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The Affirmation of SOE Finance as State Asset Which Management Is Separately in an Effort to Strengthen Evidence of Criminal Acts in SOEs

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Abstract

Talking about criminal acts of corruption which occur in the environment of State-Owned Enterprises (SOE); especially, regarding criminal acts of corruption that are detrimental to state finances, it turns out that there are still different views on interpreting the problem of the status of state finances managed by SOE. Even though the management of SOE is based on the principles of sound corporate governance in fostering and managing it, it does not necessarily mean that the separated state/regional assets have been transformed and recognized as SOE/ROE assets as an independent legal entity whose management is subject to the territory private law, but the state does the separation of state assets to be managed by SOE/ROE is to place state assets so that they can be managed professionally with corporate principles which will later become one of the efforts in order to maintain the potential revenue which has become the right of the state so as to generate benefits for improving the country's economy while at the same time increasing the welfare and intelligence of society as the goal of the Republic of Indonesia. Furthermore, with regard to the position of state finances, in the form of separated state assets and state financial losses, the Corruption Crime Law has provided limitations and judicial practices to date in interpreting separated state finances as defined in the Corruption Eradication Law. Therefore, even though the state/regional finances managed by the SOE/ROE are often questioned by the accused and their legal advisers about the position of state/regional finances in SOE/ROE which have been separated from state/regional finances, the judge's decision so far remains of the opinion that state finances separated remain within the framework of state finances. In addition, the essential matter that intends to be resolved through criminal law mechanisms related to acts of corruption in SOE/ROE which cause losses to the state is that the erosion of society's sense of justice due to evil deeds which destroy the values of trust.

Keywords: *State-Owned Enterprises; State Finance; Corruption Crime; State Asset*

Introduction

SOEs play a role in producing goods and/or services needed in order to realize the maximum prosperity of society. The implementation of the role of SOEs is realized 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. Therefore, SOEs have such an important role in the implementation of the national economy in order to realize the welfare of the community and they have the aim of providing the greatest possible benefit for the prosperity and welfare of the Indonesian people. However, in its implementation in the context of organizing the national economy in order to realize the welfare of the people it does not always work smoothly since some of the individuals who became perpetrators of corruption in SOE are dominated by middle and high-ranking officials who collaborated with the private sector; besides, they have strategic relationships in conducting SOE business activities, conduct acts against the law with the aim of enriching themselves which harmed the state in implementation of management and implementation of SOEs. The criminal act of corruption within SOE which is conducted structurally and systematically is very detrimental to the state. Furthermore, several cases of corruption in the SOE environment which harmed state finances have been submitted to trial and they have been decided by the Court, even cases of corruption in the SOE sector have resulted in state financial losses of fantastic value which including in 2020 the Indonesian Attorney General's Office had handled all at once resolve the corruption case of investment misuse of PT Asuransi Jiwasraya for the 2008-2018 period which had caused losses to state finances of 16.8 trillion rupiahs. As if it were endless, the problem of criminal acts of corruption in the environment reoccurred. Moreover, in 2021 the Attorney General's Office of the Republic of Indonesia again uncovered and resolved the criminal act of corruption against PT Asabri (Persero)'s investment for the 2012-2016 period which resulted in state financial losses of 22.7 trillion rupiahs, as well as several cases of criminal acts of corruption within other SOE's; such as, cases of criminal acts corruption crime Financial and Business Management Activities in 2016 to 2019 at the Indonesian Fishery Public Corporation which had caused losses to state finances of 176 billion rupiah and USD 279,891.50.

The series of disclosures of corruption cases which have taken place within the SOEs seems to show that there are systemic problems entangling the bodies of SOEs. In addition to causing losses to state finances, corruption in the SOE sector is conducted by using a very sophisticated and varied modus operandi. It is due to the sophistication of the perpetrators of corruption colluding with their cronies together by committing acts of corruption by disguising their actions neatly. Regards ro criminal acts of corruption which occur within SOEs; especially, about criminal acts of corruption that are detrimental to state finances, it turns out that there are still different views on interpreting the problem of state financial status within SOE bodies. Proof of the element of state financial losses being an important element in proving corruption cases within SOEs is "the meaning of state money and state financial losses". However, interpreting state money and proving state financial losses is not a simple matter since there are often different perceptions between one party and another regards to the limits of state money and proving state financial losses (sujanto, 2014)

Legal issues regards to differences in views or understanding about the scope of state finances in the management of SOEs in the form of separated state assets, according to the writer, are inseparable from the disharmony of laws and regulations. There are at least 6 (six) laws and regulations which regulate state finances in the form of separate state assets in the management of SOEs, including the first, as the General Elucidation of the PTPK Law uses the formulation of the State Finance Law that the principle of expanding the scope of state finances is all state asset in any form, separated or not directly under the control of the government or separated in a legal entity. Second, Article 2 letter g of the Finance Law stipulates that assets separated from state companies are included in the scope of state finances. Third, Article 4 Paragraph (1) along with its explanation of the SOE Law states that the separation of state assets from the APBN to be used as State Equity Participation (PMN) in SOE for further development and management is no longer based on the APBN system, but its guidance and management is based on the principles healthy company. Fourth, Article 1 number 1 of the Limited Liability Company Law Jo Article 11 of the SOE Law in essence, the assets set aside by the owners of capital become PT assets/assets and all provisions and principles of limited liability companies under the Limited Liability Company Law apply to the Persero. Fifth, Article 2 A Paragraph (1) along with its explanation, Article 2

A Paragraph (3) along with its explanation, Article 2 A Paragraph (4) PP Number 72 of 2016 concerning Amendments to PP Number 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies state that State Investment in SOE or PT is conducted without a APBN mechanism since the separated state assets have been transformed into shares, which are the capital of SOE or PT (already separated from the APBN). Sixth, MK Decision Number 48/PUU-XI/2013 and MK Decision Number 62/PUU-XI/2013 state that the Constitutional Court is of the opinion that state assets in SOEs are included in state assets which are the scope of state finances (Saputra, 2022., p. 60)

Then in the handling of criminal acts of corruption within SOE, in addition to differences in views or understanding regarding the scope of state finances that are in the management of SOE, there is also debate and clashes with the issue of freedom in order to make policies (Vrijsbeleid) conducted by the management or Directors of SOE, business decisions and business risks so that in the event of a loss to the state, it is as if the management or Directors of a SOE can take refuge through the context of "business judgment rules" which are born from the rights and authorities of the Board of Directors if policies are against the law or policies made arbitrarily are within the domain and authority of administrative law to evaluate the policy. However, it will be different if in reality the policy is deliberately made because of corrupt, collusive and nepotistic behavior which results in enriching or benefiting certain parties which results in the initial objectives of SOE not being achieved resulting in losses to state finances, then prosecution of these actions by implementing laws and regulations -relevant legislation in eradicating criminal acts of corruption that is the PTPK Law.

Based on differences of opinion regards to views or understandings about the scope of state finances that are in the management of SOE, the author is interested in conducting legal research that discusses confirming the understanding of SOE finance as state assets whose management is separated in an effort to strengthen understanding of proving corruption in SOE; especially, proving the elements of state financial losses. Therefore, the formulation of the problem on this background is what efforts can be made to strengthen evidence regards to state financial losses in SOE / ROE if a criminal act of corruption occurs?

Research Methods

This study used a normative research type research method or what is commonly known as doctrinal research with a statute approach and a case approach (Marzuki, 2014, pp. 55-56). Both types of this approach are conducted by examining all laws and regulations which are related to the problems (legal issues) that are being faced. In addition, data collection techniques in this research method were library studies that were the collection and identification of legal materials obtained through references, scientific essays, official documents, papers, journals, mass media, the internet and other legal materials that had links with those studied by the researcher.

Discussion

A. Financial Management Governance in State-owned Enterprise (SOE) and Regional-Owned Enterprise (ROE)

In the national economic system, SOEs play a role in producing goods and/or services needed in order to realize the maximum prosperity of society. The role of SOEs is felt to be increasingly important as pioneers in business sectors which are not yet attractive to private businesses. In addition, SOEs have a strategic role as executors of public services, counterbalance large private forces, and help develop small businesses/cooperatives. SOEs are also a significant source of state revenue in the form of various types of taxes, dividends and proceeds from privatization. The state in establishing SOE have 2 (two) main

objectives both economic and social. The aim of establishing SOEs in terms of economic is that SOE is intended to manage the strategic business sector which concerns the livelihoods of many people so that it is not controlled by certain parties; such as, electricity, oil and natural gas as mandated in Article 33 of the 1945 Constitution. Meanwhile, in terms of social, SOE is expected to create jobs by recruiting workers to revive the national and local economies.

The definition of a State-Owned Enterprise (SOE) as formulated in Article 1 point 1 of Law Number 19 of 2003 concerning State-Owned Enterprises namely business entities whose capital is wholly or substantially owned by the State through direct equity participation originating from separated State assets. Furthermore, in general, SOEs are divided into 2 (two) forms, namely Limited Liability Companies (Persero) and Public Companies (Perum). What is meant by SOEs in the form of Persero are SOEs whose capital is divided into shares of which all or at least 51% (fifty one percent) of the shares are owned by the Republic of Indonesia whose main objective is to pursue profits. Meanwhile, SOE in the form of Perums are SOEs whose capital is wholly owned by the State and not divided into shares, which aims to benefit the public in the form of providing high quality goods and/or services and at the same time pursuing profits based on the principles of corporate management. Furthermore, based on the Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number: PER-4/MBU/03/2021 concerning the Organization and Work Procedure of the Ministry of State-Owned Enterprises, the division of SOE in Indonesia is divided into 12 (two) twelve industrial and/or service sector clusters namely energy, oil and gas industry; Mineral and Coal Industry Sector; Plantation and Forestry Industry Sector; Food Industry and Fertilizer Sector; Healthcare Industry Sector; Manufacturing Industry Sector; Financial Services Sector; Insurance and Pension Fund Services Sector; Telecommunications and Media Services Sector; Infrastructure Services Sector; Logistics Services Sector; and Tourism and Support Services Sector. The pattern of formation of SOEs in Indonesia is similar to the formation of SOEs in Australia and Singapore. State-owned companies known as SOEs, then in Australia they are called Government Business Enterprises (GBEs). Development of SOEs or Government Business Enterprises (GBEs) in Australia is conducted by the Ministry of Finance known as the Department of Finance and Deregulation (DOFD) which is led by a Minister with operational activities conducted by a Secretary. Meanwhile, in Singapore, SOEs are grouped into 2 (two) that are Government-Linked Companies (GLCs) and Statutory Boards. The form of GLCs is a limited liability company, in which the Government is a shareholder (same as Persero in Indonesia) and is burdened with the obligation to make a profit. In order to ensure broad autonomy for management in controlling the companies they manage, GLCs are placed under holding companies. Holding Companies only function as "paper companies" which do not have the authority to directly influence the daily operational activities of the subsidiaries (GLCs), in other words, most of the GLCs, most of which have the status of subsidiaries of Temasek Holdings, have full autonomy in their business operations. In its operations, Temasek Holding acts as a private company but all of its shares are owned by the Government of Singapore (Konstitusi, Nomor 62/PUU-XI/2013, p. 110).

The government system in the Republic of Indonesia recognizes Provincial Government and Regency/City Government, which is often referred to as Regional Government. In this case the Regional Government has mandatory affairs and optional affairs which should be conducted properly and with full responsibility. In the context of implementing the intended autonomy, the Regional Government has the authority to form a business entity with the aim of providing benefits for regional economic development so as to form a Regional Owned Enterprise (ROE) which is an important asset for the Regional Government itself. Moreover, ROE has the characteristics and classification as stipulated in Article 331 Paragraph (3) of Law Number 23 of 2014 Jo. Law Number 5 of 2015 concerning Regional Government divides ROE into 2 (two), namely in the form of Perumda (Regional Public Company) and Perseroda (Regional Public Company). Perseroda is a collection of capital, people (legal subjects), established based on an agreement and subject to the provisions of the company law. Regional Government ownership in Perseroda is at least 51% owned by one region only and in the form of a limited liability company. Meanwhile, Perumda has unique and special characteristic that is the ownership of Perumda capital which

is entirely controlled by the regional government, the same as the Perum concept based on the SOE Law. The establishment of ROE has the following objectives: a) to provide benefits for regional economic development in general; b) to organize public benefits in the form of providing quality goods and/or services in order to fulfill the people's livelihood in accordance with the conditions, characteristics and potential of the area concerned based on good corporate governance; and c) to earn profits and/or profits (Undang-undang Tentang Pemerintahan Daerah: 2014).

SOE is a business entity whose capital is wholly or most of which is owned by the state through direct participation originating from separated state assets. Therefore, the assets/finances of SOEs constitute state finances as referred to in Article 2 letter g of Law Number 17 of 2003 concerning State Finances, which states that state finances include "state assets/regional assets which are managed by themselves or by other parties in the form of money, securities, receivables, goods, and other rights which can be valued in money, including assets that are segregated in state companies/regional companies". In addition, the asset or finances of SOEs are included in the scope of state finances which have also been confirmed in the Constitutional Court Decision Number 48/PUU-XI/2013 and Number 62/PUU-XI/2013 which confirms that the provisions regarding the asset/finance of SOEs are state finances as stipulated in the Law -Law No. 17 of 2003 concerning State Finance is appropriate and constitutional. Article 2 letter g of Law Number 17 of 2003 concerning State Finance is one of the fulfillments of the constitutional mandate in terms of guaranteeing the fulfillment or protection of the lives of many people. The philosophy of the phrase "asset separated in state/regional companies" is a manifestation of the constitutional mandate of Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

The aim of the separation of state assets to state companies is that to place state assets so that they can be managed as a corporation which will later become one of the efforts in order to maintain the potential revenue which has become the right of the state so as to generate benefits for improving the country's economy and increasing societal well-being and intelligence. The separation of state assets as stipulated in the Law on State Finance represents the spirit of managing the state budget and efficient distribution of state finances so that they can be used for the greatest prosperity of the people. State-owned shares in SOEs or Limited Liability Companies are essentially state assets/state finances as stipulated in the State Finance Law so that state capital participation originating from state assets in the form of state-owned shares in SOEs or limited liability companies should go through the mechanism of the State Revenue and Expenditure Budget. It has also been stated in the Constitutional Court Decision Number 62/PUU-XI/2013 which states "When the Government invests in the form of State Equity Participation in state companies, the investment decision should follow the approval of the DPR which is a representative of the people and the allocation is stated in the APBN Law and implemented in accordance with the provisions of the applicable laws, as well as the divestment which will be conducted by the Government" (Konstitusi M. , 2013, p. 112).

State-Owned Enterprises (SOEs), Regional-Owned Enterprises (ROEs), or other names, or more specifically those that conduct the constitutional mandate contained in Article 33 of the 1945 Constitution are as representatives of the state in conducting some of the state's functions in order to achieve the goal of the state that is to educate the life of the nation and advance public welfare. Therefore, from the perspective of capital, legal entities or other similar names, which conduct some of the functions of the state, the finances that become capital come partly or wholly from state finances. From this perspective it means that SOEs as a legal entity cannot be fully considered as a private legal entity. Thus, it is clear that the management of state finances, including the separated sub-sector of state asset management, is organized by SOEs, ROEs, or other names, or more specifically those that conduct constitutional mandates in Article 33 of the 1945 Constitution. Management SOE finance in the perspective of expanding state finances falls within the scope of state finance itself as stipulated in Article 2 letter g of the State Finance Law, namely state assets/regional assets that are managed by themselves or by other parties in the form of money, securities, receivables, goods, as well as other rights which can be valued in money, including separated assets in state / regional companies. The expanded and comprehensive scope

of state finance as stated in the State Finance Law should be used as a reference for the entire system of state financial management, including financial management in SOE so that it cannot avoid the legal reality that state assets are separated or inseparable even though in the form of equity participation, in this case the shares in SOE are included in the scope of state finances. Moreover, the expansion of the meaning of state finances is in line with what has been regulated in Law Number 31 of 1999 Juncto Law Number 20 of 2001 concerning the Eradication of Corruption Crimes in interpreting state finances that is all state assets in whatever form that are separated or not separated. including all parts of the State's assets and all rights and obligations arising from: a) Being under the control, management and accountability of officials of State institutions, both at the Central and Regional levels; b) Being under the control, management and accountability of State-Owned Enterprises/Regional-Owned Enterprises, foundations, legal entities and companies that include State capital, or companies that include third party capital based on agreements with the State.

Both the State Finance Law and the Corruption Crime Eradication Law both have a view of state assets being separated in the management of SOE as state finance. Meanwhile, the SOE Law itself has a view on the management of SOE finance from a private law perspective. The SOE Law defines SOE as a business entity whose capital is wholly or partly owned by the state through direct participation originating from separated state assets. Therefore, there are 2 (two) important elements contained, namely first, the state's right to own all or most of at least 51% of SOE shares and second, originating from separated assets. Article 1 point 10 of the SOE Law defines separated State Assets as state assets originating from the State Revenue and Expenditure Budget (APBN) to be used as state capital participation in Persero and/or Perum and other limited liability companies. Furthermore, the SOE Law views the assets or assets of SOE in a different perspective, where SOE asset is divided into separated assets and assets that are not separated at all. It means that separated asset is an object or state property which is fully sourced from the state budget, so logically, the state owns at least 51% of shares, so of course there are other parties or certain private legal entities which have less than 49% of asset since in The SOE Law which becomes the capital or shares of SOE does not only come from the State Budget, but comes from reserve capitalization and other sources. Since the beginning, the formation of the SOE Law adhered to the paradigm of "business judgment" (business decisions) so that at the practical level the management of SOE leads to relations according to private law. Neither the SOE Law nor the Limited Liability Company Law provide a definition of state finances, however, debates about the meaning of state finances are often associated with the SOE Law and the concept of company law. Furthermore, the provisions of Article 4 paragraph (1) and Article 11 of the SOE Law regarding the separation of state assets from the APBN to be used as state capital participation in SOE for further development and management are no longer based on the APBN system. However, management are based on the principles of a healthy company; especially, for SOEs with the form of a Persero as understood by some experts as an entry point to interpret state assets which are separated into a SOE Persero which has been transformed into corporate asset and it is no longer state finance since it is only limited to capital/shares owned as a result of capital participation. According to Erman Rajagukguk, Article 1 paragraph (2) of Law no. 19 of 2003 concerning State-Owned Enterprises states that a Persero Company, hereinafter referred to as a Persero, is a SOE in the form of a limited liability company whose capital is divided into shares of which all or at least 51% (fifty one percent) of its shares are owned by the Republic of Indonesia with the aim of primarily pursuing profit. Furthermore, Article 11 states that all provisions and principles that apply to limited liability companies as regulated in Law No. 40 of 2007 concerning Limited Liability Companies. The characteristic of a legal entity is the separation of the legal entity's assets from the assets of its owners and management. Thus, a Legal Entity in the form of a Limited Liability Company has assets which are separate from the assets of the Directors (as managers), Commissioners (as supervisors), and Shareholders (as owners). Therefore, the assets of the Foundation as a Legal Entity are separate from the assets of the Foundation Management and Members, as well as the Founders of the Foundation. SOEs in the form of Perums are also Legal Entities. Article 35 paragraph (2) of Law no. 19 of 2003 concerning State-Owned Enterprises states that Perum obtains the status of a Legal Entity since the promulgation of a Government Regulation concerning its establishment. Moreover, based on Article 7 paragraph (4) of Law

no. 40 of 2007 concerning Limited Liability Companies, SOE Persero obtain legal entity status on the issuance date of the Decree of the Minister of Law and Human Rights. Based on the things mentioned above, the assets of SOE Persero and SOE Perum assets as legal entities are not state assets (Rajagukguk, 2016, pp. 30-31). According to Erman Rajagukguk, SOE asset is not state asset but SOE finance itself as a legal entity. Legal subjects, namely those who have rights and obligations and have their own assets, are humans (natuurlijk person) and legal entities (rechtperson or legal personality). Legal entities as legal subjects have rights and obligations and they have their own assets just like humans. The assets are separate from the founders of the legal entity, separate from the assets of the owners, supervisors and administrators. It is because of the legal entity doctrine in both the common law and civil law systems (Rajagukguk, Peranan Hukum dalam Mendorong BUMN Meningkatkan Pendapatan Negara dan Kesejateraan Rakyat, 2008).

Meanwhile, regional assets are divided into owned regional assets and separated regional assets. Regional asset that is owned is called Regional Property (BMD), namely all goods purchased or obtained at the expense of the APBD or originating from other legal acquisitions (article 1 of Law No. 1 of 2004 concerning the State Treasury). Meanwhile, regional assets whose management is separated from the APBD are referred to as separated regional assets. The existence of separated regional asset is partly due to investment by the regional government in business entities, both state/regional owned companies (SOE/ROE) and private owned companies. Article 6 paragraph (1) of Law Number 17 of 2003 concerning State Finance states that: "The President as the Head of Government holds the power to manage state finances as part of government power". For the scope of regional government, this power is handed over to the respective regional heads. It is confirmed in paragraph (2) letter c of the same article which states that: "The power referred to in paragraph (1) is handed over to the governor/regent/mayor as the head of the regional government to manage regional finances and represent the regional government in the ownership of regional assets that are separated." Thus, the governors/regents/mayors have received full handover of powers in managing their respective regional finances, from planning/budgeting to accountability. The pattern of management in ROE is in principle the same as SOE which is based on good corporate governance. ROE as a business organization requires a mechanism in its management as a form of embodiment of the principles of good corporate governance.

B. The Existence of Managed State Finances in SOE/ROE in Corruption Eradication Perspective

State finances referred to in the State Finance Law are all rights and obligations of the state which can be valued in money, as well as everything either in the form of money or in the form of goods that can be owned by the state in relation with the implementation of these rights and obligations. The scope of state finances based on Article 2 of the State Finance Law includes: a) The right of the state to collect taxes, issue and circulate money, and make loans; b) The state's obligation to conduct public service tasks for the state government and pay third party bills; c) State Revenue; d) State Expenditures; e) Regional Revenue; f) Regional Expenditures; g) State/regional assets which are managed by themselves or by other parties in the form of money, securities, receivables, goods, and other rights which can be valued in money, including assets that are separated into state/regional companies; h) Asset of other parties controlled by the government in the context of implementing governmental tasks and/or public interest; i) Asset of other parties obtained by using facilities provided by the government.

The elucidation of the State Finance Law has clearly formulated state finances through 4 (four) approaches, namely in terms of objects, subjects, processes and objectives which are explained as follows:

1. In terms of objects, what is meant by State Finances includes all rights and obligations of the state which can be valued in money, including policies and activities in the fiscal, monetary and management of state assets that are separated, as well as everything either in the form of money

or in the form of goods can be made state property in relation with the implementation of rights and obligations;
2. In terms of subject, what is meant by State Finance includes all the objects mentioned above that are owned by the state, and/or controlled by the Central Government, Regional Governments, State/Regional Companies, and other bodies that are related to state finances.
3. In terms of process, State Finance covers all series of activities related to the management of the object as mentioned above starting from the formulation of policies and decision making up to accountability;
4. In terms of objectives, State Finance includes all policies, activities and legal relations related to the ownership and/or control of the objects as mentioned above in the context of administering state government.

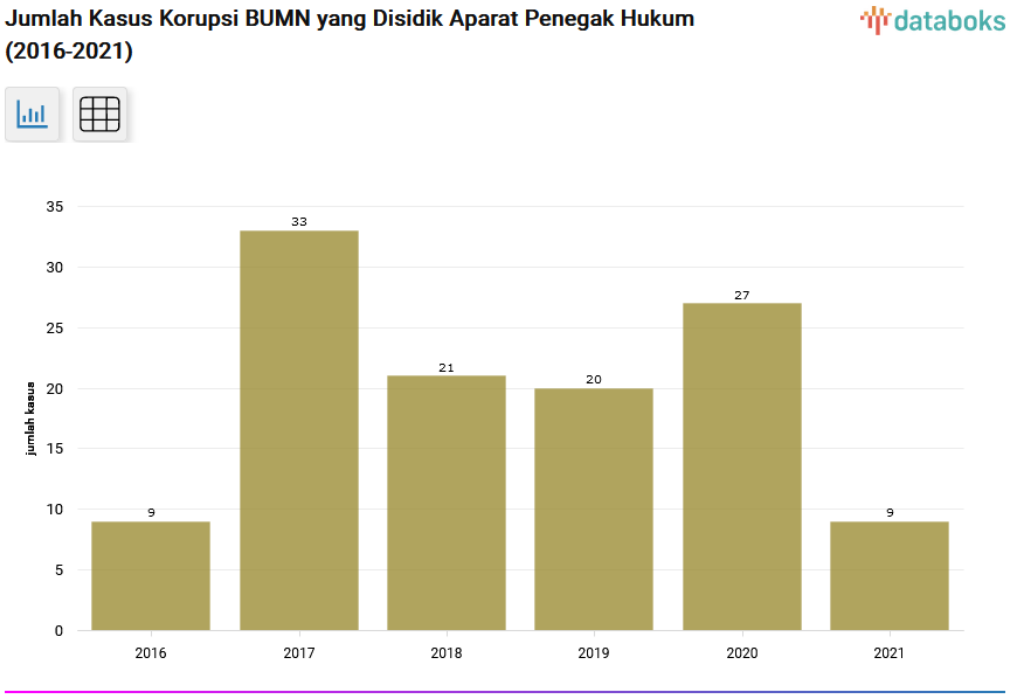
The state's financial status, in this case the state's asset which is separated in practice has two interpretations, each of which claims to be in its regime. Adherents of the public law regime consider that SOEs in the form of Persero are still subject to the public law regime. On the other hand, academics believe that SOEs in the form of Persero should comply with the private law regime since the State positions itself as a private legal entity when involved in business law. This raises a debate when share ownership in SOE is still categorized as state property. With regard to the problem of state assets, the Government should still be able to create legislation which is in favor of the people. Law enforcement officials, the Supreme Audit Agency (BPK), the Committee for State Receivables (PUPN) on the one hand interpret that state assets separated from SOEs are subject to and are under public laws or public law regimes by still using the references to laws that regulate its institutions, although other parties view that the state assets which are separated from SOE are subject to and are under private laws or private law regimes. The view of academics is based that all legal entities; such as, PT, Public Companies (Tbk), and Foundations firmly and consistently adhere to the doctrine of separate assets.

In the effort of eradicating corruption, Indonesia has statutory regulations as set forth in the Corruption Crime Eradication Law which according to Djoko Sumaryanto has 2 (two) meanings, namely the first as a preventive step related to the regulation of eradicating corruption at the criminal level. It is expected that people do not commit criminal acts of corruption. Meanwhile, repressive steps include imposing severe criminal sanctions on perpetrators while at the same time trying to recover the state's losses which have been corrupted as much as possible (Sumaryanto, Pembalikan Beban Pembuktian Tindak Pidana Korupsi Dalam Rangka Pengembalian Kerugian Kauangan Negara,, 2008). The extraordinary nature of crime in corruption in the SOE sector is due to the fact that proving it in disclosing corruption in the SOE sector is so difficult since it is conducted by means of various modus operandi of deviations in state finances which are increasingly sophisticated and complicated according to the business activities conducted by SOE and ROE in almost all sectors of the economy; such as; agriculture, fisheries, plantations, forestry, manufacturing, mining, finance, post and telecommunications, transportation, electricity, industry and trade, and construction so that these acts of corruption are committed in the fields of banking, taxation, capital market, trade and industry, commodity futures, or in the monetary and financial sector. In addition, the perpetrators of corruption in the SOE and ROE sectors involve state administrators, in this case Directors, Commissioners, and other structural officials in SOE and ROE (Undang-Undang Tentang Penyelenggaraan Negara Yang Bersih Dari Korupsi, Kolusi, Dan Nepotisme, 1999). since they have strategic functions, both tasks and authority in managing SOE in order to conduct public benefits through mastery of all national economic power either through sectoral regulations or through state ownership of certain business units with the aim of providing maximum benefits for the prosperity of the people, without prejudice to the objectives of SOE and ROE in cultivating profits.

With regard to the position of state finances, in the form of separated state assets (in SOEs) and state financial losses, the Corruption Crime Law has provided boundaries and judicial practices (decisions) in interpreting state finances which are separated as defined in the Corruption Eradication

Law. Therefore, even though the state/regional finances managed by the SOE/ROE are often questioned by the accused and their legal advisers about the position of state/regional finances in SOE/ROE which have been separated from state/regional finances, the judge's decision so far remains of the opinion that state finances separated remain within the framework of state finances. The essential matter which intends to be resolved through criminal law mechanisms related to acts of corruption in SOE/ROE which cause losses to the state is the erosion of the community's sense of justice due to evil deeds which destroy the values of trust.

Losses to the state in the perspective of the criminal act of corruption are losses to state finances caused by acts against the law or acts of abusing authority, opportunities or facilities which exist in a person because of his position and it is conducted in connection with acts of enriching oneself or others or a corporation. Furthermore, corruption practices within SOE are still rife. SOEs that should play a role in producing goods and/or services needed in order to realize the maximum prosperity of the community through business activities in almost all sectors of the economy; such as, agriculture, fisheries, plantations, forestry, manufacturing, mining, finance, postal and telecommunications, transportation, electricity, industry and trade, and construction. Therefore, SOEs have such an important role in the implementation of the national economy in order to realize the welfare of the community and they have the aim of providing the maximum benefit for the prosperity and welfare of the Indonesian people. However, in its implementation in the context of organizing the national economy in order to realize the welfare of the community it does not always work smoothly since the practice of corruption in SOE is dominated by perpetrators from middle and high-ranking officials of SOE who cooperate with the private sector since they have a strategic relationship in conducting SOE business activities carrying out acts against the law with the aim of enriching themselves which detrimental to the state in the implementation of the management and administration of SOEs. Even the practice of corruption from 2016 to 2021 continued to increase. In 2020 the state lost Rp. 17.4 trillion while in 2021 state losses due to criminal acts in the SOE sector increased to Rp. 23.9 trillion. ICW sees this to be very ironic since during the pandemic SOE received an injection of funds from the central government through the National Economic Recovery (PEN) stimulus program of up to IDR 1,761 trillion. The following is a diagram of criminal acts of corruption in the SOE sector from 2016 to 2021 as follows (Dihni, 2022):



C. Implementation of the Elements of State Financial Losses in the Law on the Eradication of Corruption Crimes

Proof of the existence of state financial losses in acts of corruption should be conducted comprehensively against all elements in both article 2 and article 3 of the Corruption Eradication Law so that it emphasizes acts against the law that is deviations in the management of SOE which result in state financial losses occurring due to corrupt, collusive and nepotistic behavior which resulted in enriching or benefiting certain parties so that the initial objectives of SOE not being achieved which lead to losses to state finances. In writing this journal, the writer will conduct an analysis of the elements of "harmful to the country's finances or economy", as in Article 2 (paragraph (1) and article 3 of the Law on the Eradication of Corruption Crimes). That the element of "harm to the country's finances or economy" is an alternative between financial state or the country's economy which means that everything does not need to be proven. Although these elements can be seen as alternative in nature, that is, it is only enough to prove one of the elements "harmful to the State's Finances" or "harm to the State's Economy", but it can also be proven that both of these elements simultaneously in one case. That "harming" is to become a loss or to be reduced, so what is meant by "harm to state finances" is the same as becoming a loss to state finances or a reduction in state finances (Wiyono, 2008, p. 41). Several laws and regulations in Indonesia regulate state losses including the following:

1. Article 1 number 15 of Law Number 15 of 2006 concerning the Audit Board of the Republic of Indonesia states "State/Regional Losses are a real and definite lack of money, securities and goods, as a result of an unlawful act either intentionally or negligently."
2. Article 1 Number 22 of Law Number 1 of 2004 concerning the State Treasury states: "State/Regional losses are a real and definite lack of money, securities, and goods, as a result of acts against the law, whether intentional or negligent."
3. The elucidation of Article 32 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes states: "What is meant by "obviously there has been a loss of state finances" is a loss which can already be calculated based on the findings of the competent authority or appointed public accountant.

Forms of loss to state finances include (Pembangunan, 2014): (a) The expenditure of state/regional resource/asset (can be in the form of money, goods) that should not have been issued; (b) The expenditure of a state/regional resource/asset is greater than it should be according to the applicable criteria; (c) Loss of state/regional resources/asset that should have been received (including receipts with counterfeit money, fictitious goods); (d) Receipt of state/regional resources/asset is smaller/lower than what should have been received (including receipt of damaged goods, of inappropriate quality); (e) The emergence of a state/regional obligation that should not have existed; (f) The emergence of a state/regional obligation that is greater than it should be; (g) The loss of a state/regional right that should have been owned/received according to the applicable regulations; (h) The state/regional rights received are smaller than what should have been received.

The General Explanation of the Corruption Crime Eradication Law states that state finances are all assets in any form that are separated, including all parts of state assets and all rights and obligations that:

a) They are under the control, management and accountability of State Institution Officials both at the Central and Regional levels.
b) They are under the control and responsibility of State-Owned Enterprises/Regional-Owned Enterprises, Foundations, Legal Entities, and companies which include state capital, or companies which include third party capital based on agreements with the state.

That apart from being stipulated in RI Law No. 31 of 1999, the definition of state finances is also regulated in Law no. 17 of 2003 concerning State Finances, which among other things in Article 2

explains that the scope of state finances includes: a) The right of the state to collect taxes, issue and circulate money, and make loans; b) The state's obligation to conduct public service tasks for the state government and pay third party bills; c) State Revenue; d) State Expenditures; e) Regional Revenue; f) Regional Expenditures; g) State/regional assets which are managed by themselves or by other parties in the form of money, securities, receivables, goods, and other rights which can be valued in money, including assets that are separated into state/regional companies; h) Asset of other parties controlled by the government in the context of implementing governmental tasks and/or public interest; i) Asset of other parties obtained by using facilities provided by the government. Therefore, from the two definitions of state finances, it is clear that Law no. 17 of 2003 concerning State Finances and Law Number 31 of 1999 concerning the Eradication of Corruption Crimes have the same view of state finances, including the scope of the state finances themselves.

Meanwhile, what is meant by the state economy is economic life that is structured as a joint venture based on the principle of kinship or an independent community business based on Government policy, both at the central level and at the regional level in accordance with the provisions of the applicable laws and regulations aimed at providing benefits, prosperity and welfare to all people's lives (General explanation Undang-undang Pemberantasan Tindak Pidana Korupsi). Furthermore, according to Rimawan Pradiptyo, Ph.D. (Pradiptyo, 2022). state economic loss is a condition in which there is a decrease in the value of economic activity due to an error in the allocation of resources, whether conducted intentionally or unintentionally, from the value that should have been generated by economy. Considering that there are three elements of the state that are: the public sector, the business sector and the household sector, it is important to understand the differences between the following three definitions, namely: a) financial costs; b) fiscal costs; c) social costs. Financial costs are costs which are borne by households or the business sector. Fiscal costs are costs which are borne by the public sector or in other words government finances. Meanwhile, social costs are a combination of financial costs (both household and business sectors) and fiscal costs (public or government sector) that the state's economic loss is not necessarily identical with the government's financial loss. The incident of the collision of a coral reef by a luxury cruise ship in the Papua region some time ago can be an example. This event is not necessarily detrimental to the government's finances, as long as the government does not spend funds to finance programs in order to improve the condition of the damaged coral reefs. However, the income of small fishermen (vessel size less than 5GT) around these waters is disrupted due to a decrease in the number of fish in the damaged coral reef area. There was no loss to the government's finances resulting from the damage, bearing in mind that fishermen with a vessel size of less than 5GT do not need a fishing permit. However, damage to coral reefs reduces the welfare of fishermen around these waters, which means a decline in the country's economy. In addition, according to economic theory, losses to the country's economy are not always related to losses in government finances (the public sector). It is very possible that conditions will occur where the government's finances are not harmed, but the country's economy does.

Conclusion

1. The existence of separated state/regional assets which are managed by SOE and/or ROE is that even though the management is based on sound corporate governance principles in fostering and managing SOE it does not necessarily mean that the separated state/regional assets have been transformed and recognized as the assets of SOE/ROE as an independent legal entity whose management is subject to private jurisdiction. However, the state does the separation of state assets to be managed by SOE/ROE is to place state assets so that they can be managed professionally with corporate principles which will later become one of the efforts maintain the revenue potential that has become the right of the state so that it produces benefits for improving the country's economy while at the same time increasing the welfare and intelligence of the community as the goals of the Republic of Indonesia;

2. The criminal act of corruption committed in the SOE sector is one of the manifestations of why the criminal act of corruption is an extraordinary crime since it is conducted by SOE officials who have strategic duties and authorities since the role of SOE is so important in the national economic system, namely SOE has a role in producing goods and/or services needed in the context of realizing the maximum prosperity of the community. Therefore, in conducting the functions of managing SOEs they are prone to practices of corruption, collusion and nepotism. With regard to the position of state finances, in the form of separated state assets (in SOE) and state financial losses, the Corruption Crime Law has provided limitations and judicial practices (decisions) in interpreting separated state finances as defined in Corruption Eradication Law. The understanding of state finances in the context of eradicating criminal acts of corruption brings the consequence that acts against the law over the management of separated state finances, in this case in the management of SOE and ROE which contain corrupt elements that cause losses, remains the scope of the politics of eradicating criminal acts of corruption both in terms of prevention and law enforcement. The judge's decision so far remains of the opinion that separated state finances remain within the framework of state finances. The essential matter which intends to be resolved through criminal law mechanisms related to acts of corruption in SOE/ROE which cause losses to the state is the erosion of the community's sense of justice due to evil deeds which destroy the values of trust.

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Sebagaimana Penjelasan Pasal 2 angka 7 Undang-Undang Nomor 28 Tahun 1999 Tentang Penyelenggaraan Negara Yang Bersih Dari Korupsi, Kolusi, Dan Nepotisme, yang dimaksud dengan pejabat lain yang memiliki fungsi Strategis adalah pejabat yang tugas dan wewenangnya didalam melakukan penyelenggaraan negara rawan terhadap praktek korupsi, kolusi, dan nepotisme, yang meliputi: 1) Direksi, Komisaris, dan pejabat struktural lainnya pada Badan Usaha Milik Negara dan Badan Usaha Milik Daerah; 2) Pimpinan Bank indonesia dan Pimpinan Badan Penyehatan Bank Indonesia; 3) Pimpinan Perguruan Tinggi Negeri; 4) Pejabat Eselon I dan Pejabat lain yang disamakan di lingkungan sipil, militer, dan Kepolisian Negara Republik Indonesia; 5) Jaksa; 6) Penyidik; 7) Panitera Pengadilan; 8) Pimpinan dan Bendaharawan Proyek.

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