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DISCOURSE ON INCREASING THE ROLE OF THE MINISTRY OF SOES AS THE MANAGEMENT AND SUPERVISION STATE-OWNED ENTERPRISES ENTITY

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Cover Page Footnote

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Position, Duties and Authority of the Minister of Finance as Shareholders or General Meeting of Shareholders (GMS) in the Company to the Minister of State-Owned Enterprises Utilization of State-Owned Enterprises (GR No. 50 of 1998). Shidarta dan Van Huis, "Between Revenues and Public Services Delivery," *Bijdragen Tot De Taal-, Land-En Vonkenkunde*, Vol 176, No 2/3, 2020, pg. 317. Sejarah Kementerian BUMN, <https://bumn.go.id/about/profile>, accessed on 20 January 2020. Indah Fitriani, "Pola Pengelolaan Badan Usaha Milik Negara: Sebuah Potret Singkat", *Manajerial*, Vol. 10, No. 19, (July, 2011), pg. 54. Shidarta, "Between Revenues and Public Services Delivery", pg. 319. Maya Sari, et. al., "The Influence of Organization's Culture and Internal Control to Corporate Governance and its Impact on Bumn (State-Owned Enterprises) Corporate Performance in Indonesia", *Journal of Advanced Research in Law and Economics*, Volume IX, Spring, 2(32), (2018), pg. 681. Kyunghoon Kim, "Matchmaking: Establishment of State-Owned Holding Companies in Indonesia", *Wiley Asia & Pacific Policy Studies*, (2018), pg. 318. Ibid. World Bank, *Corporate Governance of State-Owned Enterprises: A Toolkit*, (Washington, DC: World Bank, 2014), pg. 82. OECD (2018), *Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices*. Stephan Supranowitz, "The Law of State-Owned Enterprises in a Socialist State", *Law and Contemporary Problems*, Vol. 26, No. 4, (1961), pg. 794. Arie Y. Lewin, "Research on State-Owned Enterprises: Introduction", *Management Science*, Vol. 27, No. 11 (November, 1981), pg. 1324. Willemyns, "Disciplines on State-Owned Enterprises in International Economic Law", pg. 660. OECD, *Guidelines on Corporate Governance of State-Owned Enterprises*, (Paris: OECD Publishing, 2015), pg. 11. Dirk Meissner, David Sarpong dan Nicholas S. Vonortas, "Introduction to the Special Issue on Innovation in State Owned Enterprises: Implications for Technology Management and Industrial Development", *Industry and Innovation*, Vol. 26, No. 2, (Desember, 2018), pg. 111. Marie Muhammad, Astar Siregar, *Kertas Kerja Kongres ISEI ke-9, Cipanas 27-30 Juli 1983*. Indonesia, Undang-Undang Badan Usaha Milik Negara, UU No. 19 Tahun 2003, [*]. A. Zen Umar Purba, "Privatization in Indonesia: Restructuration and Public Offering", *Jurnal Hukum dan Pembangunan*, No. 2, Tahun Ke-27, (April, 1997), pg. 92. Ligang Song, "State-Owned Enterprise Reform in China: Past, Present and Prospects," dalam *China's 40 Years of Reform and Development*, ed. Ross Garnaut, Ligang Song and Cai Fang (ANU Press, 2018), pg. 348. Alvaro Cuervo-Cazurra, et. al., "Governments as Owners: State-Owned Multinational Companies", *Journal of International Business Studies*, 45, (2014), pg. 920. Phillipe Benoit, "State-Owned Enterprises: No Climate Success Without Them", *Journal of International Affairs Editorial Board*, hlm 135, 2019. Justin Yifu Lin, Fang Cai, dan Zhou Li, "Competition, Policy Burdens, and State-Owned Enterprise Reform", *The American Economic Review*, Vol. 88, No. 2, (May, 1998), pg. 422. Qian Sun, Wilson Tong, dan Jing Tong, "How Does Government Ownership Affect Firm Performance? Evidence from China's Privatization Experience", *Journal of Business and Accounting*, 29 (1) & (2), (January-March, 2002), pg. 22. Yair Aharoni, "Performance Evaluation of State-Owned Enterprises: A Process Perspective", *Management Science*, Vol. 27, No. 11 (November, 1981), hlm, 1343. Shidarta dan Van Huis, "Between Revenues and Public Services Delivery", pg. 323. W. Ridwan Tjandra, *Hukum Keuangan Negara*, (Jakarta: Grasindo, 2014), pg. 10. Supreme Court, Fatwa Number WKMA/YUD/20/VIII/2006 of 2006, 16 August 2006. "That in the above articles, which is a special law on SOEs, it is clearly said that the capital of SOEs comes from state assets that have been separated from the APBN and subsequently the development and management is not based on the state APBN but rather based on the principles of a healthy company", See Supreme Court, Fatwa Number WKMA/YUD/20/VIII/2006. Dian Puji Simatupang, *Paradoks Rasionalitas Perluasan Ruang Lingkup Keuangan Negara dan Implikasinya Terhadap Kinerja Keuangan Pemerintah*, (Jakarta: Badan Penerbit FHUI, 2011), pg. 128. Ridwan HR, *Hukum Administrasi Negara*, (Jakarta: Rajawali Pers, 2016), pg. 90. Ibid, pg. 105. Elucidation of Article 9 GR No. 43/2005 explaining that the considerations presented by the Minister to the President include an explanation of the settlement of creditors' objections to the merger, merger and takeover plans of SOEs, if any. A joint review with the Minister of Finance is carried out considering that such actions may result in changes to the structure of state capital investment. While the involvement of the Minister of Technical and/or other ministers and / or leaders of other agencies in connection with sectoral policies in the field of state-owned enterprises, public service obligation, and because of the legislation. Raymond Vernon, "Linking Managers

with Ministers: Dilemmas of the State-Owned Enterprise”, *Journal of Policy Analysis and Management*, Vol. 4, No. 1, (1984), pg. 40. Enrique Moreno de Acevedo Sánchez, “State Owned Enterprise Management: Advantage of Centralized Modals,” pg. 9. Kukuh Komandoko, “The Distortion on Law Enforcement in The Financial Services Sector (The Case of Dana Pensiun Pupuk Kalimantan Timur,” (Prosiding Konferensi Nasional Hukum Pidana 2019, Telaah Kritis Kebijakan dan Penegakan Hukum Pidana Terhadap Pelaku Pidana di Bidang Perekonomian, Palembang, 30-31 October 2019), pg. 5 – 6. Simatupang, *Paradoks...*, pg. 4. Isis Ikhwanasyah, An-an Chandrawulan dan Prita Amalia, “Optimalisasi Peran Badan Usaha Milik Negara (BUMN) pada Era Masyarakat Ekonomi Asean (MEA)”, *Jurnal Media Hukum*, Vol. 25, No. 25, (Desember, 2018), pg. 152. Peter Wilkinson, “10 Anti-corruption Principles for State-Owned Enterprises”, *Transparency International*, 2017, hlm 03. Erman Rajaguguk, “BUMN Persero Sebagai Badan Hukum, Pengertian Keuangan Negara Dan Kerugian Negara: Lahirnya PP 33 Tahun 2006 dan Implikasinya bagi Pemberantasan Korupsi”, dalam *Badan Usaha Milik Negara dalam Bentuk Perseroan Terbatas*, (2016), pg. 30. Akhsanul Khaq, Dermawan Syahrial, dan Wilhelmus Hary Susilo, “An Increased on Firm Value: Insight in State Owned Enterprises that Listed on the Indonesia Stock Exchange 2013-2018”, *International Journal of Economics and Financial Issues*, 10(2), (2020), pg. 143. “SOEs must implement GCG consistently and sustainably based on this Ministerial Regulation while paying attention to the prevailing provisions, and norms and articles of association of SOEs”, See Minister of SOEs, Ministerial Regulation No. PER-01/MBU/2011, Art 2. Bacelius Ruru in his paper presented at the coordination meeting of SOEs in Akmaluddin Hasibuan, “Transformasi Budaya Perusahaan di BUMN melalui Pelaksanaan Good Corporate Governance”, Makalah dalam Seminar of Corporate Governance 2003, (Bali: 23-24 January 2003). Kyunghoon Kim, “Indonesia’s Restrained State Capitalism: Development and Policy Challenges”, *Journal of Contemporary Asia*, (2019), pg. 21. Ibid. Jean-Pierre Anastassopoulos, “State-Owned Enterprises between Autonomy and Dependency”, *Journal of Public Policy*, Vol. 5, No. 4, (October, 1985), pg. 522. Xiaolu Wang, “State-Owned Enterprise in China: has it been effective?”, (ANU Press, 2002, pg. 39-42. Material Test Review on Law No. 17 of 2003 concerning State Finances on Article 23 paragraph (1) requested by CSSUI at the Decision of the Constitutional Court of the Republic of Indonesia Number 48/PUU-XI/2013 dated September 18, 2014. Christian Orchard, “Penerapan Good Corporate Governance dalam Upaya Mewujudkan BUMN yang berbudaya”, *Jurnal Hukum Samudera Keadilan*, 2016, pg. 259-271. Article 5 letter a., letter d., and letter e., Presidential Regulation of the Republic of Indonesia Number 81 of 2019 concerning the Ministry of State-Owned Enterprises. Article 33 paragraph (4) of the 1945 Constitution.

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Abstract

State-owned enterprises (SOEs) are one of the engines of economic activity that could make a positive contribution to the national economy. SOEs has a strategic role in development, certain business sectors and as implementers of public services. The role of SOEs is manifested in the form of a business entity that is profit-oriented and public services so that it requires serious and professional guidance, management, and supervision by the government through the Ministry of SOEs. According to Law No. 19 of 2003, the guidance and management of SOEs is no longer based on the APBN system, but based on the good corporate governance. Explicitly, this norm encourages the government through the Ministry of SOEs to act more professionally which can improve competitiveness in the development and management of SOEs. This article is to examine on how Ministry of SOEs role can be improved so the Ministry could be more independent to guide, manage, and supervise SOEs.

Keywords: *soes; guidance; management; supervision; good corporate governance*

Abstrak

Badan Usaha Milik Negara (BUMN) merupakan salah satu mesin penggerak kegiatan ekonomi yang dapat memberikan kontribusi positif terhadap perekonomian nasional. BUMN memiliki peran strategis dalam pembangunan, sektor-sektor usaha tertentu dan sebagai pelaksana pelayanan publik. Peran BUMN diwujudkan dalam bentuk korporasi badan usaha yang profit oriented dan public services, sehingga memerlukan pembinaan, pengelolaan dan pengawasan yang serius serta profesional oleh pemerintah melalui Kementerian BUMN. Berdasarkan Undang-Undang No. 19 Tahun 2003, pembinaan dan pengelolaan BUMN tidak lagi didasarkan pada sistem Anggaran Pendapatan Belanja Negara (APBN), namun didasarkan pada prinsip-prinsip perusahaan yang sehat. Secara eksplisit, norma tersebut mendorong pemerintah melalui Kementerian BUMN untuk lebih bertindak profesional yang mampu meningkatkan daya saing dalam pembinaan dan pengelolaan BUMN. ini mengkaji gagasan bagaimana seharusnya peran Kementerian BUMN dapat ditingkatkan, sehingga Kementerian BUMN lebih independen dalam pembinaan, pengelolaan serta pengawasan BUMN.

Kata kunci: *bumn; pembinaan; pengelolaan; pengawasan; good corporate governance*

I. INTRODUCTION

SOEs was established to achieve the purpose as a public service while at the same time making a profit. With this purpose, many argue that SOEs can be unable to compete with private companies or firms that only focus on looking for profits.² Moreover, there is a stigma that SOEs will act less aggressively in seeking profits compared to its competitors due to their low level of efficiency.³ To increase the efficiency of SOEs, further government strategies and policies are needed.

Over the past four decades, most of the policy and regulatory interventions of SOEs in many countries have focused on policies in the form of liberalization and privatization.⁴ In Indonesia, the Government continues to strive to effectively manage SOEs. From the end of the New Order government, the government has realized the importance of formulating a strategy to unleash the potential of SOEs that have been known as inefficient companies, mismanagement, and become intermediaries for political groups and individuals.⁵ According to experts in the field of SOEs from *the Inter-American Development Bank*, in general there are at least

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² David E.M. Sappington and J. Gregory Sidak, "Competition Law for State-Owned Enterprises", *Antitrust Law Journal*, Vol. 71, No. 2, (2003), pg. 479.

³ Emita W. Astami, Greg Tower, Rusmin Rusmin dan John Neilson, "The Effect of Privatisation on Performance of State-Owned-Enterprises in Indonesia", *Asian Review of Accounting*, Vol. 18 No. 1, (2010), pg. 7.

⁴ Mikko Rajavuori, "State Ownership and the United Nations Business and Human Rights Agenda: Three Instruments, Three Narratives", *Indiana Journal of Global Legal Studies*, Vol. 23, No. 2, (2016), pg. 667 – 668.

⁵ Agung Wicaksono, "Indonesian State-Owned Enterprises: The Challenge of Reform", *Southeast Asian Affairs*, (2008), pg. 146.

4 reasons why the management of SOEs becomes inefficient, namely: i) politics, ii) finance, iii) managerial, and iv) regulation⁶.

Since the reformation era in Indonesia or the enactment of Law No. 19 of 2003 on SOEs (“Law No. 19/2003”), SOE reform has provided space and created more competitive conditions in the business world as well as the development of private companies. For private companies, maximizing profits is considered the main goal, while for SOEs profit is only one of the few goals and often not the most important.⁷ Law No. 19/2003 essentially puts SOEs in the national economic system as an extension of the state's hand to perform social functions, namely providing services in the form of goods and/or services for the greatest prosperity of the people (*public services*) while seeking profit (*profit oriented*).⁸ The purpose of *public services* is that the state provides a service to the community related to the price and/or location that can be accessed by all citizens.⁹ SOEs has its own challenges in carrying out its roles.

In the government of President Joko Widodo, SOEs have become the center of the economic agenda that continues to be developed.¹⁰ The development of SOEs aims to build infrastructure, industrialization, boost regional economies, and resource sovereignty, which is considered to have slowed or weakened over the past two decades.¹¹ Such reforms and support have improved the efficiency and competitiveness of SOEs leading to substantial growth. Such reforms have so far created a new generation of SOEs with diverse types of ownership and a significant level of internationalization.

Along with increasing of economic dynamics, the strategic role and function of *profit oriented* SOEs and *public services* become very significant. The high level of business competition between corporate business entities, especially competition with private business entities, demands SOEs to be more productive and more competitive in carrying out their business activities. Although undeniable, SOEs have a special status and characteristics that distinguish them from private companies where there is an element of state ownership in them.¹² Apart from this, SOEs are also required to build a culture of business-oriented corporate business entities and development with a total of professionals.

In order to realize a total professional SOE, it is inseparable from the improvement, developing, and management carried out by the Ministry of SOEs. Therefore, the Ministry of SOEs is required to act completely professional in developing and managing SOEs. In other words, the total professional attitude does not only cover the organs of directors and commissioners of SOEs but also covers the Ministry of SOEs in carrying out coaching and management as shareholders as well as an extension of the state in SOEs. This is actually in line with the norms stipulated in Law No. 19/2003, namely the development and management of SOEs no longer based on the APBN system, but based on the good corporate governance.¹³

⁶ Enrique Moreno de Acevedo Sánchez, “State-owned Enterprise Management”, *Inter-American Development Bank*, (June, 2016), pg. 8.

⁷ Ravi Ramamurti. “Performance Evaluation of State-Owned Enterprises in Theory and Practice”, *Management Science*, Vol. 33, No. 7 (July, 1987), pg. 887.

⁸ Madaskolay Viktoris Dahoklory, “Dinamika Pengelolaan Keuangan BUMN perihal “Dilema” antara Kerugian Negara atakuh Kerugian Bisnis”, *Jurnal Rechtsvinding*, Vol. 9, No. 3, (Desember, 2020), pg. 350-351.

⁹ Ines Willemyns, “Disciplines on State-Owned Enterprises in International Economic Law: Are We Moving in the Right Direction?”, *Journal of International Economic Law Oxford*, (2016), pg. 660.

¹⁰ Eve Warburton, “A New Developmentalism in Indonesia?”, *Journal of Southeast Asian Economies*, Vol. 35, No. 3, (2018), pg. 360.

¹¹ Kyunghoon Kim, “Using Partially State-Owned Enterprises for Development in Indonesia”, *Asian Pacific Business Review*, VOL. 25, NO. 3, (2019), pg. 318.

¹² I Made Asu Dana Yoga Arta, “Status Kepemilikan Badan Usaha Milik Negara (BUMN) Persero setelah Dikuasai oleh Pihak Swasta”, *Jurnal IUS*, Vol. V, No. 2, (August, 2017), pg. 182.

¹³ Indonesia, *Law on State-Owned Enterprises*, Law No. 19 of 2003. Elucidation Art 4 par (1)

Centralization of SOEs under the Ministry of SOEs aims to improve the performance of SOEs, eliminate bureaucracy, and accelerate the required privatization process.¹⁴

However, in carrying out these duties, the Ministry of SOEs is inseparable from the responsibility of the Ministry of Finance in administering government affairs in the field of state finance. Several forms of responsibility that are still carried out by the Ministry of Finance towards SOEs are: (1) administration of state equity participation and all its changing structures; (2) proposal for the participation of state capital to SOEs; dan (3) establishment of SOEs.¹⁵

Realized or not, this condition affects the development and management of SOEs by the Ministry of SOEs. As for SOEs themselves, such conditions can cause difficulties in practice and distortions in understanding the subjugate of the law. This makes SOEs less dynamic and difficult to compete than similar private business entities. For example, a state-owned enterprise engaged in banking, must submit not only to the SOE Law, the Limited Liability Company Law, and the Banking Law, but also to the State Finance Law, the State Treasury Law and the Corruption Crimes Act. The conditions may be different if the development, management, and even supervision of SOEs are entirely carried out by the Ministry of SOEs independently without the involvement of the Ministry of Finance. Of course it is not easy to reconstruct such conditions, because it requires a comprehensive understanding, not just commercial calculations and regulatory changes.

Taking into account these conditions, this paper is a critical study in the context of the idea of developing, management and supervision of SOEs directly carried out by the Ministry of SOEs without having to involve the Ministry of Finance. Some of the things that will be discussed are: *first*, the journey of developing and managing of SOEs that was initially carried out by the Ministry of Finance and then handed over to the Ministry of SOEs. *Second*, how is the main function and duties of the Ministry of Finance as the state treasurer in the administration of state wealth, including in this case the state wealth that is separated as stipulated in the APBN. *Third*, how it should improve the role of the Ministry of SOEs in the development, management and even supervision of SOEs. In this section will be seen the legal implications critically, especially to the role and function of the Ministry of SOEs and the Ministry of Finance. Hopefully, the improving role and function of the Ministry of SOEs does not reduce the true meaning in the management of state assets.

II. DISCUSSION

A. Development and Management of SOEs

SOEs established in Indonesia to fulfill pragmatic needs.¹⁶ Philosophically, SOEs was born due to the state's obligation to prosper its people as stipulated in Article 33 of the 1945 Constitution of the Republic of Indonesia.¹⁷ The concept of the creation of SOEs because the state is not possible to carry out business activities directly, so SOEs becomes a forum for the state to provide welfare to its people through the placement of state capital.¹⁸ Since the

¹⁴ Iman Harymawan, et.al, "How does the presidential election period affect the performance of the state-owned enterprise in Indonesia?", *Cogent Business & Management*, (2020), pg. 3.

¹⁵ Indonesia, *Government Regulation on The Transfer of Position, Duties and Authority of the Minister of Finance in The Company (Persero), Public Companies (Perum) And Office Companies (Perjan) to the Minister of State Business Entities*, GR No. 64 Tahun 2001, Art. 2 par. (1).

¹⁶ Hassan Kartadjoemena, "State Enterprises in Indonesia: Present Issues and Future Prospects", *Southeast Asian Affairs*, (1976), pg. 202.

¹⁷ Muhammad Insa Ansari, "The Role of the State-Owned Enterprises on Maritime Development", *Jurnal Rechtsvinding*, Vol. 8, No. 2, (August, 2019), pg. 186.

¹⁸ Muchayat, *Badan Usaha Milik Negara: Retorika, Dinamika dan Realita (Menuju BUMN yang Berdaya Saing)*, (Jakarta: Gagas Bisnis, 2010), pg. 132-133.

beginning of Indonesia's independence until now, SOEs have played a strategic role in economic and political development.¹⁹ The role of SOEs in economic and political development is in line with Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that production branches which are important to the state and which control the lives of many people are controlled by the state.²⁰

As the main support for the national economy in Indonesia, SOEs has an important role. SOEs are built to contribute to the development of the national economy as a whole.²¹ This is proven by the total assets of SOEs as of December 31, 2019, amounting to IDR 8,739 trillion, an increase of 7.3% from the previous year.²²

The development of SOEs in Indonesia occurred in 1956-1958 when there was a massive nationalization of foreign companies. At that time SOEs was known as a State Company (*Perusahaan Negara/PN*).²³ PN has a long history of hundreds of years, even thousands of years ago.²⁴ Along with the development of the era all PN is adapted to its function and organized into PERJAN, PERUM and PERSERO.²⁵ In the period 1973-1993, the unit that handles the development of SOEs was in echelon II-level units, known as the Directorate of Persero and State Company Financial Management (*Pengelolaan Keuangan Perusahaan Negara/PKPN*). Furthermore, in the period 1993 to 1998, the organization that was originally only at the level of Directorate/Echelon II, was upgraded to the equivalent of the Directorate General/Echelon I, with the name of the Directorate General of Development of State Business Entities (DJ-PBUN). In 1998, the Government of the Republic of Indonesia changed the form of the organization of trustees and managers of SOEs to the level of the Ministry, with the name of the Ministry of State Utilization of SOEs. In connection with the establishment of ministries and in order to improve the performance and efficiency of SOEs, the Minister of Finance transferred the position, duties and authority of the Minister of Finance as a shareholder at Persero Company to the Ministry of SOEs utilization through Government Regulation No. 50 of 1998.²⁶ The ministry took over the supervision of SOEs from 17 sectoral ministries.²⁷ In 2000, although the function of the Ministry of SOEs was abolished and returned to the Ministry

¹⁹ Astami, Greg Tower, Rusmin Rusmin dan John Neilson, "The Effect of Privatisation on Performance of State-Owned-Enterprises in Indonesia", pg. 7.

²⁰ Indonesia, the 1945 Constitution of the Republic of Indonesia, Art. 33 par (2).

²¹ Bachtiar H. Simamora, Hartiwi Prabowo dan Rudi, "Success Level Implementation of ERP at Indonesia State-Owned Enterprises Transportation Sectors", *Journal of Physics: Conf. Series* 1175, (2019), pf. 1.

²² Kementerian BUMN, "Kinerja Keuangan BUMN", <https://bumn.go.id/investor/finance>, accessed on February 9, 2021.

²³ Andjar Pachta W, "Peranan Badan-Badan Usaha Negara di Indonesia", *Jurnal Hukum Pembangunan*, (1983), pg. 418.

²⁴ K.A. Wittgopel, *Oriellai Despotism in Government and Public Enterprise Essay in Honor of Professor V. V. Ranadham* dalam Kurnia Toha, "Masa Depan Monopoli Badan Usaha Milik Negara di Indonesia", *Jurnal Hukum dan Pembangunan*, No. 2, Tahun Ke-34, (April – June, 2004), pg. 110.

²⁵ Indonesia, Law on the Establishment of Government Regulation In lieu of Law No. 1 of 1969 on State Business Forms Into Law, Law No. 9 of 1969.

²⁶ "Transfer of duties, the authority of the Minister of Finance who represents the government as the General Meeting of Shareholders (GMS) in Persero is transferred to the State Minister for Utilization of State-Owned Enterprises, however the transfer of duties and authority does not include the activities of administering any state capital and its changes to PERSERO, a Limited Liability Company. others and investments made by PERSERO, are still carried out by the Minister of Finance". Article 1 and Article 2 Government Regulation No. 50 of 1998 concerning Transfer of Position, Duties and Authority of the Minister of Finance as Shareholders or General Meeting of Shareholders (GMS) in the Company to the Minister of State-Owned Enterprises Utilization of State-Owned Enterprises (GR No. 50 of 1998).

²⁷ Shidarta dan Van Huis, "Between Revenues and Public Services Delivery," *Bijdragen Tot De Taal-, Land-En Vonkenkunde*, Vol 176, No 2/3, 2020, pg. 317.

of Finance. Then in 2001, the SOEs supervisory organization returned to its function at the level of the Ministry and until now it is known as the Ministry of SOEs.²⁸

In the history of the Indonesian economy, SOEs have undergone several restructurings.²⁹ In 2020, the Ministry of SOEs launched a restructuring program aimed at partially privatizing.³⁰ This is because, at that time there was a belief that one of the important steps to improve the competitiveness of the company is to reduce state intervention in the economy, which in the context of ownership of SOEs is indicated by privatization.³¹ The purpose of the restructuring is to create a competitive SOEs.

According to some experts, compared to countries with a centralized SOE ownership model, Indonesia has a unique structure because there is a stand-alone ministry responsible for the management of SOEs.³² A more common type of centralized SOE ownership arrangement is ownership under departments or agencies within ministries or under corporate structures with separate legal identities.³³ Based on the World Bank's categorization of 16 countries with centralized ownership arrangements, Indonesia is the only country with a ministry-level ownership structure.³⁴

In principle, the government has its own reasons for establishing SOEs, including the framework of development, management and supervision of SOEs. In general, the purpose of the establishment of SOEs is to: (i) support national strategic interests; ii) ensure sustainable ownership of national companies; (iii) supplying certain public goods or services; (iv) conducting business activities in a "natural" monopoly situation; and (v) create or maintain state-owned monopolies (or oligopoly) where market regulation is deemed unfit or inefficient.³⁵ For example in Germany, the most important production equipment is owned by the state. National property is not subject to private individual ownership and is exclusively in government hands.³⁶ In addition to the above objectives, the Government also uses SOEs to encourage regional development, reduce unemployment, defend from foreign ownership, overcome inflation, accumulate foreign currencies, save declining industries and encourage high-risk and/or high-tech industries.³⁷ SOEs are used to develop certain capabilities, technologies, and knowledge of a country, without being limited by commercial considerations.³⁸

According to the Organization for *Economic Co-operation and Development* (OECD), SOEs make a considerable contribution to gross domestic product (GDP), employment, and market

²⁸ Sejarah Kementerian BUMN, <https://bumn.go.id/about/profile>, accessed on 20 January 2020.

²⁹ Indah Fitriani, "Pola Pengelolaan Badan Usaha Milik Negara: Sebuah Potret Singkat", *Manajerial*, Vol. 10, No. 19, (July, 2011), pg. 54.

³⁰ Shidarta, "Between Revenues and Public Services Delivery", pg. 319.

³¹ Maya Sari, et. al., "The Influence of Organization's Culture and Internal Control to Corporate Governance and its Impact on BumN (State-Owned Enterprises) Corporate Performance in Indonesia", *Journal of Advanced Research in Law and Economics*, Volume IX, Spring, 2(32), (2018), pg. 681.

³² Kyunghoon Kim, "Matchmaking: Establishment of State-Owned Holding Companies in Indonesia", *Wiley Asia & Pacific Policy Studies*, (2018), pg. 318.

³³ *Ibid.*

³⁴ World Bank, *Corporate Governance of State-Owned Enterprises: A Toolkit*, (Washington, DC: World Bank, 2014), pg. 82.

³⁵ OECD (2018), *Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices*.

³⁶ Stephan Supranowitz, "The Law of State-Owned Enterprises in a Socialist State", *Law and Contemporary Problems*, Vol. 26, No. 4, (1961), pg. 794.

³⁷ Arie Y. Lewin, "Research on State-Owned Enterprises: Introduction", *Management Science*, Vol. 27, No. 11 (November, 1981), pg. 1324.

³⁸ Willemyns, "Disciplines on State-Owned Enterprises in International Economic Law", pg. 660.

capitalization of developing countries.³⁹ In many cases, SOEs are the dominant actors, or even occupy "natural" monopoly positions in their respective fields.⁴⁰ Therefore, SOEs are expected to develop the country's economy by increasing state revenues, conducting profit fertilization, becoming pioneers in terms of business activities that cannot be implemented by the private sector and cooperatives and support the implementation of government programs in the field of economy and development.⁴¹

The economic sector is a very important sector in a country and intersects with all aspects of people's lives. The role of SOEs is manifested in business activities in almost all economic sectors, such as agriculture, fisheries, plantations, forestry, manufacturing, mining, finance, post and telecommunications, transportation, electricity, industry and trade and construction. Good performance and synergy is needed between the Ministry of Finance as the State treasurer and the Ministry of SOEs as the supervisor, manager and supervisor of the SOEs itself. SOE management is expected to be carried out independently and professionally by the Ministry of SOEs so that it can achieve the goals of establishing SOEs and further realizing a totally professional SOEs.

B. Administration of Finance and State Assets in SOEs

In principle, SOEs is a business entity that is wholly or most of the capital owned by the state through direct participation originating from separated state assets.⁴² The idea of reform or privatization of SOEs is to reduce the financial burden and increase the development of SOEs themselves.⁴³ This gives autonomy and delegation of the use of state assets separated into SOEs. The legal consequence is separation between owner and manager or ownership and control.

The separation between the owner (state) and manager (corporation) in SOEs can cause problems due to weak guidance, administration and supervision as well as lack of professionalism, both in terms of corporate organs and shareholders. This is one thing why the role of the Ministry of SOEs is very significant and central in the development, management and supervision of SOEs. This has the potential to be a recurring problem despite changes in the scope of government and SOE relations. Even in a country like China, the relationship between government and SOEs after 30 years in the last round of SOE reform, increasing corporate independence is still the main goal of policy makers.⁴⁴

The classic view of SOEs usually revolves around the dimensions of efficiency, productivity and administrative bureaucracy.⁴⁵ SOEs are often seen as less efficient entities and burden the country's economy or even as political protection, therefore a significant study of how best to reform, privatize or even eliminate such entities is required.⁴⁶

³⁹ OECD, *Guidelines on Corporate Governance of State-Owned Enterprises*, (Paris: OECD Publishing, 2015), pg. 11.

⁴⁰ Dirk Meissner, David Sarpong dan Nicholas S. Vonortas, "Introduction to the Special Issue on Innovation in State Owned Enterprises: Implications for Technology Management and Industrial Development", *Industry and Innovation*, Vol. 26, No. 2, (Desember, 2018), pg. 111.

⁴¹ Marie Muhammad, Astar Siregar, Kertas Kerja Kongres ISEI ke-9, Cipanas 27-30 Juli 1983.

⁴² Indonesia, Undang-Undang Badan Usaha Milik Negara, UU No. 19 Tahun 2003, [*].

⁴³ A. Zen Umar Purba, "Privatization in Indonesia: Restructuration and Public Offering", *Jurnal Hukum dan Pembangunan*, No. 2, Tahun Ke-27, (April, 1997), pg. 92.

⁴⁴ Ligang Song, "State-Owned Enterprise Reform in China: Past, Present and Prospects," dalam *China's 40 Years of Reform and Development*, ed. Ross Garnaut, Ligang Song and Cai Fang (ANU Press, 2018), pg. 348.

⁴⁵ Alvaro Cuervo-Cazurra, et. al., "Governments as Owners: State-Owned Multinational Companies", *Journal of International Business Studies*, 45, (2014), pg. 920.

⁴⁶ Phillippe Benoit, "State-Owned Enterprises: No Climate Success Without Them", *Journal of International Affairs Editorial Board*, hlm 135, 2019.

Each country has a strategy to improve the performance of SOEs. The performance of SOEs in neighboring countries such as Singapore and Malaysia continues to grow with the establishment of *state-owned holdings*. Then the reform of SOEs in China which is one of the most important things about China's transition to a market economy.⁴⁷ China has a strategy of privatization to strengthen state-owned enterprises in their country.⁴⁸ Later in Sweden, the Swedish Parliament established one state holding company, *Statsföretag*, which would be responsible for most SOEs.⁴⁹ However, it should be noted that these countries reform the management of SOEs first before carrying out structural reforms. Institutional and regulatory foundations have been prepared to support the mechanism of independent SOE strategy with good supervision.⁵⁰

Discussing the use of state assets that are separated in state-owned enterprises, will not be separated from the debate of the scope of state finances on some legislation. Law No. 17 of 2003 on State Wealth (“Law No. 17/2003”) defines state wealth as 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 exercise of such rights and obligations. The definition of state wealth in Law No. 17/2003 uses a broad or comprehensive definition intended to secure state wealth sourced from people's money.⁵¹

The broad definition of state wealth can be seen in Article 2 of Law No. 17/2003 which expands the scope of the country's finances, including: (a) the right of the state to collect taxes, issue and distribute money, and make loans; (b) the obligation of the state to perform the duties of public services of the state government and pay the bills of third parties; (c) State revenue; (d) State expenditures; (e) Regional Reception; (f) Regional Expenditures; (g) State assets/regional assets that are managed by themselves or by other parties in the form of money, securities, accounts receivable, goods, and other rights that can be valued in money, including assets separated from state/regional companies; (h) the assets of other parties that are controlled by the government in the context of carrying out government tasks and/or public interests; and (i) other party's assets obtained by using facilities provided by the government. Based on these provisions, it can be understood that state wealth include separated assets. Thus, state wealth or separated state assets intended for the inclusion of state capital to state-owned enterprises are still part of the state's wealth. This statement was confirmed by the Constitutional Court Decision Number 48/PUU-XI/2013 and Decision Number 62/PUU-XI/2013 that all SOEs assets, whether separate or inseparable, are actually state wealth.

On the other hand, Law No. 19 of 2003 on State-Owned Enterprises (“Law No. 19/2003”) define the state wealth that is separated as state wealth derived from the State Budget (*Anggaran Pendapatan dan Belanja Negara/ APBN*) to be used as state capital investment in persero and/or perum as well as other limited liability companies. SOEs is distinguished into 2 (two), namely Persero and Perum. The Company or Persero is a state-owned enterprise in the form of a limited liability company whose capital is divided into shares that are all or at least 51% (fifty-one percent) of its shares owned by the state whose main purpose is to pursue profit, while

⁴⁷ Justin Yifu Lin, Fang Cai, dan Zhou Li, “Competition, Policy Burdens, and State-Owned Enterprise Reform”, *The American Economic Review*, Vol. 88, No. 2, (May, 1998), pg. 422.

⁴⁸ Qian Sun, Wilson Tong, dan Jing Tong, “How Does Government Ownership Affect Firm Performance? Evidence from China's Privatization Experience”, *Journal of Business and Accounting*, 29 (1) & (2), (January-March, 2002), pg. 22.

⁴⁹ Yair Aharoni, “Performance Evaluation of State-Owned Enterprises: A Process Perspective”, *Management Science*, Vol. 27, No. 11 (November, 1981), hlm, 1343.

⁵⁰ Shidarta dan Van Huis, “Between Revenues and Public Services Delivery”, pg. 323.

⁵¹ W. Ridwan Tjandra, *Hukum Keuangan Negara*, (Jakarta: Grasindo, 2014), pg. 10.

Perum is a state-owned enterprise whose entire capital is owned by the state and is not divided into shares. In this paper that will be discussed is SOEs in the form of Persero.

Separated state assets as referred to in Article 4 of Law no. 19/2003 is the separation of state assets from the State Revenue and Expenditure Budget to be used as state capital participation in SOEs, where further development and management are no longer based on the APBN system, but their development and management are based on good corporate governance. Based on the explanation, state wealth that is separated into SOEs through the inclusion of capital is no longer managed based on the APBN system, but rather managed based on the principles of a *good corporate governance*.

This is reinforced by the issuance of the Supreme Court Fatwa Number WKMA/YUD/20/VIII/2006 year 2006 which one of its decisions confirms that the development and management of state-owned enterprises' capital derived from state wealth is not based on the APBN system, but rather is based on the principles of a healthy company.⁵² According to the Fatwa, Law No. 17/2003 is no longer legally binding with law No. 19/2003 in which Law No. 19/2003 is *lex specialis* and newer than Law No. 17/2003.⁵³

Based on Article 1 paragraph (1) of Law No. 1 of 2004 concerning State Treasury ("Law No. 1/2004"), State Treasury is the management and accountability of state finances, including investments and wealth that are separated, stipulated in the APBN and APBD. Furthermore, it is stated in Law No. 1/2004 that the Law on State Budget is the basis for the Central Government to conduct state revenues and expenditures and the Regional Regulation on APBD is the basis for local governments to conduct regional revenues and expenditures. Based on these matters, it is known that the scope of the state treasury is limited only to those stipulated in the APBN and/or APBD.

Law No.1/2004 stipulates the Minister of Finance as the State General Treasurer, who has a number of other authorities as follows: (i) break the budget implementation document; (ii) conduct control over the implementation of the APBN; and iii) invest state money and manage/manage investments.

Once the country's wealth/finances are separated and become the wealth/finances of the legal entity that receives then all its rights and obligations will no longer be the obligations of the state. Concrete legal evidence of state wealth/finance being separated is no longer the state's wealth/finances are:⁵⁴

- 1) The deposit of the money no longer goes to the state treasury as a place of storage of state money determined by the minister of finance as the general treasurer of the state, whereas in principle all receipts must be immediately deposited into the state treasury and all expenditures come from the state treasury;
- 2) The rights and obligations that arise over the separated state assets/finances no longer make the APBN law the basis for revenues (rights) and expenditures (obligations);
- 3) The Minister of Finance as the general treasurer of the state has no authority over the finances that have been separated except in his position as a representative of the state as a shareholder whose legal position is the same as other shareholders according to the Company Law; and

⁵² Supreme Court, Fatwa Number WKMA/YUD/20/VIII/2006 of 2006, 16 August 2006.

⁵³ "That in the above articles, which is a special law on SOEs, it is clearly said that the capital of SOEs comes from state assets that have been separated from the APBN and subsequently the development and management is not based on the state APBN but rather based on the principles of a healthy company", See Supreme Court, Fatwa Number WKMA/YUD/20/VIII/2006.

⁵⁴ Dian Puji Simatupang, *Paradoks Rasionalitas Perluasan Ruang Lingkup Keuangan Negara dan Implikasinya Terhadap Kinerja Keuangan Pemerintah*, (Jakarta: Badan Penerbit FHUI, 2011), pg. 128.

- 4) Liability for claims and / or risks arising on separated state assets / finances does not become a burden on the APBN and does not appear in the budget execution form (DIPA), which is a budget execution document.

Based on Government Regulation No. 41 of 2003 concerning The Delegation of Positions, Duties and Authorities of the Minister of Finance in The Company (Persero), Public Companies (Perum) and Office Companies (Perjan) to the Minister of State-Owned Enterprises (“GR No. 41/2003”), The position, duties and authority of the Minister of Finance in the field of development and supervision of SOEs are partially delegated to the Ministry of SOEs, namely those who represent the Government as shareholders or the General Meeting of Shareholders (GMS) in Persero or state-owned limited liability companies directly. The act of delegation according to the State Administrative Law is the delegation of government authority from one organ of government to another.⁵⁵ The legal consequence of the delegation is the transfer of responsibility from the delegator to the delegation government.⁵⁶ Delegation of this authority means that the Ministry of Finance as the supervisor and supervisor of SOEs has delegated the authority and its responsibilities to the Ministry of SOEs.

In connection with the supervision and administration of state-owned assets embedded in SOEs and limited liability companies, including the addition and reduction of state wealth investment and changes in the state ownership structure as a result of the transfer of state-owned shares or issuance of new shares not taken part by the state, it is necessary to be stipulated by a Government Regulation.

Based on the searches that have been conducted, tata way of participation and administration of state capital in the framework of the establishment or participation into SOEs and/or limited liability companies whose shares are partly owned by the state at least related to 3 (three) relevant Government Regulations, namely:

- 1) Republic of Indonesia Government Regulation No. 43 of 2005 concerning Merger, Consolidation, Acquisition, and Change in the Form of Legal Entities for State-Owned Enterprises (“GR No. 43/2005”);
Based on Article 5 GR No. 43/2005, Merger, Consolidation and Acquisition of SOEs which require a Government Regulation:
 - (i) Merger between Perum and other Perum, or Persero with other Persero;
 - (ii) Consolidation between Perum and other Perum, or Persero with other Persero; or
 - (iii) Takeovers made by Perum against Persero, Perum against limited liability companies, Persero against other Persero, or Persero against limited liability companies.

Elucidation of Article 4 GR No. 43/2005 confirms that GR No. 43/2005 does not regulate Mergers, Consolidations and Acquisitions between SOEs and companies other than SOEs. However, if this happens and causes a change in the amount and composition and investment of state capital, it must be stipulated by a Government Regulation. The consequence of the above regulation is GR No. 43/2005 does not prevail to transactions at the SOE subsidiary level.

Based on GR No. 43/2005, the process of Merger, Consolidation and Acquisition of SOEs is carried out by proposing transactions made by the Minister appointed as the GMS (in this case generally the Minister of SOEs) to the President accompanied by the basis for consideration after joint review with the Minister of Finance. The kajian may include the

⁵⁵ Ridwan HR, *Hukum Administrasi Negara*, (Jakarta: Rajawali Pers, 2016), pg. 90.

⁵⁶ *Ibid*, pg. 105.

technical minister and/or use an independent consultant.⁵⁷ In the final stage, the SOE takeover is carried out by the Minister of SOEs after the issuance of a government regulation regarding the takeover of the SOEs concerned.

Thus, it is known that for Merger, Consolidation and Acquisition transactions of SOEs must be conducted a review in advance by the Minister of SOEs and the Ministry of Finance and then, if approved, it will be carried out with a Government Regulation issued based on a joint study between the Ministry of SOEs and the Ministry of Finance.

- 2) Government Regulation of the Republic of Indonesia No. 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies as amended based on Government Regulation of the Republic of Indonesia No. 72 of 2016 (“GR No. 44/2005”).

Based on GR No. 44/2005, any participation or addition of state capital or reduction of state capital participation in SOEs and limited liability companies whose funds come from the APBN shall be stipulated by a Government Regulation and implemented under the provisions of the laws and regulations in the field of state finance.

The participation of state capital into SOEs and limited liability companies is sourced from:

- a. APBN, which covers the country's wealth in the form of: (i) fresh funds; (ii) state property; (iii) state receivables in SOEs or limited liability companies; (iv) state-owned shares in SOEs or limited liability companies; and/or (v) other state assets.

Any participation and addition of state capital investment derived from the APBN shall be implemented in accordance with the provisions of the laws and regulations in the field of state finance.

Furthermore, Article 2A GR No. 44/2005 states that the Inclusion of State Capital derived from state assets in the form of state-owned shares in SOEs or limited liability companies to SOEs or other limited liability companies, is carried out by the Central Government without going through APBN mechanism. Nature matters of state-owned assets in the form of state-owned shares in so-called SOEs are used as state capital investments in other SOEs so that most of the shares are owned by other SOEs, then the SOE becomes a subsidiary of SOEs with the provision of the state must have shares with privileges stipulated in the articles of association.

Based on the provisions of GR No. 44/2005, the addition of state capital participation based on the APBN can be done on the proposal of the Minister of Finance to the President accompanied by a rationale based on the results of a joint review with the Minister of SOEs and/or the Minister of Technical. Furthermore, the implementation of the addition is carried out by the Minister of SOEs and the Minister of Finance after the issuance of government regulations.

- b. Reserved capitalization and/or other sources.

⁵⁷ Elucidation of Article 9 GR No. 43/2005 explaining that the considerations presented by the Minister to the President include an explanation of the settlement of creditors' objections to the merger, merger and takeover plans of SOEs, if any. A joint review with the Minister of Finance is carried out considering that such actions may result in changes to the structure of state capital investment. While the involvement of the Minister of Technical and/or other ministers and / or leaders of other agencies in connection with sectoral policies in the field of state-owned enterprises, public *service obligation*, and because of the legislation.

Additional state equity participation based on the capitalization of reserves and/or other sources above is determined by the resolution of the GMS for Persero and Limited Liability Companies and the Ministerial Decree for Perum.

In addition to state capital participation in SOEs, a reduction in State capital participation can be carried out if it is proposed by the Ministry of Finance to the President accompanied by basic considerations after joint review with the Minister of SOEs.

The reduction of state capital participation in SOEs and limited liability companies is carried out in the framework of: (i) Sale of State-owned shares in Persero and Limited Liability Companies; (ii) Transfer of SOEs assets for state capital participation in other SOEs or Limited Liability Companies, the establishment of new SOEs, or become inseparable state assets; (iii) Separation of SOEs subsidiaries into SOEs; and/or (iv) Corporate restructuring.

According to Article 22 GR No. 44/2005, any reduction in state equity participation in SOEs and Limited Liability Companies is determined by the GMS by following the corporate mechanism, so there is no need to wait/depend on the issuance of a Government Regulation. Nevertheless, Government Regulation is still published in the framework of the administrative order of the Administration of State Capital Investment. Furthermore, based on Article 25 GR No. 44/2005, the implementation of state capital participation and reduction of state capital participation shall be reported by the Minister to the Minister of Finance for administration.

- 3) Government Regulation of the Republic of Indonesia No. 45 of 2005 concerning the Establishment, Management, Supervision, and Dissolution of State-Owned Enterprises (“**GR No. 45/2005**”).

Establishment of SOEs according to GR No. 45/2005, including:

- (i) establishment of a new Perum or Persero that is not originated from the transfer of form and smelting as referred to in letters b, c, and d below;
- (ii) change in the form of government agency units into SOEs;
- (iii) changes in the form of SOEs; atau
- (iv) the formation of SOEs as a result of the merger of Persero and Perum.

Based on GR No. 45/2005, the establishment of SOEs must be stipulated by a government regulation that at least contains: establishment of SOEs; the aims and objectives of establishing SOEs; and determination of the amount of the separated state assets.

C. Improving the Role of Entities of the Ministry of SOEs in the Development, Management and Supervision of SOEs

With the development of SOEs in other countries across the world, the problem of ensuring that these companies are managed appropriately is a major concern of many governments.⁵⁸ Based on research conducted by *the Institution for Development Sector*, SOEs in developing countries are experiencing some major problems that can generally be classified in general, namely in the fields of politics, finance, management and regulation.⁵⁹ It can be said

⁵⁸ Raymond Vernon, “Linking Managers with Ministers: Dilemmas of the State-Owned Enterprise”, *Journal of Policy Analysis and Management*, Vol. 4, No. 1, (1984), pg. 40.

⁵⁹ Enrique Moreno de Acevedo Sánchez, “State Owned Enterprise Management: Advantage of Centralized Modals,” pg. 9.



that the Ministry of SOEs is still experiencing obstacles in realizing the competitiveness of SOEs due to inadequate management and regulations that limit SOEs to gain profits.

Law No. 19/2003 mandates that one of the goals of SOEs is to gain profit (profit oriented) and its management is based on the principles of good corporate governance. However, in carrying out its business activities, SOEs can be bound by a variety of provisions of legislation that are much more numerous compared to the private sector.

Diagram 1
Laws applicable to SOEs

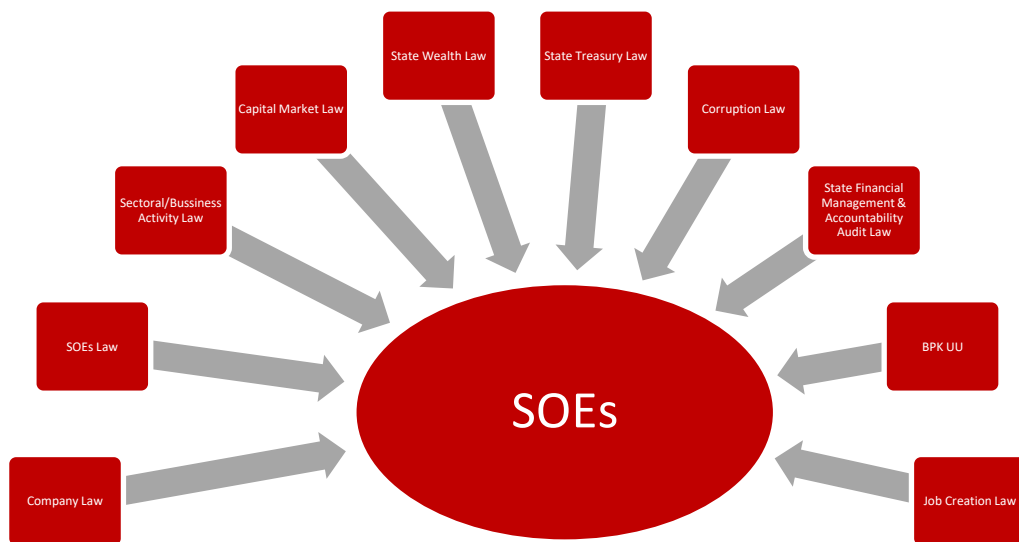
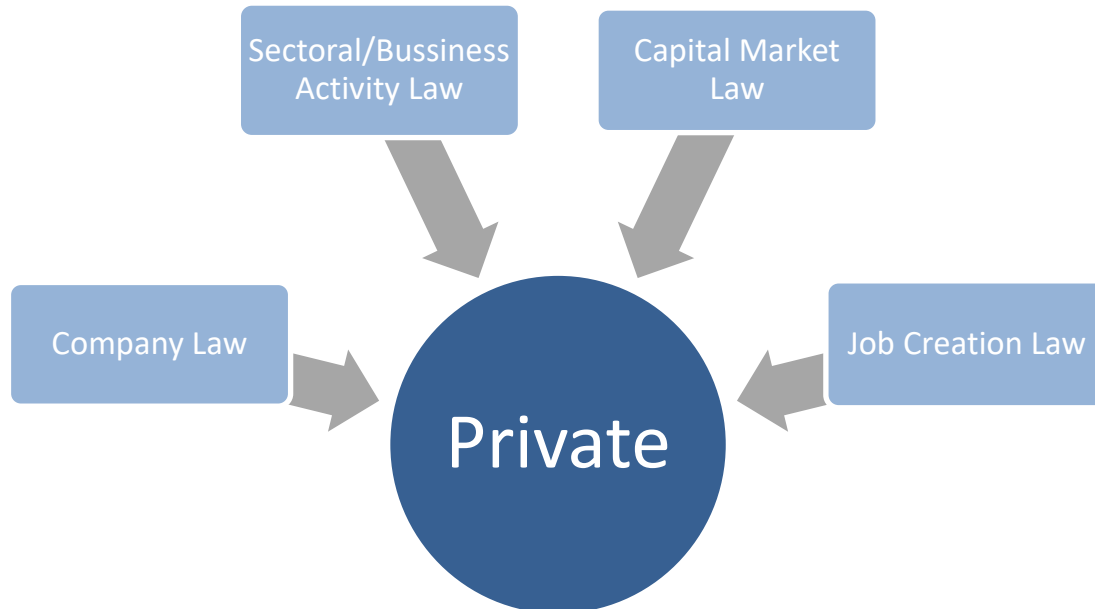


Diagram 2
Laws that apply to the private sector



The binding of SOEs with various laws and regulations provides the risk of overlap, conflict, and multi-interpretation in the management of SOEs. This condition has the potential to cause distortion in law enforcement if there is a case.⁶⁰ For example, the difference in interpretation of the scope of the state in the SOEs Law with other related laws and regulations, such as the State Wealth Law. Even though the elucidation of Article 4 of Law no. 19/2003 has stated clearly that SOEs finances are not subject to the APBN and are separated state assets, however, the scope of state wealth in Article 2 letter g of Law no. 17/2003 states that state assets are separated as part of state finances.

In carrying out its business activities SOEs is subject to the financial obligations of the state. Thus, the state as a shareholder has the responsibility to bear the risks that occur in all spheres of state finances. In fact, it should not be the responsibility of the state or at least not related to the purpose of the state. These differences cause conflicts of law and inconsistencies in their management and examination.⁶¹ For example in policy making by the Board of Directors of SOEs aimed at business interests and in fact impacting on the losses of SOEs, it is vulnerable to corruption cases.⁶² The position of SOEs that tend to be vulnerable to corruption cases and

⁶⁰ Kukuh Komandoko, "The Distortion on Law Enforcement in The Financial Services Sector (The Case of Dana Pensiun Pupuk Kalimantan Timur)," (Prosiding Konferensi Nasional Hukum Pidana 2019, Telaah Kritis Kebijakan dan Penegakan Hukum Pidana Terhadap Pelaku Pidana di Bidang Perekonomian, Palembang, 30-31 October 2019), pg. 5 – 6.

⁶¹ Simatupang, *Paradoks...*, pg. 4.

⁶² Isis Ikhwanayah, An-an Chandrawulan dan Prita Amalia, "Optimalisasi Peran Badan Usaha Milik Negara (BUMN) pada Era Masyarakat Ekonomi Asean (MEA)," *Jurnal Media Hukum*, Vol. 25, No. 25, (Desember, 2018), pg. 152.

compliance with the Tipikor Law, it is partly due to:⁶³ (i) close relations between SOEs and the government, politicians, SOEs administrators and senior management; (ii) poor governance and management of SOEs; (iii) conflicts of interest in SOEs; and (iv) lack of accountability through transparency and public reporting of SOEs.

In relation to SOEs in the form of Persero, then as stated in Article 11 of Law No. 19/2003, the SOE is subject to the provisions and principles stipulated in Law No. 40 of 2007 concerning Limited Liability Companies (“Law No. 40/2007”). A limited liability company is a legal entity that has legal rights and obligations and is separate from its owners (shareholders). A Limited Liability Company has assets separate from the assets of the Board of Directors (as manager), Commissioner (as supervisor), and Shareholders (as owner).⁶⁴ Shareholders have limited liability, only limited to the shares they own. This is stated in Article 3 of Law No. 40/2007, the Company's shareholders are not personally responsible for the alliance made on behalf of the Company and are not responsible for losses of the Company beyond the shares owned or known as the principle of shareholder liability (*piercing the corporate veil*).

As a limited liability company, Organ Persero consists of a General Meeting of Shareholders (“GMS”), Board of Directors, and Board of Commissioners. Minister (i.e. Minister of SOEs) act as the GMS that holds the highest power in Persero and holds all authority that is not handed over to the Board of Directors or Commissioners. Based on the elucidation of Article 14 of Law no. 19/2003, matters that require prior approval from the Minister of SOEs because of its strategic nature for the sustainability of the Company, are as follows:

- 1) changes in the amount of capital;
- 2) amendments to the articles of association;
- 3) use of proceeds plan;
- 4) merger, consolidation, takeover, separation and dissolution of the Persero;
- 5) investment and long-term financing;
- 6) cooperation of Persero;
- 7) the establishment of a subsidiary or investment;
- 8) transfer of assets.

As a GMS, the Ministry of SOEs can take strategic policies for the development of SOEs. However, the Ministry of SOEs does not supervise the daily operations of SOEs because the Minister of SOEs as GMS has appointed credible directors and commissioners and entrusted the operations of SOEs to them.

Based on the principles of Article 4 of Law No. 19/2003, the development and management of SOEs is based on the principles of good *corporate governance* (GCG). GCG is the basis of the market economy system. This is because the implementation of GCG will support and create a good business environment so as to increase competitive advantage and avoid corruptive behavior.⁶⁵ The performance of SOEs management has not been optimal, one of which is also due to the not yet implemented GCG principles in SOEs. In fact, the obligation to implement GCG on SOEs has been mandated in the Regulation of the Minister of State-Owned Enterprises Number PER-01/MBU/2011 of 2011 concerning the Implementation

⁶³ Peter Wilkinson, “10 Anti-corruption Principles for State-Owned Enterprises”, Transparency International, 2017, hlm 03.

⁶⁴ Erman Rajaguguk, “BUMN Persero Sebagai Badan Hukum, Pengertian Keuangan Negara Dan Kerugian Negara: Lahirnya PP 33 Tahun 2006 dan Implikasinya bagi Pemberantasan Korupsi”, dalam *Badan Usaha Milik Negara dalam Bentuk Perseroan Terbatas*, (2016), pg. 30.

⁶⁵ Akhsanul Khaq, Dermawan Syahril, dan Wilhelmus Hary Susilo, “An Increased on Firm Value: Insight in State Owned Enterprises that Listed on the Indonesia Stock Exchange 2013-2018”, *International Journal of Economics and Financial Issues*, 10(2), (2020), pg. 143.

of *Good Corporate Governance* in State-Owned Enterprises.⁶⁶ There are several benefits obtained in the implementation of GCG, namely:⁶⁷ i) easy access to foreign and domestic investment; ii) *cost of capital* obtained is cheaper; iii) provide better decisions in improving the company's economic performance; iv) increase the confidence and trust of shareholders and stakeholders in the company; dan v) melindungi Board of Directors/Commissioners/Board of Executives from lawsuits. In addition, GCG involving the Board of Directors, Board of Commissioners and GMS provides added value to shareholders on an ongoing basis in the long term, while paying attention to the interests of other *stakeholders*, based on prevailing laws and regulations and norms.

The Minister of SOEs as GMS still has certain limitations in performing its duties, as described in GR No. 43/2005, GR No. 44/2005, and GR No. 45/2005 above, namely misalnya for the establishment of SOEs, or the participation of state-owned enterprises must be through the permission of the Minister of Finance and implemented after the issuance of Government Regulations. For the merger, consolidation, and takeover of SOEs, the Ministry of SOEs must first submit a proposal to the President along with the basis for consideration after joint review with the Minister of Finance. This merger, consolidation, and takeover of SOEs are carried out by the State Minister for SOEs after the issuance of a Government Regulation regarding the merger, consolidation, and takeover of the SOEs concerned. In addition, in order to privatize SOEs, there must be approval from the House of Representatives on the draft of APBN in which there is a target of state revenue from the privatization results.

Based on GR No. 41/2003, the delegation of the position, duties, and authority of the Minister of Finance to the Ministry of SOEs does not include:

- 1) Administration of each state capital investment following its changes into Persero/Limited Liability Company;
- 2) Proposal for each state capital participation into Persero/Limited Liability Company;
- 3) Establishment of Persero.

Exceptions for the transfer of authority, especially in points 1 and 2 above, can create obstacles for business activities to be carried out by SOEs. For example, if the SOEs plans to merge with other SOEs and does not use additional state capital participation from the APBN and does not change the total percentage of state ownership in the company resulting from the merger, it is still obliged to go through the procedure stipulated in GR No. 44/2016, namely a study with the Minister of Finance and issuance of Government Regulations. Another example, when the Ministry of Finance decides that certain projects led by SOEs have the potential to jeopardize the government's fiscal position, the Ministry of Finance will intervene and press to review those projects.⁶⁸ This happened when the Ministry of Finance tried to control the timeframe and terms of state-owned development projects such as the 35,000 MW electricity program and the Jabodetabek Light Rail Transit project.⁶⁹ Such obligations may impede the state-owned enterprises' plans to take corporate action that has been reviewed from a business point of view. Therefore, if the corporate action does not require the inclusion of additional

⁶⁶ "SOEs must implement GCG consistently and sustainably based on this Ministerial Regulation while paying attention to the prevailing provisions, and norms and articles of association of SOEs", See Minister of SOEs, Ministerial Regulation No. PER-01/MBU/2011, Art 2.

⁶⁷ Bacelius Ruru in his paper presented at the coordination meeting of SOEs in Akmaluddin Hasibuan, "Transformasi Budaya Perusahaan di BUMN melalui Pelaksanaan Good Corporate Governance", *Makalah dalam Seminar of Corporate Governance 2003*, (Bali: 23-24 January 2003).

⁶⁸ Kyunghoon Kim, "Indonesia's Restrained State Capitalism: Development and Policy Challenges", *Journal of Contemporary Asia*, (2019), pg. 21.

⁶⁹ *Ibid.*

state capital derived from the APBN, it should be sufficient approval obligation on Ministry of SOEs as GMS like a private company. Furthermore, considering that the Ministry of SOEs is the supervisor and supervisor of SOEs and who knows best about the needs of SOEs, the Ministry of SOEs can be given the authority to make proposals for state capital participation in SOEs. If the Government wants state objectives and efficient management of SOEs to be achieved, then the relationship between SOEs and the state must be repaired or even improved.⁷⁰ This increase or improvement can be implemented through more centralized supervision of SOEs, namely through the Ministry of SOEs.

If we observe at the reform of the development of SOEs in China, some things that can be considered in increasing the role of SOEs, including the following: (i) reducing government intervention, where excessive government control and intervention on SOEs can lead to low efficiency, SOEs are expected to have substantial freedom in decision making and operations in the market; ii) supervision of professional performance and employees of SOEs, where professionals are required to have good management and responsibility for the progress of SOEs, while workers who are not professional can be stopped at any time; iii) pay attention to the need for government investment in SOEs, including by making SOEs efficiency in the ownership structure either through privatization, joint ventures, or even private companies, if needed.⁷¹

Regarding its role in developing, managing, and even supervising SOEs, the Ministry of SOEs should be given broader authority to manage SOEs finances which are separated state assets. The authority in question is a measurable authority and focuses on the establishment of a competitive corporate system. This authority can be given by providing clear boundaries that the Minister of SOEs as the GMS can make decisions regarding corporate actions such as mergers, acquisitions and consolidations, privatization, or asset management such as write-offs or asset transfers without further permission from the Ministry of Finance and the President as far as the corporate action does not originate or require funds from the APBN.

Characteristics of SOEs that have many objectives and sometimes *conflicting*, strong political intervention, and lack of transparency cause SOEs to have complicated governance compared to the private sector. The development of SOEs should put forward 3 main principles, namely: (i) *clear objectives*, where there is a clear mandate for the managers of SOEs so that they are only responsible for one door; (ii) *transparency*, where the principle of *high disclosure* is applied to both the government and SOEs; dan (iii) *political insulation*, where government duties are limited as supervisors and directors, while management is carried out by professionals independently, so that *governance* can be carried out properly.⁷² As with the private sector, SOEs performance is required to be professional. As an economic actor, basically, SOEs are no different from the private sector. Only the owner is mostly by the state. However, the precautionary principles must always be prioritized in such professionalism because many conditions affect the performance of SOEs which differentiates it from the private sector. Therefore, SOEs must be subject to more laws and regulations compared to private.⁷³ Institutionally, SOEs have more potential interventions from stakeholders and regulations attached to them than private sector.

⁷⁰ Jean-Pierre Anastassopoulos, "State-Owned Enterprises between Autonomy and Dependency", *Journal of Public Policy*, Vol. 5, No. 4, (October, 1985), pg. 522.

⁷¹ Xiaolu Wang, "State-Owned Enterprise in China: has it been effective?", (ANU Press, 2002, pg. 39-42.

⁷² Material Test Review on Law No. 17 of 2003 concerning State Finances on Article 23 paragraph (1) requested by CSSUI at the Decision of the Constitutional Court of the Republic of Indonesia Number 48/PUU-XI/2013 dated September 18, 2014.

⁷³ Christian Orchard, "Penerapan Good Corporate Governance dalam Upaya Mewujudkan BUMN yang berbudaya", *Jurnal Hukum Samudera Keadilan*, 2016, pg. 259-271.

Nevertheless, if reviewed from the characteristics and principles of SOEs as outlined above, it will not be separated from the intervention of the Ministry of SOEs, especially in the implementation of its duties and functions, including:⁷⁴

- 1) formulating and stipulating policies in the fields of business development, strategic business initiatives, strengthening competitiveness and synergy, strengthening performance, creating sustainable growth, restructuring, managing laws and regulations, human resource management, technology and information, finance and corporate risk management state owned enterprises;
- 2) management of state property/wealth that is the responsibility of the Ministry of SOEs; and
- 3) supervision over the implementation of tasks within the Ministry of SOEs.

From a positive axiological perspective, some of the duties and functions of the Ministry of SOEs as mentioned above are very central and significant when talking about corporate business processes that are competitive, dynamic, profit oriented and public services. The duties and functions of the Ministry of SOEs as stipulated in Presidential Regulation No. 81 Tahun 2019 concerning the Ministry of State-Owned Enterprises (“PR No. 81/2019”) must be understood as a norm that provides a basis for providing bigger and more measurable space to the Ministry of SOEs in managing state property / assets which are its responsibility.

The provision of greater and measurable space can also be given in accordance with the corridors of national economic spirit organized based on economic democracy with the principle of togetherness, fair efficiency, sustainable, environmentally sound, self-reliance, and by maintaining a balance of progress and national economic unity.⁷⁵

Teleologically, giving the Ministry of SOEs a bigger and more measured space is intended to increase efficiency for the sake of progress and national economic unity. From an ideal and simpler perspective, it can be said that increasing the role of the Ministry of SOEs will increase the capacity of SOEs to become more totally professional.

III. CONCLUSION

To create totally professional SOEs, it will not be separated from the improvement of guidance, management and supervision carried out by the Ministry of SOEs. The Ministry of SOEs needs to improve its role with measurable powers in administering state capital participation, along with the entire structure of corporate action against SOEs. The structure of corporate action is included in privatization, merger, acquisition, consolidation and other corporate actions related to capitalization.

In accordance with its duties and functions, the Ministry of SOEs as the shareholders of SOEs can take strategic policies for the advancement of SOEs. In carrying out the administration of SOEs, if the funds used come from the APBN, then approval must be done by the Minister of Finance as the State Treasurer. As for the administration of state capital investment derived from outside the APBN is handed over its authority to the Ministry of SOEs.

Nevertheless, the Ministry of Finance as the state treasurer remains authorized in the fiscal and administrative functions of state wealth. The position, duties and authority of the Minister of Finance delegated to the Minister of SOEs is the party who represents the Government as the shareholder or the General Meeting of Shareholders (GMS) of Persero and

⁷⁴ Article 5 letter a., letter d., and letter e., Presidential Regulation of the Republic of Indonesia Number 81 of 2019 concerning the Ministry of State-Owned Enterprises.

⁷⁵ Article 33 paragraph (4) of the 1945 Constitution.

Limited Liability Companies whose shares are partly owned by the Republic of Indonesia. Ontologically, the Ministry of Finance is still authorized to conduct business efforts for each state capital investment directly derived from the APBN.

Related to the increasing role of the Ministry of SOEs, it is necessary to affirm epistemologically the scope of State Wealth. Especially regarding the state wealth that is the responsibility of the Ministry of SOEs, so that it can be managed autonomously by the Ministry of SOEs. This is necessary to provide greater but measurable space to the Ministry of SOEs in order to act like a corporate shareholder. In addition, this will also reduce the burden on SOEs from legal limitations, so that they can be more productive and compete with private companies.

From axiological perspective, it is possible to increase the role of the Ministry of SOEs, as long as it is carried out within the corridor of implementation and fundamentals of Article 33 of the 1945 Constitution. While reviewed normatively, the duties and functions of the Ministry of SOEs as stipulated in Presidential Regulation No. 81/2019 should be understood as a caucus to provide greater and measurable space in the management of state property/wealth that is the responsibility of the Ministry of SOEs.

Bibliography

Articles

- Aharoni, Yair. "Performance Evaluation of State-Owned Enterprises: A Process Perspective". *Management Science*, Vol. 27. No. 11 (November 1981): 1340-1347.
- Ansari, Muhammad Insa. "The Role of the State-Owned Enterprises on Maritime Development". *Jurnal Rechtsvinding*, Vol. 8. No. 2 (August 2019): 186-202.
- Anastassopoulos, Jean-Pierre. "State-Owned Enterprises between Autonomy and Dependency". *Journal of Public Policy*, Vol. 5. No. 4 (October 1985): 521-539.
- Arta, I Made Asu Dana Yoga. "Status Kepemilikan Badan Usaha Milik Negara (BUMN) Persero setelah Dikuasai oleh Pihak Swasta". *Jurnal IUS*, Vol. V. No. 2 (August 2017): 178-188.
- Benoit, Phillipe, "State-Owned Enterprises: No Climate Success Without Them", *Journal of International Affairs Editorial Board*, (2019).
- Cuervo-Cazurra, Alvaro. et. al. "Governments as Owners: State-Owned Multinational Companies". *Journal of International Business Studies*, 45 (2014): 919-942.
- Dahoklory, Madaskolay Viktoris. "Dinamika Pengelolaan Keuangan BUMN perihal "Dilema" antara Kerugian Negara ataukah Kerugian Bisnis". *Jurnal Rechtsvinding*, Vol. 9. No. 3 (December 2020): 349-365.
- E.M., David, Sappington, dan J. Gregory Sidak. "Competition Law for State-Owned Enterprises". *Antitrust Law Journal*, Vol. 71. No. 2 (2003): 479-523.
- Harymawan, Iman. Et.Al, "How Does the Presidential Election Period Affect the Performance of the State-Owned Enterprise in Indonesia?". *Cogent Business & Management*, (2020): 1 – 14.
- Kartadjoemena, Hassan. "State Enterprises in Indonesia: Present Issues and Future Prospects". *Southeast Asian Affairs*, (1976): 201-208.
- Khaq, Akhsanul, Dermawan Syahrial, dan Wilhelmus Hary Susilo. "An Increased on Firm Value: Insight in State Owned Enterprises that Listed on the Indonesia Stock Exchange 2013-2018". *International Journal of Economics and Financial Issues*, 10(2) (2020):143-147.
- Kim, Kyunghoon. "Using Partially State-Owned Enterprises for Development in Indonesia". *Asian Pacific Business Review*, Vol. 25. No. 3 (2019): 317 – 337.

- _____. "Matchmaking: Establishment of State-Owned Holding Companies in Indonesia". *Wiley Asia & Pacific Policy Studies*, (2018): 313-330.
- _____. "Indonesia's Restrained State Capitalism: Development and Policy Challenges". *Journal of Contemporary Asia*, (2019): 1-28.
- Komandoko, Kuku, "The Distortion on Law Enforcement in The Financial Services Sector (The Case of Dana Pensiun Pupuk Kalimantan Timur)," Prosiding Konferensi Nasional Hukum Pidana 2019, Telaah Kritis Kebijakan dan Penegakan Hukum Pidana Terhadap Pelaku Pidana di Bidang Perekonomian, Palembang, 30-31 Oktober 2019.
- Lewin, Arie Y. "Research on State-Owned Enterprises: Introduction". *Management Science*, Vol. 27. No. 11 (November 1981): 1324-1325.
- Lin, Justin Yifu, Fang Cai, dan Zhou Li. "Competition, Policy Burdens, and State-Owned Enterprise Reform". *The American Economic Review*, Vol. 88. No. 2 (May 1998): 422-427.
- Meissner, Dirk, David Sarpong, dan Nicholas S. Vonortas. "Introduction to the Special Issue on Innovation in State Owned Enterprises: Implications for Technology Management and Industrial Development". *Industry and Innovation*, Vol. 26. No. 2 (December 2018): 121-126.
- Muhammad, Marie, Astar Siregar. Kertas Kerja Kongres ISEI ke-9, Cipanas 27-30 Juli 1983.
- Purba, A. Zen Umar. "Privatization in Indonesia: Restructuration and Public Offering". *Jurnal Hukum dan Pembangunan*. No. 2. Tahun Ke-27. (April 1997): 85-93.
- Rajaguguk, Erman. "BUMN Persero Sebagai Badan Hukum, Pengertian Keuangan Negara Dan Kerugian Negara: Lahirnya PP 33 Tahun 2006 dan Implikasinya bagi Pemberantasan Korupsi". dalam *Badan Usaha Milik Negara dalam Bentuk Perseroan Terbatas* (2016): 29-62.
- Rajavuori, Mikko. "State Ownership and the United Nations Business and Human Rights Agenda: Three Instruments, Three Narratives". *Indiana Journal of Global Legal Studies*. Vol. 23. No. 2 (2016): 665-708.
- Ramamurti. Ravi. "Performance Evaluation of State-Owned Enterprises in Theory and Practice". *Management Science*. Vol. 33. No. 7 (July 1987): 876-893.
- Ruru, Balecius. "Restrukturasi Peran BUMN: Tinjauan Ideologis dan Ekonomis". *Jurnal Ekonomi Pembangunan*. Vol. 8. (1966): 26-31.
- Sánchez, Enrique Moreno de Acevedo. "State Owned Enterprise Management: Advantage of Centralized Modals, *Institutions for Development Center*, (2016).
- Sari, Maya. Et. Al. "The Influence of Organization's Culture and Internal Control to Corporate Governance and is Impact on BumN (State-Owned Enterprises) Corporate Performance in Indonesia". *Journal of Advanced Research in Law and Economics*, Volume IX. Spring. 2(32) (2018): 681-691.
- Shidarta, Stijn Cornelis Van Huis, "Between Revenues and Public Services Delivery," *Bijdragen Tot De Taal-, Land-En Vonkenkunde* Vol 176, No 2/3, (2020).
- Simamora, Bachtiar H., Hartiwi Prabowo dan Rudi. "Success Level Implementation of ERP at Indonesia State- Owned Enterprises Transportation Sectors". *Journal of Physics: Conf. Series* 1175 (2019): 1 – 9.
- Sun, Qian, Wilson Tong, dan Jing Tong. "How Does Government Ownership Affect Firm Performance? Evidence from China's Privatization Experience". *Journal of Business and Accounting*, 29 (1) & (2) (January-March 2002): 1-23.
- Supranowitz, Stephan. "The Law of State-Owned Enterprises in a Socialist State". *Law and Contemporary Problems*, Vol. 26. No. 4. (1961): 794-801.

- Song, Ligang “State-Owned Enterprise Reform in China: Past, Present and Prospects,” in *China’s 40 Years of Reform and Development*, Edited by Ross Garnaut, Ligang Song and Cai Fang. *ANU Press*, (2018).
- Toha, Kurnia. “Masa Depan Monopoli Badan Usaha Milik Negara di Indonesia”. *Jurnal Hukum dan Pembangunan*. No. 2. Tahun Ke-34. (April – June 2004): 110-120.
- Vernon, Raymond. “Linking Managers with Ministers: Dilemmas of the State-Owned Enterprise”. *Journal of Policy Analysis and Management*, Vol. 4. No. 1 (1984): 39-55.
- W, Andjar Pachta. “Peranan Badan-Badan Usaha Negara di Indonesia”. *Jurnal Hukum Pembangunan*, (1983).
- W., Emita, Astami, Greg Tower, Rusmin Rusmin, dan John Neilson. “The Effect of Privatisation on Performance of State-Owned-Enterprises in Indonesia”. *Asian Review of Accounting*, Vol. 18. No. 1 (2010): 5-19.
- Wang, Xiaolu, “State-Owned Enterprise in China: has it been effective?”. *ANU Press*, 2002.
- Warburton, Eve. “A New Developmentalism in Indonesia?”. *Journal of Southeast Asian Economies*, Vol. 35. No. 3 (2018): 355-368.
- Wicaksono, Agung. “Indonesian State-Owned Enterprises: The Challenge of Reform”. *Southeast Asian Affairs*, (2008): 147-167.
- Wilkinson, Peter, “10 Anti-corruption Principles for State-Owned Enterprises”, *Transparency International*, (2017).
- Willemyns, Ines. “Disciplines on State-Owned Enterprises in International Economic Law: Are We Moving in the Right Direction?”. *Journal of International Economic Law Oxford*, (2016): 657–680.

Books

- HR, Ridwan. *Hukum Administrasi Negara*. Jakarta: Rajawali Pers, 2016.
- Muchayat. *Badan Usaha Milik Negara: Retorika, Dinamika dan Realita (Menuju BUMN yang Berdaya Saing)*. Jakarta: Gagas Bisnis, 2010.
- OECD. *Guidelines on Corporate Governance of State-Owned Enterprises*. Paris: OECD Publishing, 2015.
- _____. *Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices*. Paris: OECD Publishing, 2018.
- Simatupang, Dian Puji. *Paradoks Rasionalitas Perluasan Ruang Lingkup Keuangan Negara dan Implikasinya Terhadap Kinerja Keuangan Pemerintah*. Jakarta: Badan Penerbit FHUI, 2011.
- Tjandra, W. Ridwan. *Hukum Keuangan Negara*. Jakarta: Grasindo, 2014.
- World Bank. *Corporate Governance of State-Owned Enterprises: A Toolkit*. Washington, DC: World Bank, 2014.

Court Decisions and Regulations

- Indonesia. 1945 Constitution.
- _____. Law on State-Owned Enterprises, Law No.19 of 2003, LN No. 70 of 2003, TLN No. 4297.
- _____, Law on State Treasury, Law No. 01 of 2004, LN No. 5 of 2007, TLN No. 4355.
- _____, Law on Limited Liability Companies, Law No. 40 of 2007, LN No. 106 of 2007, TLN No. 4756.
- _____, Government Regulation on The Delegation of Position, Duties and Authority of the Minister of Finance as Shareholders or General Meeting of Shareholders (GMS) in the Company to the Minister of State-Owned Enterprises Utilization of State-Owned Enterprises, GR No. 50 of 1998, LN No. 82 of 1998, TLN No. 3758.

- _____. Law on State-Owned Enterprises, Law No. 19 of 2003, LN No. 70 of 2003, TLN No. 4297.
- _____. Law on Job Creation, Law No.11 of 2020, LN No. 245 of 2020, TLN No. 6573.
- _____, Government Regulation on The Delegation of Position, Duties, and Authority of the Minister of Finance in Persero Companies, Public Companies (PERUM), and Office Companies (PERJAN) to the Minister of State-Owned Enterprises, GR No. 41 of 2003, LN No. 97 of 2003, TLN No. 5420.
- _____, Government Regulations on Mergers, Consolidation, Takeovers, and Changes in the Form of Legal Entities of State-Owned Enterprises, GR No. 43 of 2005, LN No. 115 of 2005, TLN No. 4554.
- _____, Government Regulation on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies, GR No. 44 of 2005, LN No. 116 of 2005, TLN No. 4555 as amended last time by Government Regulation of the Republic of Indonesia, PP No. 72 of 2016, LN No. 325 of 2016, TLN No. 6006
- _____, Government Regulation on the Establishment, Management, Supervision, and Dissolution of State-Owned Enterprises, GR No. 45 of 2005, LN No. 117 of 2005, TLN No. 4556.
- _____, Presidential Regulation on the Ministry of State-Owned Enterprises, PR No. 81 of 2019.
- The Decision of the Supreme Court of the Constitution of the Republic of Indonesia No. 48/PUU-XI/2013 dated September 18, 2014.

Internet

- Kementerian BUMN. “Sejarah Kementerian BUMN. Accessed January 20, 2020. <https://bumn.go.id/about/profile>.
- Kementerian BUMN. “Kinerja Keuangan BUMN”. Accessed February 9, 2021. <https://bumn.go.id/investor/finance>.



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