



Country Independence Of State-Owned Enterprises: Relationship Between Private Law And Public Law

Yoyo Arifardhani

Faculty of Law, Pancasila University, E-mail: arifardhaniyoyo@gmail.com

ARTICLE INFO	ABSTRACT
<p>Keywords: State Finance Law; Business Law</p> <p>How to cite: Arifrdhani, Y. (2018). Country Independence of State-Owned Enterprises: Relationship Between Private Law and Public Law. <i>Veteran Law Review</i>, 1(1), 50-71.</p>	<p>BUMN is a business entity that all or part of its capital is owned by the state through direct participation from separated state assets. Based on its duties and responsibilities, BUMN has an important role in helping the government carry out the tasks of national economic development. This independence and professionalism are interpreted as free political interference in the operations of state-owned enterprises that can prevent BUMN from carrying out its duties and functions. The realization of the professionalism of this BUMN is challenged by two aspects, namely at the level of law and economic politics. The legal position of BUMN today is inseparable from the concept of state finances. The concept of state losses can be found in the State Finance Law and in more detail regulated in the State Treasury Law. Article 35 of the State Finance Law.</p> <p>Copyright ©2018 VELREV. All rights reserved.</p>

1. Introduction

In order to carry out consistently and consequently the 1945 Constitution ("1945 Constitution"), especially Article 33 paragraph (2) of the 1945 Constitution, economic resources that control the livelihood of many people in Indonesia are controlled by the state and used as much as possible for prosperity of the people. In order to realize the mandate of the national economy, the government formed a State-Owned Enterprise ("BUMN"). The purpose and objective of the management of BUMN operations as stipulated in Article 1 of Act Number 19 of 2003 concerning State-Owned Enterprises, BUMN is a business entity that all or part of its capital is owned by the state through direct participation from separated state assets.

The BUMN is responsible for managing state assets and using facilities provided by the state for the greatest prosperity of the people. Based on its duties and responsibilities, BUMN has an important role in helping the government carry out the tasks of national economic development. The purpose and objective of the management of BUMN operations as regulated in as stipulated in Article 2 paragraph (1) of Law No. 19 of 2003 concerning SOEs, are as follows: (1) contribute to the development of the national

economy in general and state revenues in particular; (2) pursue profits; (3) organizing public benefits in the form of providing high quality and adequate goods and / or services for the fulfillment of the lives of many people; (4) to be a pioneer in business activities that cannot be carried out by the private sector and cooperatives; and (5) actively providing guidance and assistance to entrepreneurs in the weak economy, cooperatives and the community.

To achieve the above objectives, BUMN, especially state-owned enterprises, must be placed in an appropriate legal framework. The legal frame must be able to accommodate the legal framework that can make BUMN independent in the sense of equal professionalism with large companies both on a national and multinational scale. This independence and professionalism are interpreted as free political interference in the operations of state-owned enterprises that can prevent BUMN from carrying out its duties and functions.

The realization of the professionalism of this BUMN is challenged by two aspects, namely at the level of law and economic politics. At the legal level, the Constitutional Court in Decision No. 48 and No. 62 / PUU-XI / 2013 has determined that BUMN are "the arms of the state", and therefore provide an interpretation of the possibility of widespread state interference with BUMN. At the political economy level, it is not the public secret that this BUMN is used as a "dairy cow" for the economic interests of political power. Then, in terms of the practical governance of BUMN, many individuals occupy the top position of the ranks of the BUMN management, which do not have the required abilities and expertise, but the position reflects more "reciprocity" from the political power over its political support so far.

Therefore, based on the description above, there are 2 (two) problems that can be identified in this article, namely: How is the legal position of BUMN Persero in terms of legal division theory? How should the position of BUMN Persero be able to support the independence of BUMN?

2. Position of Persero State Owned Enterprises Of The Public Law

2.1 Consequences of the Position of BUMN related to State Financial Arrangements

The legal position of BUMN today is inseparable from the concept of state finances. State financial arrangements in the 1945 Constitution before and after the amendment brought different legal consequences to the understanding of state finances in general, and BUMN finance in particular. This difference is also present in various opinions of scholars which are basically divided into two, namely in the narrow sense, which equates the understanding of state finance only with the state budget (state budget) and in a broad sense, which equates the notion of state finance not only covering the state budget but also the APBD and finance managed by state and regional units including by state companies and regional companies.

Hamid S. Attamimi¹, Jimly Asshidiqqie² and Saldi Isra³ are scholars who adhere to state finance in a broad sense in which according to him, the finance of BUMN includes the scope of state finances. Yusuf L Indradewa, Harun Al Rasyid and Arifin P. Soeria Atmadja are scholars who adhere to the understanding of state finance is only limited to the State Budget at the central level.⁴

With the adoption of the view of state finances in the broadest sense, including in this case the state assets that are separated in state-owned enterprises, provide legal consequences for BUMN as a public legal entity that allows deep state intervention in the management of BUMN. This broad implication includes, among other things, criminalization of corruption against the losses of BUMN, the authority of the BPK in auditing BUMN, the authority to control the DPR against BUMN.

The concept of state losses can be found in the State Finance Law and in more detail regulated in the State Treasury Law. Article 35 of the State Finance Law⁵. It was stated in the explanation of this law that the principle

¹ According to Hamid S. Attamimi, the task of the BPK which must examine responsibility for the finances of this unitary state should not be limited to the implementation of the State Budget, but also the implementation of the Regional Budget and the budget of state / regional owned enterprises.

² According to Jimly Asshiddiqie, after the reform, the understanding adopted was no longer very narrow, but a very broad understanding as reflected in the State Finance Act, the Law on Examination of Management and Responsibility for State Finance, the State Treasury Law and the BPK Law.

³ Saldi Isra interpreted the state finances as regulated in the 1945 Basic Law not limited to the state budget because if only understood as limited to the state budget, of course the provisions of Article 23C of the 1945 Constitution do not need to be formulated. State finances in the 1945 Constitution must be understood or interpreted as all finances used in the administration of the state, both at the central and regional levels, including the organizers of State/Regional-owned enterprises (BUMN/BUMD).

⁴ Arifin P Soeria Atmadja defines state finance in terms of government accountability, that the state finances that must be accounted for by the government are state finances that only come from the state budget. So what is meant by state finance is finance originating from the state budget. According to Harun Al-Rasyid, what is meant by state finance is finance in a narrow sense, also associated with the responsibility of auditing state finances by the BPK. Harun Al-Rasyid applies systematic interpretation, namely linking verse (5) with paragraph (1) Article 23 of the 1945 Constitution which regulates the State Budget. So that the definition of state finance is financial originating from the state budget only. Yusuf L. Indradewa provided his understanding of state finances in the narrow sense referred to in the provisions of Article 23 paragraph (5), namely the State Budget. This is related to the government's responsibility for implementing the budget. Therefore, state finances may not cover regional finance or the finances of state companies (except Perjan).

⁵ Article 35 of the State Finance Law:

- (1) Every state official and civil servant who is not a treasurer who violates the law or neglects his obligations, directly or indirectly, which is detrimental to the state finances, is obliged to compensate the said loss.
- (2) Everyone who is given the task of receiving, storing, paying, and / or handing over money or securities or state goods is the treasurer who is obliged to submit an accountability report to the Supreme Audit Agency
- (3) Each treasurer as referred to in paragraph (2) is personally responsible for the financial losses of the state under its management
- (4) Provisions regarding the settlement of state losses are stipulated in the law concerning state treasury

that applies universally is that those who are authorized to receive, store and pay or give up money, securities or state property are personally responsible for all deficiencies that occur in their management. The obligation to reimburse state finances by the state financial managers is a reliable element of internal control.

The definition of state losses can also be seen in Article 1 point 22 of the State Treasury Law which states: "State / Regional losses are shortages of money, securities and goods, the real and definite amount of which is a result of unlawful intentions or negligence". In the State Treasury Law, it is regulated regarding the settlement of state losses. Article 59 Paragraph (2) of the State Treasury Law states that the Treasurer, a civil servant is not a treasurer, or another official who due to his actions violates the law or neglects the obligation imposed directly on him to inflict losses on the state's finances must replace the loss. Then each leader of the state ministry / agency / head of the regional work unit can immediately make a claim for compensation, after knowing that in the state ministry / agency / work unit the relevant regional equipment incurred losses due to actions from any party.

In the concept of state finance law, state losses are a reduction in state money due to illegal acts committed by civil servants. The recovery mechanism is by claiming compensation by the superior official against the civil servant concerned. The concept and implications of the country's losses are different from those set out in the Corruption Eradication Act. Article 2 paragraph (1) of the Corruption Eradication Act states that:

"Anyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's or the country's economy, is sentenced to imprisonment with life imprisonment or a minimum of 4 (four) years imprisonment and a maximum of 20 (twenty) years and fine at least Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiahs) ".

Regarding the concept of state loss, Article 3 of the Corruption Eradication Act determines:

"Anyone who aims to benefit himself or another person or a corporation, misuses the authority, opportunity or means available to him because of the position or position that could harm the state's finances or the country's economy, subject to life imprisonment or the shortest imprisonment 1 (one) year and no later than 20 (twenty) years and or a fine of no less than Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah). "

From the second provision of the article there is an element of important actions that can result in a person being subject to criminal acts of corruption, which is an element "that can harm the state's finances". Whereas to understand what is meant by state finance can be seen in the explanation of this law which states that state finances are all state assets in any form,

separated or not separated, including all parts of state assets and all rights and obligations arising because it is in the control, management and accountability of BUMN.

The scope of the word "can" which is forwarded to the phrase "detrimental to the economy of the country" refers to the formal offense, namely the existence of criminal acts of corruption enough to fulfill the elements of the actions that have been formulated not by the emergence of consequences. But the sentence "detrimental to the economy of the country" also has a very broad meaning and scope and is blurred. Whereas Article 1 paragraph (22) of the State Treasury Law states that state losses are real and certain in number. From here it appears that there are differences in the meaning of state losses in the formulation of the State Treasury Law and the Corruption Act. The State Treasury Law uses the formulation of state losses with pressure on shortages or reductions in numbers, while the Corruption Law has a broad scope, not just a reduction in the amount.

The conception that state wealth is separated from state-owned enterprises remains a state asset is also found in BUMN accounts receivable. Prp Act. No. 49 of 1960 concerning the Committee for State Receivables and Law No. 17 of 2003 concerning State Finance classified SOE receivables as state receivables. This law regulates that all state receivables are bogged down in payments because the debtor does not pay for the management carried out by PUPN. This country's receivables based on Article 8 also include accounts of state enterprises. Thus, the mechanism for managing non-performing loans at state-owned banks will be resolved through the PUPN mechanism.

2.2. The authority of the Supreme Audit Agency in examining BUMN

The Supreme Audit Agency is a state institution tasked with examining the management and responsibility of state finances as referred to in the 1945 Constitution⁶. The 1945 Constitution prior to the 3rd Amendment stipulated the BPK as a state institution that conducts checks on the responsibility of state finances as stipulated in Article 23 paragraph (5)⁷ of the Constitution 45 before the amendment. After the amendment to the 1945 Constitution, the authority of the BPK was expanded to include the management (pre-audit) and responsibility (post audit) of state finances. The expansion of this authority seems to be in line with the development of the definition of state finance after the 3rd amendment to the 1945 Constitution⁸ and the birth of Law Number 17 of 2003 concerning State Finance.

⁶ Article 1 number 1 of Law Number 15 of 2006 concerning the Supreme Audit Board (BPK)

⁷ "to check the responsibility for state finances, a BPK is held, whose rules are stipulated by law. The results of the examination were notified to the House of Representatives".

⁸ The authority of the BPK is regulated in Article 23E of the post-amendment of the 1945 Constitution which reads:

- (1) To examine the management and responsibilities of state finances, a free and independent Supreme Audit Agency is held
- (2) The results of the state financial examiner shall be submitted to the House of Representatives, Regional Representative Council and Regional People's Representative Council in accordance with their authority'

State financial management is the overall activities of state financial management officials in accordance with their position and authority, which includes planning, implementation, supervision and accountability. In Article 1 paragraph 8 of the BPK Law, what is meant by the management of state finances is the overall activities of state financial management officials in accordance with their position and authority, which includes planning, implementation, supervision and accountability.

The Law on BPK provides the definition of state finances the same as the definition stipulated in the State Finance Law as explained in Article 1 number 7 of the BPK Act which states, "State finance is all state rights and obligations that can be valued with money, and everything something in the form of money or in the form of goods that can be used as state property in connection with the implementation of these rights and obligations ". In the Elucidation of Article 6 paragraph (1) of the BPK Law, it is stated that what is meant by state finance covers all elements of state finance as referred to in the law governing state finances⁹. The law governing state finances means Law No. 17 of 2003 concerning State Finance, which when referring to Article 2 letter g of the State Finance Law which includes state finances, including assets separated from BUMN. Thus the scope of the BPK audit includes the authority to examine BUMNs.

The authority of the BPK to conduct audits of BUMN is emphasized in Article 6 paragraph (1) of the BPK Law which reads:

"BPK is tasked with examining the management and responsibility of state finances carried out by the Central Government, Regional Governments, other State Institutions, Bank Indonesia, State Owned Enterprises, Public Service Agencies, Regional Owned Enterprises, and other institutions or agencies that manage state finances" .

The BPK Act was then petitioned for material review at the Constitutional Court in 2013¹⁰. In essence, the applicant believes that the scope of state finances is only APBN. State assets outside the state budget, such as wealth separated by state / regional companies, as well as other assets controlled by the government in the framework of the administration of governmental duties and / or public interests, are not state finances. The Petitioner also questioned the constitutionality of the BPK's authority in examining the management of state finances carried out on BUMN.

However, this judicial review was rejected by the Constitutional Court in Decisions Number 48 and Number 62 / PUU-XI / 2013. Therefore BPK is

(3) The results of the examination are followed up by the representative body and / or agency in accordance with the law.

⁹ Article 3 paragraph (1) of Law Number 15 Year 2004 concerning Examination of Management and Responsibility of State Finance.

¹⁰ The first group of applicants to review the State Finance Law and BPK Law was the Center for Strategic Studies, University of Indonesia, which in this case was represented by Arifin P. Soeria Atmadja, Sigid Edi, Machfud Sidik, Tjipto Usmail, Darminto Hartono, and Dian Simatupang listed in case No. 48 / PUU-XI / 2013. The second group was the BUMN Law Forum, Omay Komar Wiraatmadja, and Sutrisno which was registered in Case Number 62 / PUU-XI / 2013 dated 1 July 2013.

still authorized to supervise BUMN. In the decision of the judge the Constitutional Court essentially provides the following considerations:

- a. In essence, BUMN is an arm of the state in the economic field. The separation of state wealth cannot be interpreted as the breaking of the relationship between the state and BUMN. The separation is only in the context of business management in the framework of business so that it can follow the development and competition of the business world and make capital fertilization, which requires immediate decision making but can still be accounted for.
- b. Although BUMNs are different from private legal entities and state administering organs such as state institutions / ministries / agencies, BUMN that manage state finances also apply constitutionally the functions of the DPR and BPK.
- c. The wealth of the separated country is still the state's wealth. So, there is no reason that the BPK is no longer authorized to examine it. Nevertheless, so that BUMN run in accordance with the principles of good corporate governance, internal supervisors, in addition to the board of commissioners and the supervisory board, are still relevant.
- d. Although state wealth has been transformed into BUMN capital as business capital whose management is subject to the business paradigm (business judgment rules), the separation of state property does not turn into a wealth of BUMN that is independent of state wealth, because from the perspective of transactions that occur separation cannot be constructed as transfer of ownership, therefore remaining as state property and thus the authority of the state in the field of supervision remains valid.

With the ruling of the Constitutional Court, it has affirmed the legal norms that the regulation of BUMN is included in the realm of public law. This can be seen from the consideration of the Constitutional Court which emphasizes that the state's wealth which is separated as BUMN capital remains a state asset. Because it is included as a state asset, the public law sphere applies such as supervision by the BPK and the DPR.

3. Implication Of Capital Investments In Persero Soes By Countries From Private Law Aspects

3.1 Legal Consequences of Equity Participation by States in SOEs Based on Corporate Law

In the eyes of corporate law, BUMN is basically a Limited Liability Company. This can be seen in the provisions of Article 11 of Law No. 19 concerning State-Owned Enterprises, all provisions and principles applicable to Limited Liability Companies as regulated in the Limited Liability Company Law apply to the Persero, the principle of capital participation as the nature of the establishment of a Limited Liability Company also applies to BUMN Persero. Rudhi Prasetya emphasized that BUMN was identical to Limited Liability Company, because in the general explanation Government Regulation Number 12 of 1969, stated "This Government Regulation is not intended to be used as a law" *sui generis* "for Persero in addition to the provisions that apply to Limited Liability Company as stipulated in the

Indonesian Book of Commercial Law. The establishment of BUMN Persero also follows procedures like a Limited Liability Company, which is requested for approval by the Minister of Law and Human Rights, registered, announced in the Supplement to the State Gazette.

Payment of capital either at the time of establishment of a Limited Liability Company in the form of shares is an investment, which means the participation of a person taking part in a business entity that is realized through shares. A sign of shares is essentially a sign as proof of participation of a person investing in a Limited Liability Company¹¹. Juridically, the capital that is included in the company is no longer the wealth of people who include capital, but it becomes the company's wealth itself. It is at this point that there is a separation of wealth between shareholder and corporate wealth. With such characteristics, the shareholders' responsibility for the loss or debt of the company is also limited. With the adoption as a legal entity, the shareholders of the Company are not personally responsible for the agreements made in the name of the Company and are not responsible for the loss of the Company in excess of the shares held.¹²

Based on the above description clearly seen that BUMN is a Limited Liability Company. Although there are elements of the state within the company, but because this business entity is a Limited Liability Company, the business entity must submit to the Company Law, because the Company Law is a substantive basis for the regulation of the existence of Limited Liability Companies. The Company is considered to have an independent position regardless of the person or other legal entity of the person who founded it. The meaning of the independent position of the Company is that its position in the law is considered to be independent, autonomous, regardless of the individuals within the Company.

The process of depositing state capital into state-owned enterprises according to Arifin P Soeria Atmadja shows the occurrence of legal transformation from public finance to private finance¹³. If a portion of the state wealth is placed as the inclusion of government capital in a company as a separated state asset, then the status of the separated wealth will become the property of a company whose management is subject to civil law. As a sign that the shareholders make deposits, shares are issued in the name of the shareholders which creates material rights for their owners. Therefore, shares are assets, in this case the assets of shareholders as owners.

3.2 Wealth of State Owned Enterprises (BUMN) in relation to the Company's Receivables and Debt Losses

As described above, in the realm of public law there are differences in the formulation of state losses (including losses of BUMN) in the State Treasury Law and the Corruption Act. The State Treasury Law uses the formulation of state losses with the pressure of deficiencies or reduction in

¹¹ Prasetya, R. (1995). *Kedudukan Mandiri PT Disertai Dengan Ulasan Menurut UU No.1 Tahun 1995 Tentang PT*, Bandung: PT.Citra Aditya Bakti. p. 13.

¹² Article 3 paragraph (1) Limited Liability Company Law

¹³ Atmadja, A. P. (2009) *Keuangan Publik Dalam Perspektif Hukum: Teori, Kritik dan Praktek*, Jakarta: Rajawali Press. p. 117.

numbers, while the Corruption Act seeks to cover anything not only a reduction in the number, but enough on word pressure can be detrimental.

The confusion of understanding between state losses and state-owned companies' losses can also cast doubt on the directors of BUMN in taking operational policies because there is a possibility that BUMN directors must be criminally liable for losses of BUMN. maintain market share. It turns out that competing airlines retaliate and cut prices more and continue to survive. After 3 months, the state-owned airline surrendered and decided to leave the route. The price war has made a loss. If it follows the provisions of Article 2 letter g of the State Finance Law, this price strategy is considered as an act that is detrimental to the state.

Then, if further investigated, there is an inconsistency between norms between Article 8 of Law Number 49 Prp. In 1960 and Article 2 letter g of the State Finance Law related to the concept of BUMN receivables. On the one hand, the provisions in the law stipulate that BUMN receivables are state receivables. But on the other hand, the law does not include or categorize BUMN debts as state debt. This problem had become a legal polemic that made the government at that time want to restructure non-performing loans or non-performing loans to state-owned banks requesting a fatwa to the Supreme Court. The Supreme Court in its Fatwa No. WKMA / Yud / 20 / VII / 2006 August 16, 2006 in principle determines:

- a. BUMN wealth is not a state's wealth
- b. BUMN receivables are not state receivables
- c. State assets that are separated from BUMN are not the scope of state finances.

Following the fatwa of the Supreme Court, the Government issued Government Regulation Number 33 of 2006 concerning Amendments to Government Regulation Number 14 of 2005 concerning Procedures for the Elimination of State / Regional Receivables. The Government Regulation abolished Article 19 and Article 20 of Government Regulation Number 14 of 2005.

To strengthen the Fatwa of the Supreme Court, it was then submitted a judicial review of the provisions in Law Number 49 Prp of 1960 by BUMN bank debtors. The Petitioners argued that they had lost their right to obtain a hair cut from the BUMN Bank as the creditor, because of the difference in treatment (discrimination) between the Bank's customers and private customers. The applicant as a debtor of PT. Bank Negara Indonesia Tbk., In the event of a situation which is a force majeure, namely the occurrence of the monetary crisis, does not get assistance in the form of relief of payment obligations including deduction of debt (haircut). Whereas the fact that uncooperative problematic debtors completing their credit through the Indonesian Bank Restructuring Agency ("BPPN"), has enjoyed a reduction in the principal (hair cut) to reach above 50% of its principal debt, while the restructured loans are through PUPN, it turns out the principal debt is getting bigger.

In its decision Number 77 / PUU-IX / 2011 dated September 17, 2012, the Constitutional Court provided the following considerations:

- a. Thus there are two types of state receivables referred to in Law No. 49 of 1960, namely state receivables and accounts receivable from entities that are directly or indirectly controlled by the state. In this case, it includes the receivables of BUMN banks that are directly or indirectly controlled by the state. In this sense, the receivables of BUMN banks according to the law are delegated to PUPN, which do not have the freedom to restructure debt, including the provision of hair cut. On the other hand, there is the fact that debtors at non BUMN banks obtain debt restructuring facilities, including the provision of hair cut to the debtor by the respective bank management.
- b. Based on Law Number 19 of 2003 concerning BUMN, Article 1 paragraph 1 and number 10 states that BUMN is a business entity that all or most of its capital is owned by the state through direct participation from separated state assets, namely state assets originating from the State Budget to be used as a state capital participation in the Persero and / or Public Corporation and other PT. Thus, BUMN is a business entity that has separate assets from state assets, so that the authority to manage wealth, business, including the settlement of BUMN debts is subject to PT law based on UUPT Number 40 of 2007.
- c. With the coming into effect of Law Number 1 of 2004 concerning State Treasury, the definition of "State Receivables" is as referred to in Article 1 number 6 of Act Number 1/2004 which states, "State Receivables are the amount of money that must be paid to the Central Government and / or the rights of the Central Government that can be valued with money as a result of the agreement or other consequences based on the prevailing laws or other legal consequences ". Thus, state receivables are only receivables of the Central Government and / or Regional Governments. So that it does not include accounts receivable from business entities that are directly or indirectly controlled by the state, including in this case the receivables of BUMN Banks.
- d. Receivables from BUMN Banks after the enactment of Law No.1 / 2004, the Law on BUMN and the UUPT, are no longer state receivables that must be transferred to PUPN. BUMN Banks' receivables can be settled by the management of each BUMN bank based on sound business principles in each BUMN bank. State-owned banks as PT have separated their wealth from state assets which in carrying out all business actions including management and management of the respective bank accounts, are carried out by the management of the bank concerned and not delegated to PUPN. Thus according to the Court Article II paragraph (1) letter b of Government Regulation Number 33 of 2006 concerning Amendments to Government Regulation Number 14 of 2005 concerning Procedures for the Elimination of State / Regional Receivables is not in line with the provisions of Law No.1 / 2004, Law - BUMN, and UUPT;
- e. Settlement of receivables from BUMN banks, there are still two rules that apply, namely Law No.49 / 1960 and Law No.1 / 2004 in conjunction with the Law on BUMN and UUPT, which creates legal

uncertainty that is contrary to constitutional principles. Likewise, the provision of the transfer of receivables of BUMN Banks to be delegated and submitted to PUPN has caused different treatment between debtors of BUMN Banks and debtors of Banks other than BUMN, so that it contradicts the constitutional principles contained in Article 28D paragraph (1) of the 1945 Constitution. In addition, based on the principle that the latest law overrides the old law (*lex posterior derogat legi priori*) and higher regulations override lower regulations (*lex superior derogat legi inferiori*), then Law No.49 / 1960 insofar as the receivables of business entities have been regulated in Law No. 1/2004 and Government Regulation Number 14 of 2005 concerning Procedures for the Elimination of State / Regional Receivables as amended by Government Regulation Number 33 of 2006 concerning Amendments to Government Regulation Number 14 of 2005 concerning Procedures for the Elimination of State / Regional Receivables as long as they designate the Law Law No.49 / 1960 is contrary to the principles of the constitution and generally accepted legal principles. Therefore, the Petitioners' petition insofar as the state receivables relating to the accounts receivable of business entities that are directly or indirectly controlled by the state in Law No.49 / 1960 are legally grounded in part.

Since the Constitutional Court's decision, the BUMN receivables are considered not to be the state's receivables but the BUMN own accounts as independent legal subjects. Therefore, when it wants to restructure loans, state-owned banks do not need to hand over the processing of bad loans to the PUPN, but can be restructured by the BUMN themselves.

The emergence of the Supreme Court Fatwa and the Constitutional Court's Ruling actually has placed the legal norms of BUMN wealth on the correct legal rails and its validity can certainly be used by judges in deciding related to BUMN and state finances. However, the consistency of norms becomes a contradiction when the Constitutional Court decides cases related to the authority of the BPK in examining BUMN Enterprises in Decisions Number 48 and Number 62 / PUU-XI / 2013.

4. Analysis Of Persero State-Owned Enterprises

4.1 The Position of BUMN Persero as an Intersection between Public Law and Private Law

The division of law into public law and private law is a classical division that is still used today even though it has attracted much debate. Although it contains a lot of debate, understanding of the theory of public law sharing and private law is very helpful in justifying whether the management of BUMN is included in the domain of public or private law. From several sources, the division of the domain of public law and private law consists of several theories, namely:

- a. Protected Interest Theory
- b. Subject theory
- c. Legal Relations Theory
- d. Theory of How to Maintain Rights

e. Theory of the Law Making Process

f. Residual Theory

Based on the theory of protected interests, the benchmarks used are the nature of the interests governed by law¹⁴. Public law is something related to general welfare, while private law is something that takes care of specific interests (bodies). So the purpose of public law is to protect the public interest, while civil law aims to protect the interests of individuals or individuals¹⁵. Then the rule of public law is compelling, while the rules of civil law generally are even complementary and some are forced.¹⁶ Thus, if it is said the purpose of the establishment of BUMN is for the general welfare and its duty is for public services, such as PT. KAI, the management of BUMN BUMN is in the realm of public law. However, if it is seen whether the regulations made by the agency can force generally outside the body members to be added with sanctions for violations, then almost all SOEs do not have the authority to issue binding regulations in general and force¹⁷, so that the existence of this body is in the realm of private law.

According to the theory of the subject, it is included in public law if one of its parties is the ruler, while into civil law if both parties are individuals without closing the possibility that in the civil law the ruler can also be a party¹⁸. If viewed from the establishment of BUMN BUMN with the ownership of full shares by the government, the government is the only party in the establishment of the Persero which is made possible by the Limited Liability Company Law, so he entered into the realm of public law based on this theory. However, there are two theories related to the establishment of the company, namely contractual theory, the company was formed immediately the agreement of the parties occurred to establish a company, and institutional theory, where the company was formed due to the agreement of the parties themselves. Thus based on institutional theory, the establishment of BUMN Persero includes the scope of private law, because limited liability companies are private legal entities.

To differentiate between a public legal entity and a civil legal entity, the point starts with: (i) it is a civil legal entity if it is established by an individual, whereas in a public legal entity if it is held by general authority, (ii) whether the legal entity has power as a ruler, that can take decisions and make regulations that bind other people who are not members of the legal

¹⁴ The division of law into public law and private law in its history was started by Ulpianus. Other legal classification is division based on legal functions, namely material law and formal law, based on their form or form, namely written law and unwritten law, based on the area of validity, namely national law and international law; based on its contents, namely *lex specialis* and *lex generalis*. See Sudikno Mertokusumo, *Knowing An Introduction to Law*, Yogyakarta: Atma Jaya University Yogyakarta, 2010. p. 165-168.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ BUMN that can issue regulations in general and force only PT Indonesia Classification Bureau (Persero) which is based on the authority delegated by the Ministry of Transportation to issue ship marine feasibility certification and can issue regulations related to this matter.

¹⁸ Mertokusumo, S. *op.cit.*, p. 169

entity¹⁹. In this case the BUMN is a private legal entity because the government is domiciled as an individual / private in the case of the Establishment of BUMN Persero and this body cannot issue general regulations.

Arifin P Soeria Atmadja stated that the criteria of the state as a public and state legal entity as a private legal entity are as follows²⁰: (i) in the context of the state as a public legal entity, the legal position of the state must be divided into private domains and public domains. public). The law governing the private sphere is not at all different from the law governing the ordinary civil domain (*gewone burgerlijke eigendom*), namely civil law, (ii) in the context of the state as a private owner, the government as a state representation carries out private acts or legal actions (civil) also. In a position as a private legal entity, the government has a legal relationship (*rechts betrekking*) with other legal subjects based on private law, and legal relations are horizontal (equivalent).

Based on the theory of legal relations (classical theory), private law is related to the legal relationship between individuals, while public law regulates relations between countries and individuals²¹. Public law is a law that regulates state administration which includes the regulation of: (a) the way of state institutions carry out their duties, (b) legal relations between state / government and individuals / citizens, (c) legal relations between state / government tools. While private law is a law that regulates public order concerning: (a) Family / family and wealth of citizens / individuals, (b) Relationship between citizens / individuals, (c) Relations between individuals and state instruments, as far as the state's in legal traffic is an individual. Based on this theory, it is clear that the process of state participation in a state-owned enterprise does not enter the domain of public law because it does not regulate the authority of state organs and their relations with other state organs and with individuals. The state has the capacity as an individual when depositing capital in establishing BUMN, and this is included in the realm of private law.

The division of legal classification by A.Thon lies in the criteria for how to preserve the rights brought about by law. If the initiative to defend rights arises from the individual, then it falls into private law. Whereas if the initiative to defend the rights arises from the state or government, then it is included in public law. The government can retain its rights provided in the PT Law but in its capacity as a shareholder, who has the same rights as other shareholders who are not state.

Based on the theory of the law making process developed by Hans Kelsen, both public law and private law are only individualization rather than general provisions. In private law, individuals are bound by laws made by themselves through the law governing process. Whereas in public law, individuals are bound by law, without being allowed to participate in law making. The state as the founder and shareholder deals with other parties

¹⁹ *Ibid.*, p. 60

²⁰ Atmadja, A. P. (2005) *Keuangan Publik Dalam Perspektif Hukum: Teori, Kritik dan Praktik*, Jakarta: Badan Penerbitan Fakultas Hukum Universitas Indonesia, p. 23.

²¹ *Ibid.*, p. 170

based on contractual theory or with the PT itself based on institutional theory, which agreement is set forth in the deed of establishment and the articles of association of the Company which regulates among others the rights of shareholders. Thus based on this theory, the action is included in the realm of private law.

The residual theory does not explain the justification of the distinction between public and private law. It's just that according to Salmon public law is a legal relationship that is needed or applies to the state in its relationship with its citizens, while the rest is private law.

Based on an analysis of public and private legal division theories, it is clear that the establishment of BUMN, including its operationalization, is included in the realm of private law with the following reasons: (i) the state acts in its capacity as an individual, in this case the Persero shareholders have the same rights as other non-state shareholders; (ii) BUMN cannot make regulations that are generally binding outside the members in the company.

Only theories based on protected interests that can justify the process of establishing and operating BUMNs as public domains with the establishment of state-owned BUMNs aim to achieve general welfare. However, this theory is debatable because both public law and private law, both of which are essentially aimed at the public interest. The arrangement and enforcement of contract law is basically aimed at creating legal order in the community. Prof. Loughlin in his book "Idea of Public Law" states that institutions or institutions of public law are governing while institutions of private law are related to other objectives such as profit creation²². The state, through the legal system, has created private legal institutions to make individuals act in certain ways²³. Rules that make up trust and corporations, for example, exist to make certain visions of how society should work, these rules are far from the political sphere.

Not only public law that can maintain the stability and power of the government, private law also has a role here²⁴. Governments often use private legal institutions to achieve certain public goals. The private legal institutions that are used are, among other things, contracts for the procurement of services that require the tender winner to behave responsibly for the community and the environment. Through foundation legal institutions, these rules are held to provide special protection for groups of people who have noble goals. Laws governing labor and law that limits the power of landowners are seen as an attempt to create a society where all have a role in safeguarding the state.

4.2. The position of BUMN Persero as a Public Legal Entity Cause Legal Problems

As explained above, the Constitutional Court with Decisions No.48 and 62 / PUU-XI / 2013 has affirmed a legal norm that the regulation of BUMN is included in the realm of public law. This can be seen from the

²² Barber, N. W. *Professor Loughlin's Idea of Public Law*, Oxford Journal of Legal Studies, (Vols. 25, No. 1, 2005, p. 165).

²³ *Ibid.*

²⁴ *Ibid.*,p. 166

consideration of the Constitutional Court which emphasizes that the state's wealth which is separated as BUMN capital remains a state asset. Because it is included as a state asset, the public law sphere applies such as supervision by the BPK and the DPR. The decision of the Constitutional Court if examined looks inconsistency and confusion in the application of legal principles. First, it is stated that BUMN is an arm of the state in the field of economy and the separation of state wealth cannot be interpreted as the breaking of the link between the state and BUMN.

Actually, if followed by the corporate legal framework, the role of the state remains unbroken in BUMN. When the share capital is paid by the shareholders to a company, the shares are issued as a sign of shareholder ownership. Shares are movable objects that give rights to the holders of the company. So with the issuance of shares to shareholders, it cannot be said that the relationship between the state and state-owned enterprises has been broken, only that the position of the state in this case has changed into a shareholder. As a shareholder, the state can still control BUMN in its capacity as a shareholder through a forum called the General Meeting of Shareholders ("GMS"). The GMS has the authority to determine the direction of the policy where it can determine the management of the company and for material transactions (such as asset disposal, acquisition mergers) must obtain GMS approval. This is where the mechanism of state control as a shareholder of BUMN Persero.

Secondly, it is said that BUMN is not an organ of the state organizing such as state institutions or ministries, but the supervision provisions are applied by public institutions such as the BPK and DPR. Supervision and inspection by public institutions such as BPK and DPR should only be justified if there is a use of state finances. While the wealth of BUMN is the wealth of BUMN as a business entity with its own legal entity. Management of a country with business management has very different characteristics. Managing BUMN as a legal business entity requires the company to be managed to achieve business goals, namely to earn profits. In achieving the goal of obtaining profits the company must make business decisions in situations of uncertainty, business risk, and tight business competition, so it requires its own rules to compensate between business interests and community interests. This is different in terms of state management whose purpose is to perform public services without the need to face business uncertainty and risk. If the state management paradigm is equated with a business management paradigm, then there must be chaos in its implementation.

Thirdly, it is stated that even though BUMNs are part of the state's finances which are supervised and examined by public institutions such as the BPK and DPR, they are also subject to supervision systems that exist in corporate law such as supervision by the board of commissioners. Likewise, in its consideration, the Constitutional Court judges have recognized that the country's wealth has been transformed into BUMN capital as business capital whose management is subject to the business paradigm (business judgment rules). This not only mixes two different domains of the audit system between the public audit domain (by the BPK) and the realm of private

inspection (by the board of commissioners) causing confusion, but also creates inefficiencies in managing where the principle of efficiency is also one of the principles in running the economy based on the provisions of Article 33 paragraph 3 of the 1945 Constitution. The number of institutions that supervise BUMN will certainly reduce the performance of the BUMN itself because there will be a lot of time spent out of its main purpose as a business actor.

Fourth, in the consideration of the Constitutional Court it was stated that the separation of state assets as BUMN capital cannot be constructed as transfer of ownership. The understanding of the Constitutional Court judges is trapped in the construction of the transfer of property rights like a sale and purchase transaction. Whereas in the establishment of the company there was a transfer of capital wealth deposited by the shareholders into the company's own wealth based on the operation of the statutory provisions (by the operation of law). The capital deposited by the shareholders will become the property of the company as an independent legal entity. Shareholder control of the company's assets arises due to the rights they have as shareholders. So that share is the shareholders' wealth.

Fifth, it was affirmed by the Constitutional Court that the separated wealth remained part of the state's finances. The author considers that it is not appropriate that the finance of BUMNs as state finances is based on three reasons²⁵. First, the separated state capital has become the property of BUMN. The state in this case obtains shares in the capital that has been deposited. These shares are listed as state assets. If the money deposited in BUMN is declared as state money, accounting will occur twice on the same object in accounting. This can be found if the state deposits capital in the form of goods such as land. The land owned and the certificate of land rights is in the name of the country and if it is deposited into BUMN capital, the state will get shares, while the land becomes the property of the BUMN. This land by BUMN can be renamed from the name of the state to the name of BUMN. Secondly, the finance of BUMN cannot be treated as state finances because it manages state finances differently by managing the finance of BUMN. In money management, the state is not an entity that aims to seek profit and can suffer losses on a business decision. What has been allocated in the APBN must theoretically be fully absorbed. As a business entity, BUMN can benefit, but can also lose. *Third*, doctrinally, categorizing the finance of BUMN enterprises as state finance has contradicted the concept of "public money" and "private money". In the process of procuring goods and services, BUMN are not subject to the Presidential Regulation Number 54 of 2010 but based on the articles of association and directors' decisions.

The Supreme Audit Agency as a state financial institution and public legal entity should not be appropriate to conduct an examination of BUMN as a private legal entity, where the legal status is private law status. BUMN is a legal entity that has wealth separate from the assets of its management or members. The state as a shareholder of BUMN should not have authority over the financial or wealth of BUMN as a consequence of the

²⁵ Juwana, H. (2013). *Uang BUMN, Uang Negara?*, Kompas, Friday, June 7, 2013

separation of wealth based on the theory of legal entities. BUMN have the authority and independence in determining policies through their organs based on the provisions specifically regulated in the Company Law, the BUMN Law, and the internal regulations of BUMN themselves.

It should be highlighted here, that BUMN has its own internal supervisory units, Commissioners, Audit Committees, and External Auditors (Public Accountants) established by the General Meeting of Shareholders (RUPS). The existence of organs and institutions in the BUMN affirms that the management of BUMN is based on the principles of good corporate governance, not through the APBN mechanism so that the BUMN's finance should not be the state's finances but the BUMN's own finance. However, inconsistencies arise as stipulated in article 71 paragraph (2) of the BUMN Law which stipulates, "The Supreme Audit Agency has the authority to conduct inspections of BUMN in accordance with the provisions of the legislation". This certainly creates confusion again, on one side the BPK as a public legal entity can enter the BUMN domain as a private legal entity.

The Company Law has provided its own mechanism for shareholders to conduct an audit of the company. Based on the provisions of Article 138 of the Company Law, the shareholders submit an application for an examination of the company to the district court where the company is domiciled.²⁶ The government as a shareholder can also sue the board of directors. Pursuant to Article 97 paragraph (6) and Article 114 paragraph (6) the UUPT shareholders can file a lawsuit through a district court against members of the Board of Directors and / or Board of Commissioners who due to their mistakes or negligence cause losses to the Company.

4.3. Understanding the Loss of BUMNs as State Losses Cause Legal Uncertainty

As mentioned earlier in the Act, the corruption of state losses includes anything not only a reduction in the amount, but enough at the pressure of the word "can be detrimental". By using the Corruption Act, law enforcement officials often investigate, prosecute, even convict guilty of the management of the BUMN because of state losses without seeing and proving the element of "evil intentions". In fact, evil intentions (*mens rea*) and evil deeds (*actus reus*) to enrich themselves, others, or corporations are very important in determining criminal proceedings. Enriching other people or corporations is not enough just "a favorable price" but must be traced and proven the benefits obtained are the result of an evil conspiracy with those who provide these benefits.

Actually, if examined in Articles 2 and 3 of the Corruption Law, it is not reflected in the necessity to prove the existence of evil intentions. In the two articles, the term "intentionally" was not found. The word "intentionally" in law has meaning that there must be intentions and evil deeds. It must be

²⁶ In addition to shareholders, parties that can submit a company inspection application are prosecutors for the public interest and other parties based on laws and regulations, the Company's articles of association or agreements with the Company are authorized to submit inspection requests. The request for inspection is carried out with the aim of obtaining data or information and must be based on reasonable reasons and good faith.

understood that in the criminal act of corruption without malice there is no possibility of corruption. Although the Corruption Act does not include the words "intentionally", in criminal acts of corruption must still be proven the existence of evil intentions to enrich illegally. If not, negligence and even loss due to business decisions in BUMN will lead to corruption. This is what happened to a number of BUMN administrators even though some of them got free decisions from the court.

The author argues that the perspective of state losses from the aspect of criminal law cannot be applied to the case of loss of BUMN Persero. The loss of BUMN Persero is subject to private law in this case the UUPT which has its own mechanism. The word "can" in the clause: "... which can harm the state finances or the economy of the country ...", contrary to Article 28 paragraph (1) of the 1945 Constitution because it can be interpreted according to the will of anyone who reads it causing legal uncertainty to justice seekers and law enforcers, because the act or event is not real or does not necessarily occur and is uncertain in number.

The losses incurred in running a business by a corporation cannot be equated with the losses resulting from the practice of administering government affairs by state officials. The company's loss is derived from the accumulated difference in income and expenses for one financial year. Therefore, the loss of the company suffered in one transaction cannot be said that the company has suffered a loss as a whole because there may be other profitable transactions in the financial year so that if calculated, the company booked profits. Even if a loss is found, it is not necessarily automatically a loss to PT, because there may be profits that have not been shared in the past year or closed from the company's reserve fund.

There are differences in norms in measuring whether an action is taken guilty or not between a criminal act of corruption and the corporate legal regime. The element "which can be detrimental to the economy of the country" refers to the formal offense, namely the existence of criminal acts of corruption enough to fulfill the elements of actions that have been formulated not by the emergence of consequences. As long as he fulfills the elements a) his actions are illegal; b) enrich themselves, other people or corporations; and c) may harm the state's finances or the country's economy, the concerned party is found guilty and threatened with criminal sanctions on corruption.

This is different from the concept of business judgment rules in corporate law that even if the elements of corporate losses can be proven, this does not necessarily make the directors' decisions or actions wrong, but must go through an examination based on the principles of the business judgment rule. This differentiation of application is fundamental because running government affairs by running business affairs is not the same because it has different backgrounds and conditions.

As a result of the understanding that BUMN finance is state finances, the DPR considers that it can intervene in deciding or establishing a BUMN

policy²⁷. The BPK authority granted by the BPK Law in examining and auditing indirectly provides a door for DPR oversight of BUMN. Similarly, the House of Representatives often calls upon the ranks of directors and management of BUMN²⁸. The DPR often also calls on the Minister of BUMN Enterprises through the mechanism of hearings²⁹. This phenomenon is certainly not conducive to the management of BUMN because they will not dare to take business decisions with commercial risks due to always being overshadowed by fears of corruption. This places the position of BUMN that is not competitive compared to national and multinational private companies.

4. Conclusions

Based on legal theory, BUMN must be treated using a private legal paradigm because the capacity of the state as a shareholder and BUMN Persero cannot make regulations that bind the public itself.

Financial understanding and losses of BUMN Persero as state finances and losses based on the perspective of public law have weakened the competitiveness of SOEs towards national and multinational private companies. BUMN management does not dare to take business decisions due to always being overshadowed by fears of corruption. BUMN BUMN as a

²⁷ Rajagukguk. E., *Peranan Hukum Dalam Mendorong Bumn Meningkatkan Pendapatan Negara Dan Kesejahteraan Rakyat*, Delivered at the meeting "Peranan BUMN Dalam Meningkatkan Pertumbuhan Ekonomi Negara", Directorate General of Laws and Regulations of the Ministry of Law and Human Rights R.I., Jakarta July 28, 2008

²⁸ The usual summons is packaged in the form of public hearings in Article 239 of the DPR Standing Orders which read: "Public hearings are meetings between commissions, joint commissions, legislative bodies, budget bodies, or special committees with individuals, groups, organizations or private entities, both at the invitation of the DPR leadership and at the request of the person concerned, led by commission leaders, joint commission leaders, leaders of the Legislative Body, leaders of the Budget Board, or special committee leaders." which can be called upon to hold a public hearing with the DPR but which can be called, among others, is a private body. If SOEs, especially state-owned enterprises, are considered private entities, it is not wrong, but in reality the DPR has never called SOEs in their capacity as private entities but rather bodies where there is state capital. In reality, the DPR often calls BUMNs rather than calling private companies.

²⁹ As stipulated in Article 238 of the DPR Standing Orders which read: "Hearing is a meeting between commissions, joint commissions, legislative bodies, budget bodies, or special committees with Government officials representing their institutions, both at the invitation of DPR leaders and at the request of Government officials concerned, led by the head of the commission, the joint leader of the commission, the head of the Legislation Body, the head of the Budget Agency, or the head of a special committee". When referring to the above provisions, the calling of the State Minister of BUMN is valid because the Minister of State-Owned Enterprises is a government official representing the Ministry of State-Owned Enterprises. However, if the call of the Minister of State for State-Owned Enterprises in the hearing is aimed at obtaining information or clarifying related SOEs because the Minister of State-Owned Enterprises is representing the state as a shareholder in a BUMN, this cannot be justified. BUMN State Ministers can be called upon to provide information on the implementation of duties, personnel problems and administration within the State Ministry of BUMN. The State Minister of BUMN cannot be asked for a statement at a hearing related to the problems that exist in SOEs because the capacity of the Minister of State-Owned Enterprises in this case is as shareholders who are subjects of private law..

corporation has its own management and supervision mechanism as regulated in the principles of corporate law and corporate governance principles.

To affirm the applicability of the private legal domain to BUMN Persero, the Minister of BUMN Enterprises as a government representative as a shareholder needs to be encouraged more to use the mechanism provided in the UUPT against indications of fraud committed by management by not directing the use of investigating officers to conduct criminal proceedings in solving problems. or loss of State-Owned Enterprises (BUMN) but using a lawsuit mechanism regulated in the Company Law.

Internal supervision mechanisms such as those carried out by Commissioners, Audit Committees, and Public Accountants for BUMN Enterprises need to be improved and carried out correctly by placing non-political professionals in that position. The supervision by organs and internal institutions in the BUMN affirms that the management of BUMN must be based on the principles of good corporate governance, not through the APBN mechanism.

* * *

References

Adriyani, W. (2009). *Kerugian Keuangan Negara Pada Pengelolaan Persero*. Disertasi, Fakultas Hukum Airlangga.

Algra, N. E. et.al. (1977). *Pengantar Ilmu Hukum*, Jakarta: BinaCipta.

Apeldoorn, V. (1985). *Pengantar Ilmu Hukum*, (Vols. 34). Jakarta: PT Pradnya Paramita.

Barber, N. W. (1996). *Professor Loughlin's Idea of Public Law*. (Vols. 25). Oxford Journal of Legal Studies, No. 1, 2005, p. 165. Bruggink, JJ. H., *Refleksi Tentang Hukum*, Bandung: Citra Aditya Bhakti.

Cheffins, B. R. (2012). *The History of Corporate Governance*, ECGI Working Paper Series in Law.

Clark, R. C. (1986). *Corporate Law*, Aspen Law & Business, p. 141. Donaldson, Thomas. *Corporations and Morality*. Englewood Cliffs, N. J. : Prentice Hall.

Hadiyanto. (2012). *Politik Hukum Pengelolaan Kekayaan BUMN Persero dalam Rangka Pembangunan Perekonomian Indonesia*". Disertasi, Fakultas Hukum Universitas Padjadjaran.

Hadiyanto, M. (1994). *Perandan Posisi BUMN Dalam Pembangunan Jangka Panjang Kedua*, ed. Moh. Arsjad Anwar dkk. *Strategi Pembiayaan dan Regrouping BUMN: Upaya Menciptakan Sinergi Dalam Rangka Peningkatan Daya Saing BUMN*. Jakarta.

Hansmann, H., & Kraakman, R. (2004). *What is Corporate Law?*. Center for Law, Economics and Public Policy Yale Law School, Research Paper No. 300,.

Hasan, D. *Pengelolaan Kekayaan Badan Usaha Milik Negara (BUMN) dan Permasalahannya, Kompilasi Hukum Bisnis, dalam rangka Purnabakti Prof. Dr. H. Man Sastrawidjaja, S.H., S.U.*, Bandung: CV. Keni Media.

Mertokusumo, S. (2003). *Mengenal Hukum: Suatu Pengantar*. Yogyakarta: Liberty.

Monks, R. A. G., & Minow, N. (1990). *Corporate Governanc*. Blackwell Business,(Vols. 2). Black, H. C., M.A. *Black's Law Dictionary*. West Publishing, (Vols. 6), Centennial Edition.

Pramono, N. (2006). "*Kekayaan Negara Yang Dipisahkan Menurut UU No. 19 Tahun 2003 Tentang BUMN*, dalam Sri Rejeki Hartono, et.al, ed, *Permasalahan Seputar Hukum Bisnis: Persembahan kepada Sang Maha Guru*, Jogjakarta.

Prasetya, R. (1995). *Kedudukan Mandiri PT Disertai Dengan Ulasan Menurut UU No.1 Tahun 1995 Tentang PT*. Bandung: PT.Citra Aditya Bakti.

Prasetya, R., & Hamilton, N. (1976). *The Regulation of Indonesian State Enterprises, Law and Public Enterprise in Asia*, International Legal Center, p. 147, New York: Praeger Publishers.

Pusat Penelitian dan Pengkajian MKRI. (2005). *Teori Mengenai Anggaran Negara*. Jakarta: Sekretariat Jendral MK-RI.

Rajagukguk, E . (2007). Dalam Seminar, *Peran BUMN dalam Mempercepat Pertumbuhan Perekonomian Nasional*. Jakarta.

Tjandra, W. R. (2006). *Hukum Keuangan Negara*. Jakarta: PT. Grasindo.

Rido, A. (2004). *Badan Hukum dan Kedudukan Badan Hukum, Perseroan, Perkumpulan, Koperasi, Yayasan, Wakaf*. Bandung: PT.Alumni.

Ritonga, A. (2012). *Perspektif Pengelolaan Kekayaan BUMN Persero Dihubungkan dengan Sistem Keuangan Negara Dalam Pembangunan Perekonomian Mencapai Negara Kesejahteraan*, Unpad: Dalam Disertasi.

Safitri, I. (2004). *Upaya Hukum Yang Dapat Ditempuh Oleh Pemegang Saham, dalam Emmy Yuhassarie et.al., Prosiding rangkaian Lokakarya Terbatas Masalah-masalah Kepailitan dan Wawasan Hukum Bisnis Lainnya Tahun 2004:PT dan Good Corporate Governane*. Jakarta: Pusat Pengkajian Hukum.

Sastrawidjaja, M. S., & Mantili. (2008). *PT menurut Tiga Undang-Undang*. (Vol. 1). Bandung: PT. Alumni.

SoeriaAtmadja, A. P. (2005). *Keuangan Publik Dalam Perspektif Hukum: Teori, Kritik dan Praktik*. Jakarta: Badan Penerbitan Fakultas Hukum Universitas Indonesia.

Sulaiman, A. (2011). *Keuangan Negara pada Badan Usaha Milik Negara Dalam Perspektif Ilmu Hukum*, Alumni.

Sulistio. (2006). dalam Seminar, *Fatwa Mahkamah Agung dan Pengungkapan Korupsi Badan Usaha Milik Negara*. Jakarta.

Supramono, G. (1996). *Hukum PT yang baru*. Jakarta: Djambatan.

Tumbuan, F. B. G. (1975). "Tugas dan Wewenang Organ PT Menurut UUPT", *Sosialisasi Undang-Undang Tentang PT*", Jakarta, 2007, p. 6. Friedmann, Lawrence M, *American Law, The Legal System, A social Science Perspective*, New York : Russel Sage Foundation.

Tjandra, R. W. BUMN "Cap Sapi Perah" Politisi, 3 Desember 2012. <http://gagasanhukum.wordpress.com/2012/12/03/bumn-cap-sapi-perah-politisi/>

-----,. (2006). *Pengertian Keuangan Negara dan Kerugian Negara, Nyanyian Sunyi Kemerdekaan Menuju Indonesia Negara Hukum Demokratis*, Jakarta, Fakultas Hukum Universitas Indonesia, Lembaga Studi Hukum dan Ekonomi.

-----,. (2006). *Hukum Keuangan Negara*. Jakarta: PT Grasindo.

-----,. *Peranan Hukum Dalam Mendorong BUMN Meningkatkan Pendapatan Negara Dan Kesejahteraan Rakyat*, Disampaikan pada pertemuan "Peranan BUMN Dalam Meningkatkan Pertumbuhan Ekonomi Negara", Direktorat Jenderal Peraturan Perundang-Undangan Departemen Hukum dan HAM R.I., Jakarta 28 Juli 2008.

-----,. (2009). *Keuangan Publik Dalam Perspektif Hukum: Teori, Kritik dan Praktek*. Jakarta: Rajawali Press.

----- ,.(2012). *Perseroan Terbatas menurut Tiga Undang-Undang*. (Vol. 1). Jilid 2. Salendro Timur, Bandung: CV. Keni Media.

-----,. (2017). *Permasalahan Seputar Hukum Bisnis, "Persembahan Kepada Sang Maha Guru", Kekayaan Negara Yang Dipisahkan Menurut UU. No. 19 Tahun 2003 Tentang BUMN*. (Vol. 1). Jakarta: Gitama Jaya.