companies.

The status of state assets that are separated as part of state finances has been strengthened by the law through the Constitutional Court Decision Number 62/PUU-XI/2013. In its consideration, it was stated that: According to the Court, the separation of state assets from the perspective of transactions is not a transaction that transfers a right, so that as a legal result there is no transfer of rights from the state to SOEs, BUMDs, or other similar names." Thus, the separated state wealth still remains state wealth.

The positive law regarding SOEs is regulated in "Law Number 19 of 2003 concerning SOEs as amended by Law Number 6 of 2023 concerning Job Creation (hereinafter referred to as the SOE Law). Article 1 number 1 of the SOE Law states that SOEs are business entities whose capital is wholly or partially owned by the state through direct participation derived from the separated state wealth.

In the explanation of the SOE Law, it is stated that what is meant by separation is the separation of state wealth from the State Revenue and Expenditure budget to be used as state capital participation in SOEs for future its guidance and management are no longer based on the State Revenue and Expenditure budget system, but its guidance and management are based on the principles of a healthy company."

Then, the government and the House of Representatives made changes to the SOE Law through "Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning SOEs (hereinafter referred to as the Third Amendment Law on SOEs)". The Third Amendment Law on SOEs expands the scope of SOEs by defining SOEs as business entities that meet at least one of the following provisions: (a) all or most of their capital is owned by the State of the Republic of Indonesia through direct capital participation; or (b) there are state privileges owned by the State of the Republic of Indonesia.

The wealth of SOEs as state assets that is separated is then affirmed in Article 4B of the Third Amendment Law of SOEs which stipulates that the profits or losses experienced by SOEs are profits or losses of SOEs. In accordance with these provisions, Article 4A paragraph (5) of the Third Amendment Law on SOEs emphasizes that state capital in SOEs that comes from capital participation both in the context of SOEs and changes, is the wealth of SOEs that are the property and responsibility of SOEs."

The overlap of these arrangements causes contradictions and debates related to the status of state assets that have been separated and managed by SOEs. This ambiguity ultimately

makes it difficult to determine firmly and definitively whether the losses suffered by SOEs fall into the category of public law or the private realm (Hartono & Rini, 2021). Like business people in general, SOEs in pursuit of profits have the potential to suffer losses in their business activities. These losses are often considered as state financial losses which are ultimately qualified as a criminal act of corruption as stipulated in "Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (hereinafter referred to as the Corruption Law). The General Explanation of the Corruption Law means state finances."

Based on the explanation above, the author will discuss the issue of the importance of harmonization of regulations related to State Assets in State-Owned Enterprises (SOEs) in relation to law enforcement against corruption crimes. The focus of the discussion will be directed to the three main goals of the law, namely justice, certainty, and the usefulness of the law. For this reason, the author uses a descriptive normative legal research method, relying on secondary data in the form of primary, secondary, and tertiary legal materials obtained through literature review. The literature used includes legal sources both in print and digital form. In analyzing this topic, the author applies a statutory approach and a conceptual approach.

This study aims to analyze regulatory inconsistencies related to the concept of state assets in State-Owned Enterprises (SOEs), identify the juridical and administrative impacts caused, and explain the urgency of harmonizing rules to strengthen legal certainty, management accountability, and protection of state assets; In addition, this research is expected to provide theoretical benefits for the development of state financial law and state-owned enterprise law, as well as practical benefits in the form of policy recommendations for governments, legislators, and stakeholders in formulating an integrated and effective regulatory framework.

METHOD

This study adopted normative descriptive legal research, focusing on positive legal norms in Indonesia within the system of laws and regulations. It specifically addressed the legal uncertainty surrounding the Law on State-Owned Enterprises (SOEs) in relation to the regulation of wealth in SOEs, aiming to uncover truths based on legal logic from a normative perspective.

The study employed the statute approach, conceptual approach, and comparative approach. The statute approach analyzed laws and regulations related to the research topic. The conceptual approach explored dynamics of criminal law and microeconomic analysis. The comparative approach examined the synchronization of regulations concerning the concept of state wealth in SOEs, identifying similarities and differences to illuminate the issues discussed.

The author used normative data, drawing on primary, secondary, and tertiary legal materials collected through literature study. Primary legal materials included the 1945 Constitution of the Republic of Indonesia, Law Number 17 of 2003 concerning State Finance, Law Number 19 of 2003 concerning SOEs, and other related laws. Analysis techniques involved technical description, comparative analysis, evaluation, and argumentation to interpret the materials and produce relevant legal arguments.

RESULTS AND DISCUSSION

Legal Certainty

Regarding legal certainty, "Gustav Radbruch put forward the Theory of Legal Certainty which states that legal certainty refers to the certainty of the existence of law itself. There are four aspects related to the concept of legal certainty according to Radbruch. First, the law is positive, which means it is legislation. Second, the law must be based on facts, not just the formulation of an assessment that will be decided by the judge. Third, the existing facts need to be formulated in a clear way so as not to cause misinterpretation and so that they can be applied easily. Fourth, positive laws should not be changed frequently (Putra, 2024). Legal certainty allows each individual to predict the consequences that will be received if they take a particular legal action." This certainty is very important to realize the principle of equality before the law without discrimination (Nugraha & Jannah, 2023).

According to "John Austin, regulations made by a ruler or positive law must be able to ensure legal certainty. The law is seen as the order of the ruler (the law is the order of the law-maker) who has the supreme power (sovereignty) (Handoyo, 2018). Law is considered a logical, stable, and closed system. In this view, law is clearly separated from the concept of justice and is not based on good or bad moral values. Austin's core teaching is to separate law and morality, declaring that the essence of law is the command of sovereign power." One of the weaknesses of Austin's teachings is that it does not allow room for the law to flourish and be accepted in public life (Yulianto & Harmoko, 2024).

In order for law enforcement to be guaranteed for the community, it is very important to have legal certainty that clearly regulates legal behavior in society through laws and regulations. This view is in line with the theory of legal certainty put forward by Van Apeldoorn and Hans Kelsen. According to Van Apeldoorn, legal certainty has two aspects. First, the aspect concerns the ability to establish the law in a concrete situation, where the party seeking justice wants to know the law that applies in a particular case before they file a case.

Second, the aspect of legal protection, which provides guarantees for the parties involved against the power of the judge (Larumpa, 2023). Thus, legal certainty means that the rule of law must be clear and provide protection to the parties to the case. Meanwhile, according to Hans Kelsen, legal certainty is based on the principle of imputation, which means that legal certainty is achieved because the legal norms listed in the law determine sanctions for unlawful actions.

The absence of legal certainty results in the legal system being unable to carry out its role optimally, both in forming a solid legal order and in guiding the behavior of the community specifically. Legal certainty is an inherent element in law, especially in the context of written norms, because without certainty, the law will lose its function as a reference for action for all citizens (Larumpa, 2023). In practice, the law needs to be enforced consistently in society and contains an element of transparency so that each individual can understand the meaning of the applicable provisions.

Legal certainty is a fundamental instrument in the national legal system that must reflect clarity, does not open space for many interpretations, is free from conflicting norms, and can be carried out in accordance with the social reality of society. From the perspective of legal certainty, every law must formulate appropriate provisions for public behavior; On the one hand, it must be concise and economically efficient, but on the other hand, it must provide a

complete explanation of what is allowed and prohibited, including the consequences for violations that occur. This principle is reflected in the adagium of Roman law such as *legem brevem esse oportet* (rules must be simple), *leges intellegi ab omnibus debent* (rules of law must be understood by all parties), and *ubi jus incertum, ibi nullum* (if the law is uncertain, then in fact there is no law) (Murdani, 2024).

Legal Substance

The status of state wealth that is separated as part of state finance has a close relationship with the history of the formation of laws governing state finances. This regulation of state finance has a constitutional basis which is stated in "Article 23C of the Constitution of the Republic of Indonesia of 1945 which stipulates that, Other matters concerning state finance are regulated by law. Through the mandate of the constitution, a package of state finance laws consisting of the State Finance Law, Law Number 1 of 2004 concerning the State Treasury (hereinafter referred to as the State Treasury Law) was promulgated, and Law Number 15 of 2004 concerning the Audit of State Financial Management and Responsibility (hereinafter referred to as the Law on the Audit of State Financial Management and Responsibility)."

The formation of the three laws is a response to the need for reform in the country's financial sector, to answer challenges and update the country's financial arrangements to be more modern and comprehensive. This aims to overcome various problems in the life of the nation and state that cannot be solved by the laws and regulations of the heritage of the Dutch East Indies, and adjusted to the values of the nation reflected in the constitution (Yulianti & Nurhazana, 2021).

The definition of state finance can be understood through three ways of interpreting Article 23 of the 1945 Constitution (Original), which is the constitutional basis for state finance. The first interpretation interprets state finance in a narrow sense, which only includes finance sourced from the state budget. In this context, state finance is seen as part of the country's overall financial system in a limited sense. Based on this understanding, state finance includes all elements listed in the State Budget submitted by the government to the House of Representatives every year. Thus, the State Budget is considered as a picture of state finance in a narrow sense, and supervision of the State Budget is a form of supervision of the state finances itself (Sulaiman, 2023).

The second interpretation of state finance leads to a broad understanding, including funds sourced from the State Budget, Regional Budget, as well as assets and wealth owned by SOEs and SOEs, which are as a whole part of the state financial system. In this context, state finance is understood as all activities related to the receipt and use of money derived from state authority, which is intended for the public interest (Latif, 2016).

Meanwhile, the third interpretation uses a systematic and teleological or sociological approach to gain a more relevant understanding of the purpose of the interpretation. If the purpose of interpretation is focused on the aspects of governance and accountability, then the definition of state finance becomes narrow, namely limited to the scope regulated in the State Finance Law, the State Treasury Law, and the Law on the Audit of State Financial Management and Responsibility (Sorik & Dwiatmoko, 2022). However, if the approach is directed at the mechanism of supervision and accountability examination, then what is used is a broad understanding of state finances, including funds in the State Budget, Regional Budget, and all

the wealth of SOEs and BUMDs, all of which are the object of state audit and supervision (Arsyad & Karisma, 2018).

The three laws generally use a broad approach to state financial definitions. The state financial management model through this broad scope of definition is basically considered ideal because it can strengthen protection efforts against potential state financial irregularities (Afriyadi, 2017). However, problems arise when this concept is faced with the provisions in the SOE Law and its amendments, which tend to provide a separation between state finance and SOE finance. The law states that the profits or losses experienced by SOEs are the responsibility of the SOE entity itself, not directly categorized as part of state finances.

The inconsistency regarding the concept of state finance in these various regulations has created legal uncertainty, which has an impact on increasing risks for SOE directors in carrying out business decisions. In practice, a number of cases show that losses suffered by SOEs are often interpreted as state losses, even though the decisions taken by the board of directors are based on logical business considerations and in line with the principles of *good corporate governance* (Prasetio, 2014).

Legal Structure

Legal structure can be understood as a conceptual framework that forms the operational basis of a legal system, complete with the limitations that govern it (Ansori, 2017). In this context, the legal structure includes institutions or institutions that have the authority to carry out law enforcement through various predetermined mechanisms and processes. In the criminal justice system, the main actors that run this structure include the police, prosecutor's office, judicial institutions, and correctional institutions (Hajairin, 2021).

Recently, there has been an increase in prosecution cases against the board of directors of SOEs related to alleged corruption crimes that originated from the business decisions they made (Syaharani, 2024). This phenomenon arises because the interpretation of state losses refers to the explanation in "Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (PTPK Law), where business decisions that result in company losses are seen as state losses, so that the directors can be charged with corruption crimes (Itriani, 2020). Legally, the wealth of SOEs that have been separated from the state budget is manifested in the form of shares owned by the state. Thus, assets under the control of SOEs are no longer directly owned by the state, but belong to the SOE entity itself.

However, in practice, the interpretation that SOE assets still include state wealth is often the basis for the criminalization of business decisions taken by the board of directors, leading to ambiguity in the legal accountability system for SOE managers." Administrative or contractual actions that lead to corporate losses can easily qualify as acts of corruption (Wagiu & Toloh, 2023). Often, in the legal process against the directors of SOEs, a thorough analysis is not carried out based on the doctrine of the Business Judgement Rule, which actually provides legal protection for business decisions that have been taken reasonably and professionally. In fact, in some court rulings, there are dissenting opinions among judges on this matter.

As a result, the legal risks faced by members of the board of directors of SOEs are not only limited to civil lawsuits, but also extend to the criminal realm. The development of the current legal system shows that there is a meeting between the aspects of public law and private

law, which leads to ambiguity in both the aspects of corporate law and criminal law, as well as causing legal uncertainty in practice (Supriyatna, 2024).

Legal Culture

Legal culture can be interpreted as a collection of knowledge and values embraced by a group of people and become a guideline in acting or behaving related to the law (Syamsudin, 2011). These values and knowledge become a reference in daily life, both personally and collectively, in determining what is considered important, worthy of having, expected, or striving for (Judicial Commission, 2023). The choice of these values is greatly influenced by internal factors such as life views, attitudes, expectations, and public perceptions of the law.

The concept of legal culture is divided into two, namely internal and external legal culture. Internal legal culture refers to the values and perspectives of law enforcement officials such as police, prosecutors, judges, and advocates in carrying out their legal duties. Meanwhile, the culture of external law reflects the attitude and understanding of the general public towards the laws that apply in their environment (Mahanani, 2019).

When viewed from the perspective of external legal culture, there appears to be a difference of perspective between legal experts regarding the financial status of the state in the context of capital participation in SOEs. Hikmahanto Juwana argued that doctrinally, it is not appropriate for SOE finance to be considered part of state finance. He assessed that if SOE finance is included as state finance, it will be contrary to the principle of separation between the public and private spheres.

He also explained that if funds deposited to SOEs are recognized as state finance, there will be a double calculation of the same object in the state accounting system. However, according to him, it is different if what is deposited into SOEs is state-owned goods (inbreng), such as land, because in this case recognition as state finance is still acceptable (Pangestu & Muzakkir, 2020). Muchsan stated that the phrase separated in "Article 2 letter g of the State Finance Law does not mean that it is separated from the State Budget and Regional Budget absolutely, but only separated from direct management. According to him, state wealth that is included in state companies and managed by these companies remains part of state finances as long as its management is carried out by the government (Kartika et al., 2021)."

Interestingly, when viewed from the perspective of internal legal culture, especially the views of judges, there are differences of opinion regarding the status of SOEs' wealth as part of state finances. In the Research Report of the Research Report of the Center for Law and Justice of the Supreme Court of the Republic of Indonesia in 2010, it was stated that of the 12 judges who were respondents, five stated that the finances of PT (Persero) were included in the state finance category. Meanwhile, the other seven judges argued that the company's funds belonged to the company itself, even though the capital came from the state wealth that had been separated.

The report also noted that only three out of 12 respondents believe that losses in PT (Persero) transactions are automatically classified as state losses. Meanwhile, the other nine assessed that not all direct losses are categorized as such, unless it is proven that there is a violation of the principles of sound company management. In fact, one of the respondents explicitly referred to the doctrine of the Business Judgment Rule, which explains that the board of directors cannot be held liable for the company's losses if the business decisions taken are based on good faith and prudence.

Legal Justice

Gustav Radbruch stated "that law contains the values of justice, in which justice has a role as a normative foundation and at the same time as a constitutive element of the law itself. Justice is normative because it is the starting point or basis for the formation of positive law (Swantoro et al., 2017). Meanwhile, as a constitutive element, justice is an essential condition that must exist in law; without justice, a norm is not worthy of being called law (Nasir et al., 2023). In Aristotle's view, since the law applies to everyone, justice in the law must be interpreted in the context of equality. He distinguishes between numerical equality and proportional equality.

Numerical equality is the basis of the principle that everyone is treated equally before the law. Meanwhile, proportional equality is based on the principle that everyone has the right to get what is right (Febriansyah, 2017). In addition to the approach to justice based on the principle of equality, Aristotle also introduced two other types of justice: distributive justice and corrective justice." Distributive justice is concerned with the granting of rights based on appropriate proportions, while remedial justice focuses on redressing for injustices or wrongs that have occurred (Pratama et al., 2024). Corrective justice requires compensation or restoration to the original state as a means to balance the imbalance due to injustice. The concept of justice put forward by Aristotle is a representation of the adagium *Iustitia est constans et perpetua voluntas ius suum cuique tribuendi* (giving to each person what is his part or right) (Safa'at et al., 2014).

Legal Substance

As stated earlier, there is a disharmony in the regulation of the status of SOEs' wealth. The State Finance Law, the State Treasury Law, the Law on the Audit of State Financial Management and Responsibility, and the Corruption Law adhere to the principle that state wealth that is separated and placed as capital participation in SOEs is part of state finance. Meanwhile, the SOE Law and the Third Amendment Law on SOEs stipulate that the profits or losses experienced by SOEs are purely the profits or losses of SOEs themselves.

From the point of view of justice, the author argues that wealth under the management of SOEs should not be categorized as part of state finances, in order to be in line with the principles in the theory of legal entities. According to this theory, when state wealth has been separated and handed over to SOEs, then the ownership shifts to SOEs as a private entity in the form of a legal entity, while the state only gets shares in the form of shares according to the amount of capital deposited. These stocks are recorded as state assets (Fernando, 2018).

Thus, SOE funds or finances should not be treated the same as state finance because their nature and governance have different characters. In order for SOEs to grow and be competitive as expected, independence is needed in their financial management, namely by applying professional and efficient business principles (Ikhwansyah et al., 2018). If SOE finance is equated with state finance, there will be unfair or discriminatory treatment of SOEs compared to private companies, which are fully subject to the provisions of private law as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies. In fact, SOEs are basically civil legal entities, so logically all their activities and organizational structures must be managed based on the private legal system, and follow the principles of good corporate governance.

When the government, as a representative of the state in its capacity as a subject of public law, allocates state wealth listed in the State Budget as capital participation to SOEs, then the legal relationship over finance is transformed into stock ownership. In this context, the role of the state has also changed to a private legal subject, namely as a shareholder. Therefore, if SOEs suffer losses, the state cannot be held accountable for contracts or transactions carried out by SOEs (Tolo & Niasa, 2022).

Placing SOE finance as part of state finance is contrary to the principle of proportional justice by Aristotle, which states that every subject of law must be treated according to its position and function. As a shareholder, the state is only entitled to receive dividends like other shareholders. If SOEs remain categorized within the framework of public law, then every managerial or operational activity has the potential to be considered a public legal action. This opens up space for the use of the logic of state financial law, such as criminalization in cases of corruption for state losses, even though these losses are actually part of a reasonable business risk in the business world.

Legal Structure

There is a difference of opinion between the Supreme Court and the Constitutional Court regarding the legal status of SOEs' assets. The Minister of Finance once submitted a request to the Supreme Court to issue a fatwa regarding the legal status of state assets that have been separated and placed in SOEs, as well as receivables managed by state-owned banks. The request was responded to by the Supreme Court through Fatwa Number WKMA/YUD/20/VIII/2006 dated August 16, 2006.

In the fatwa, the Supreme Court conveyed two main points of view related to the position of state wealth that is separated in the context of state finance. First, the Court is of the opinion that state wealth that has been transferred from the State Budget to SOEs is no longer included in the scope of state finances. Second, receivables owned by SOEs cannot be categorized as state receivables. The implication of this view is that losses suffered by SOEs are not automatically considered state losses (Lestari et al., 2018).

PT Sarana Aspalindo Padang et al. as a debtor of one of the state-owned banks became the applicant in the "judicial review of case number 77/PUU-IX/2011. In his demands, the petitioner asked the panel to declare Article 4, Article 8, Article 10 and Article 12 paragraph (1) of Law Number 49 of the 1960 Decree concerning the Committee on State Receivables (UU PUPN) invalid, because it is contrary to Article 24D paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution."

Article 8 of the PUPN Law "defines that what is meant by State Receivables is the amount of money that must be paid to the state or an agency that is either directly or indirectly controlled by the state based on a regulation, agreement or any cause. Thus, receivables belonging to SOEs that cannot be collected, are categorized as State Receivables and it is the responsibility of PUPN to collect them."

The Constitutional Court emphasized that after the promulgation of the Law on the State Treasury, receivables owned by SOEs are no longer categorized as state receivables, so that their settlement is no longer the authority of PUPN or KPKNL. In addition, "Article 1 numbers 1 and 10 in the SOE Law states that SOEs are business entities whose capital is partially or wholly owned by the state through direct participation sourced from state wealth that has been

separated, namely State Budget funds which are used as state capital participation in Persero, Perum, and other forms of limited liability companies.

This Court decision is the starting point for a strict separation between SOE receivables and state receivables. As a follow-up, the Minister of Finance issued PMK Number 168/PMK.06/2013 regarding procedures for settling receivables derived from the submission of SOEs/BUMDs and business entities whose capital is wholly or partially owned by SOEs/BUMDs." With these provisions, state-owned banks are given the flexibility to manage their receivables in accordance with the principles in the company's legal entity.

However, the Center for Strategic Studies of the University of Indonesia (CSS-UI) once asked the Constitutional Court to examine "Article 2 letter g and letter i of the State Finance Law, which essentially states that state wealth/regional wealth managed by itself or other parties in the form of money, securities, receivables, goods, and other rights that can be assessed with money, including wealth separated from state companies/regional companies are state finance. The Applicant argues that the article is contrary to Article 23 paragraph (1), Article 28C paragraph (2), Article 28D paragraph (1) and Article 31 paragraph (4) of the 1945 Constitution on the grounds that basically the norm a quo causes the achievement of private legal entities in carrying out their functions."

In the Constitutional Court's Decision Number 48/PUU-XI/2013, the Constitutional Court stated that Article 23 of the 1945 Constitution cannot be interpreted as that state financial management is solely limited to the State Revenue and Expenditure Budget (APBN). Given the strategic role of BHMN PT and SOEs/BUMDs in managing state finances to carry out state functions, there needs to be clarity that the management of state-owned facilities and infrastructure is also included in the responsibility of state financial management in accordance with the applicable paradigm."

The Constitutional Court also emphasized that the inclusion of SOE assets as part of state finances is intended so that the state can still supervise the management of the segregated wealth in a transparent and responsible manner for the maximum welfare of the people. Therefore, SOEs that still have state capital participation still need to be under supervision as part of the implementation of good and accountable state financial governance (Nurfahmi et al., 2019).

Disharmony of views among law enforcement officials regarding whether SOEs' wealth is included in the state finance category has the potential to cause injustice to SOE directors. This ambiguity opens up space for the risk of criminal prosecution against the board of directors. In such a situation, the doctrine of the Business Judgment Rule is actually intended as legal protection for directors who have acted carefully and free from conflicts of interest. However, due to differences in interpretation of the status of SOEs' wealth, the application of this doctrine has become inconsistent, so it is still possible for the directors to be blamed for alleged state financial losses. As a result, these conditions create a sense of injustice and can hinder quick and appropriate decision-making in carrying out business activities in SOEs.

Legal Culture

One of the important indicators in assessing the success of law enforcement is how the legal culture is internalized by law enforcement officials themselves. In making a decision, a judge is inseparable from the values that he believes to be true, which are embedded in his

mind. These values influence their perspective and behavior in assessing whether a defendant or defendant is guilty or not, as well as in determining the appropriate form of sanction if proven guilty. The choice of this value system greatly affects the quality of the decisions produced, both in terms of truth, justice, and usefulness (Syamsudin, 2011).

The difference in viewpoints between the Supreme Court (MA) and the Constitutional Court (MK) regarding the status of SOEs' wealth reflects differences in the perspective and value system adopted by judges from each institution. The judge at the Supreme Court argued that when the state includes capital in a company, then the capital is no longer part of the state's wealth, but becomes the company's own wealth. This means that there is a strict separation between the assets of shareholders and the company's assets, so that the liability of shareholders is limited to the capital included. In this case, the company's losses or debts must be borne from the company's own assets. This view is based on the provisions contained in the SOE Law.

On the other hand, the Constitutional Court is of the view that the separation of state assets into state-owned enterprises, state-owned enterprises, or similar entities does not necessarily abolish the legal relationship between the state and these entities. The separation is more aimed at supporting the efficiency of competitive business management, so that SOEs are able to adapt to the challenges of the business world and encourage capital growth.

The approach used by constitutional judges refers to the State Finance Law, the State Treasury Law, and the State Financial Management and Responsibility Audit Law. The three regulations affirm that state wealth set aside and invested as capital in SOEs is still categorized as state finance. Thus, BPK is authorized to carry out audits both of state financial responsibility (post audit) and of its management (pre-audit) in SOEs. In fact, juridically, SOEs are legal entities with assets separate from the state, which have independence and authority in determining policies through their internal organs, in accordance with laws and regulations and internal rules that apply in the SOEs.

This difference in understanding has a real impact on the criminal law enforcement process. If SOEs suffer losses due to an unlawful act, the question arises whether the loss can be used as a basis to ensnare the perpetrator using the provisions of Article 2 paragraph (1) or Article 3 of the Corruption Crime Law (*Tipikor*), or vice versa, whether the civil law route should be taken on the basis of unlawful acts as stipulated in Article 1365 of the Civil Code (*onrechtmatige daad*).

Legal Benefits

In the theory of utilitarianism developed by Jeremy Bentham, the concept of utility is explained through "the principle of the greatest happiness of the greatest numbers, which can be simply interpreted as an attempt to provide the greatest happiness, enjoyment, or satisfaction to as many individuals as possible. Therefore, law is seen as a means to achieve goals that benefit society. Bentham used the measure of pleasure and pain as a benchmark (Nor, 2023). When the community feels satisfied with the application of a rule of law, the law is considered to have succeeded in fulfilling the purpose of its usefulness (Pratiwi et al., 2023).

Furthermore, Bentham also emphasizes the importance of the process of maximizing utility, where optimization of utility means creating the greatest happiness, profit, and benefit for many people." Within this framework, efforts to increase benefits must also be accompanied

by a reduction in pain or suffering for as many people as possible, especially in situations that are morally significant to them (Pratiwi et al., 2023).

Therefore, the usefulness of the law is an aspect that should not be ignored, because the public expects that the law brings really good in its implementation. Law enforcement should not cause social unrest. Unfortunately, legal discourse is often too focused on written norms and rules in legislation, which in reality may not be entirely ideal or do not represent the reality of people's lives. In the implementation of the law, it is important to proportionately consider the balance between the benefits obtained and the sacrifices entailed (Martadinata & Ahmadi, 2020).

Legal Substance

Jeremy Bentham's theory of utilitarianism, which emphasizes "the principle of the greatest happiness of the greatest number, can be the basis for reflection on the polemic of the status of SOEs' wealth as part of state finances. According to Bentham, the law should ideally be a means of creating the greatest benefit or happiness for as many people as possible. In this context, the law that regulates the wealth of SOEs should be able to provide a sense of security and legal certainty, not only for the state as the majority shareholder, but also for business actors, including the directors of SOEs, and the public who are beneficiaries of SOE services."

However, the insynchronization between the State Finance Law and the SOE Law actually causes legal uncertainty and insecurity, especially for the directors of SOEs who carry out business functions. When the status of SOEs' wealth on the one hand is considered as state wealth and on the other hand it is separated from the State Budget/Regional Budget, then business decisions made by the directors risk being criminalized if they cause losses. This has the potential to cause pain to those involved, even though they have acted on the principles of prudence and corporate interests (business judgment rule).

From a utilitarian perspective, this condition is clearly contrary to the purpose of the law, which is to create a sense of satisfaction and maximum benefits. This regulatory disharmony not only creates a psychological and legal burden for the board of directors, but can also hinder strategic business decision-making that should benefit the wider community. Thus, in order to realize the greatest benefits for as many people as possible, the legal synchronization regarding the status of SOEs' wealth must be carried out immediately. Certainty and legal harmony will minimize suffering and maximize benefits for all affected parties.

If the policy direction of the lawmakers wants the separation of SOEs' wealth from state finances completely to provide independence and flexibility for SOE administrators in making business decisions without the need to worry about the potential for criminal prosecution, then it should be expressly stipulated in the SOE Third Amendment Law that with the enactment of the Third Amendment Law on SOEs, all articles in the laws and regulations that regulate SOEs' wealth as part of the state finances is declared revoked and invalid.

Legal Structure

The provisions in "Article 1 number 10 jo. Article 4 paragraph (1) of the Law on SOEs and its explanation have provided clarity on the meaning of state wealth that has been separated. From a business law perspective, state wealth allocated as capital participation in a company is considered to have been separated from the state financial structure (APBN). This wealth

then changes its status to the company's capital and then in the form of shares that are managed based on the principles of good corporate governance."

However, the provisions in the State Finance Law, the State Treasury Law, and the Law on the Audit of State Financial Management and Responsibility actually create ambiguity regarding the status of wealth in SOEs. This ambiguity creates legal uncertainty regarding the governance of assets that have been deposited as capital into SOEs, thus potentially obscuring the purpose of establishing SOEs themselves. The wrong interpretation of the concept of state wealth that is separated as capital participation in SOEs (Persero) results in overlapping interpretations.

On the one hand, these assets are recognized as the company's capital that has been transformed into shares. On the other hand, the wealth is still seen as part of the state's finances. This situation causes confusion, especially when the shares are traded on the capital market and can be owned by the general public, including foreign investors. If it is still treated as state-owned, then the legal status of the shares becomes uncertain, and this can have a negative impact on investors' interest in investing their capital.

If the state still considers the wealth that has been deposited as SOE capital as part of the state's finances, then this is contrary to the theory of legal usefulness put forward by Jeremy Bentham. Bentham's theory of utilitarianism states that law should be the tool to create the greatest benefit for as many people as possible. In this framework, the law should create certainty, efficiency, and concrete benefits for the community, not create confusion or uncertainty in practice.

In the case of SOEs, capital participation by the state actually converts state wealth into corporate capital in the form of shares, which is subject to modern corporate legal mechanisms and principles and professional governance. In fact, in practice, SOE capital often comes not only from the state, but also from the wider community through the purchase of shares in the capital market. Thus, SOE entities, especially those in the form of Persero, are not only state-owned, but also public entities whose ownership can be widely distributed in the community.

Legal Culture

If law enforcement officials understand the wealth of SOEs as part of the state's wealth, then losses that occur in SOEs can be categorized as state losses, so they have the potential to be subject to provisions in corruption crimes. This understanding certainly has serious implications, because it can cause concern among SOE administrators in making business decisions, even though the decision is basically in line with the purpose of establishing SOEs themselves.

The Law on Limited Liability Companies and the Law on SOEs are special regulations that specifically regulate limited liability companies, especially in the context of SOEs. Therefore, the principle of *lex specialis derogat legi generali* must be applied when there is a conflict of norms with the State Finance Law, the State Treasury Law, the Law on the Audit of State Financial Management and Responsibility, and the Law on Corruption Crimes. If the concept of shares continues to be seen as part of state finance, then this will cause distortions to the essence of PT as an independent legal entity. The legal position of shareholders will be uncertain and confusing. This will also disrupt legal certainty for private investors who are shareholders in SOEs.

If this view is maintained, the impact will be very wide on the sustainability of SOEs as limited liability companies. When shares have been released to the public through the capital market and have undergone a transfer of ownership, then they are still considered a state asset, then this will cause a negative perception from a business law perspective. Investors will feel hesitant to invest capital, due to the unclear status of the stock which can pose legal risks. As a result, interest in investing in SOE stocks in the capital market is very likely to decrease. The follow-up effect, as a multiplier effect, the condition of the national stock market can be negatively affected and gradually have an impact on the overall performance of the national economy.

CONCLUSION

The desynchronization between the State Finance Law—which classifies SOE assets as part of state finances—and the SOE Law—which emphasizes their separation as independent entities—generates profound legal uncertainty, inconsistent law enforcement across police, prosecutors, and courts, and a lack of uniform legal culture. This ambiguity undermines the law's role as a predictable guideline, blurs authority in financial management, and exposes SOE directors to undue criminal liability for reasonable business decisions, contravening principles of proportional justice and fair treatment as private legal entities. Furthermore, it erodes legal utility by distorting SOEs' independence, confusing shareholders' positions, and deterring private investors. Future research could explore legislative reforms, such as a unified framework harmonizing these laws, or comparative analyses of SOE asset regulations in other jurisdictions like Singapore or Malaysia to propose actionable synchronization models.

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