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Indonesian State-Owned Enterprises (BUMN or SOEs) and the Urgency of Implementation of Principle of 'Business Judgment Rule'*

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Abstract:
State-owned enterprises (SOEs or BUMN) companies need management which generally emphasizes governance which is more concerned with the principles of efficiency and effectiveness. In reality, it is evident that in Indonesia state-owned companies have an enormous economic and social role, and are an extraordinary force for the economic sector. In Singapore and Malaysia, SOEs also contribute greatly to economic activities. In Indonesia, SOEs are included in several diverse sectors or fields of business, from banking, energy, food, infrastructure, and transportation on sea, land, and air. A total of 118 SOEs in 2015 with a total asset of 5,395 trillion rupiahs would certainly be able to make a greater contribution to economic growth in 2016 if they can synergize in managing the business sector. SOEs' assets are also estimated to be greater through the SOE asset revaluation process. The Constitutional Court in case number 48 / PUU-XI / 2013 and case No. 62 / PUU-X1 / 2013 dated May 22, 2013, decided that management SOEs must use the principle of Business Judgment Rule. In the verdict, it is also stated that state-owned finances are state finance. As a result, this verdict brings legal certainty about the position of SOEs' finance. This paper explains that the development of state-owned enterprises-SOEs as a corporation that brings social and business missions is facing constitutional juridical problems and facing the challenges of globalization. Factually, at this time legal development cannot be separated from the influence of globalization. Globalization in the economic field has affected various fields of the business sector in the world.
Keywords: State-Owned Enterprises; Globalization; Economic Law; Principle; Business Judgment Rule; Corporation; Indonesia.

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Badan Usaha Milik Negara Indonesia (BUMN) dan Urgensi Implementasi Prinsip 'Peraturan Penilaian Bisnis'

Abstrak:
Badan Usaha Milik Negara (BUMN) membutuhkan manajemen yang umumnya menekankan tata kelola yang lebih mementingkan prinsip efisiensi dan efektivitas. Pada kenyataannya, terbukti bahwa di Indonesia perusahaan milik negara memiliki peran ekonomi dan sosial yang sangat besar, dan merupakan kekuatan dan pendorong ekonomi yang luar biasa. Di Singapura dan Malaysia, BUMN juga berkontribusi besar pada kegiatan ekonomi. Di Indonesia, BUMN termasuk dalam sejumlah sektor atau bidang usaha yang beragam, mulai dari perbankan, energi, makanan, infrastruktur, dan transportasi, baik laut, darat dan udara. Sebanyak 118 BUMN pada 2015 dengan total aset Rp5.395 triliun tentu akan mampu memberikan kontribusi yang lebih besar bagi pertumbuhan ekonomi 2016 jika mereka bisa bersinergi dalam mengelola sektor bisnis. Aset BUMN juga diperkirakan lebih besar melalui proses revaluasi aset BUMN. Mahkamah Konstitusi dalam kasus nomor 48/PUU-XI/2013 dan kasus No. 62/PUU-X1/2013 tanggal 22 Mei 2013, memutuskan bahwa manajemen BUMN harus menggunakan prinsip Aturan Penilaian Bisnis. Dalam putusan itu, dinyatakan juga bahwa keuangan milik negara adalah keuangan negara. Akibatnya, putusan ini membawa kepastian hukum tentang posisi keuangan BUMN. Makalah ini menjelaskan bahwa pengembangan BUMN sebagai perusahaan yang melakukan misi sosial dan bisnis menghadapi masalah yuridis konstitusional dan menghadapi tantangan globalisasi. Secara faktual, saat ini perkembangan hukum tidak dapat dipisahkan dari pengaruh globalisasi. Globalisasi di bidang ekonomi telah mempengaruhi berbagai bidang sektor bisnis di dunia.
Kata kunci: Perusahaan Milik Negara; Globalisasi; Hukum Ekonomi; Prinsip; Aturan Penilaian Bisnis; Perusahaan; Indonesia.

BUMN (Государственные предприятия Индонезии) и срочность реализации принципа ‘Правило делового суждения’

Аннотация:
BUMN нуждаются в управлении, которое, как правило, делает упор на принципы эффективности и результативности. На самом деле очевидно, что в Индонезии BUMN играют огромную экономическую и социальную роль и являются исключительной силой и экономическим двигателем. В Сингапуре и Малайзии BUMN также вносят большой вклад в экономическую деятельность. В Индонезии BUMN входят в ряд различных секторов или сфер бизнеса, таких как банковское дело, энергетика, продовольствие, инфраструктура и транспорт, как морской, наземный и воздушный. В общей сложности 118 BUMN в 2015 году с общим активом 5,395 триллионов рупий, несомненно, смогут внести больший вклад в экономический рост в 2016 году, если они смогут объединить усилия в управлении бизнес-сектором. Активы BUMN также оцениваются как более значимые в процессе переоценки активов BUMN. Конституционный суд по делу № 48/PUU-XI/2013 и делу № 62/PUU-X1/2013 от 22 мая 2013 г. постановил, что руководство BUMN должно использовать принцип Правила Делового Суждения. В постановлении также указывалось, что финансы BUMN являются государственными финансами. В результате это решение вносит юридическую определенность в отношении положения финансов BUMN. В этой статье объясняется, что развитие BUMN как корпорации, выполняющей социальные и бизнес-задачи, сталкивается с конституционными юридическими проблемами и проблемами глобализации. Фактически, в настоящее время правовое развитие невозможно отделить от влияния глобализации. Глобализация в экономической сфере повлияла на различные сферы бизнеса в мире.
Ключевые слова : Государственные Предприятия; Глобализация; Экономический закон; Принцип; Правило Делового Суждения; Корпорация; Индонезия.

Introduction

Under the research topic of this paper, which is about building a Business Judgment Rule System in State-Owned Enterprises (BUMN, Persero) in Indonesian Economic law, it is necessary to describe the theory of the function of the rule of law in economic development. According to J.D. Mrs. Hart, three elements must be developed in the legal system so that law plays a role in economic development, namely predictability, stability (stability), fairness. (Theberge, 1980)

First, predictability (predictability), namely the law must be able to create certainty. With certainty, investors can predict the consequences of the actions that will be taken and have certainty of how other parties will act.

Second, stability. The role of the state empowered by law is basically to maintain a balance to achieve a goal. This balance includes the interests of individuals, groups, and general interests associated with the challenges being faced both at home and abroad. Through this Act, it is hoped that it will accommodate the interests of workers and employers, the interests of economic growth and a clean environment, the interests of large companies and small and medium-sized businesses. In this case, whether the law can accommodate or balance competing interests in society (Mandelson, 1970, p. 225).

Third, fairness, namely the law must be able to create justice for the community and prevent unjust and discriminatory practices. Fairness aspects such as due process, equality of treatment, and standards of government behavior are a necessity to maintain market mechanisms and prevent the negative impacts of excessive bureaucratic actions. The absence of a standard of justice is said to be the biggest problem faced by developing countries. In the long run, the absence of these standards can result in the loss of the Government's legitimacy (Theberge, 1980, p. 232).

The rule of the law refers to the main objective of the law, which is to create an orderly society. Order and balance in society need to be achieved so that human interests will be protected in achieving their goals. In general, the law functions to divide rights and obligations, regulate how to solve legal problems, and maintain legal certainty (Trubek, 1972, p. 4).

There are differences in the view of the function of law, giving rise to differences regarding the purpose of applying the law. On the one hand, there is more emphasis on the function of social control or the function of change and others. If each party demands according to their desires, then what arises is a legal problem, not a legal settlement. It even creates conflict, which connotes

blaming each other, accusing each other and others. On the other hand, some focus on the legal objectives of realizing justice and order. If examined deeper, at a certain level the two goals do not always go hand in hand and may even conflict with one another. The purpose of realizing justice is different from the goal of realizing an order. In certain circumstances, demands for justice will loosen legal certainty, whereas legal certainty is precisely the main component of realizing an order. Without legal certainty, there will be no order. Conversely, at some level, the order can undermine justice. In addition to realizing certainty, the order requires equality, while justice must allow diversity or difference in treatment.

The law is a regulation of human behavior that is held by official bodies that are compulsory, which is coercive and provides strict sanctions for violators of these regulations. Objective law is the rules that govern relationships between members of the community. Based on this understanding, the law regulates relations between fellow members of the community who have legal relations with one another.

The law has several functions, including a means of order and community order, a means for realizing social justice physically and spiritually, a driving force for development because it has the binding and compelling power so that it can be used as an authority tool to direct the community to be better and a tool to supervise the community but also supervise the government, law enforcers, and supervisory apparatus themselves. (Rajagukguk, 2000, p. 83)

The function of law in society is very diverse, depending on various factors and the state of society. Besides, the legal function in an undeveloped society will also be different from that found in an advanced society. In underdeveloped societies, the law is more functioned to guarantee security in society and guarantee the achievement of social structures expected by the community. However, in advanced societies, the law is becoming more general, abstract, and more distant from the context.

The Constitutional Court in case number 48 / PUU-XI / 2013 and case No. 62 / PUU-X1/ 2013 dated May 22, 2013, which was read on September 18, 2014, has decided that the management BUMN (State-Owned Enterprises-SOEs) uses the principle of the Business Judgment Rule. In the ruling, it was also stated that BUMN finance was state finances. As a result, this ruling brings legal certainty about the position of finance of BUMN.

Principles of Business Judgment Rules are one of the important

elements in Law No. 40 of 2007 concerning Limited Liability Companies, so that they have standards regarding accountability to be able to see which business decisions are taken following procedures in the interests of the company or whether business decisions are taken for the director's interests (Prasetio, 2014, pp. 143-144).

Discussion

The terminology of the Business Judgment Rule in the theory of its library is the legal doctrine of companies originating from America that adhere to the common law legal system. Business Judgment Rules are one of several doctrines in corporate law that must be run by directors to fulfill the fiduciary duty. According to Angela Schneeman, Business Judgment Rule is a doctrine that teaches that company directors can be released from responsibility for losses incurring from a business decision-making action, in which the decision-making actions have gone through a process, careful and in good faith. (Prasetio, 2014, pp. 143-144)

The concept of the Business Judgment Rule itself has been implemented in one of the states in the United States, which adheres to the common law legal system around 173 years ago. The United States applies the Business Judgment Rule system in Delaware. Indonesia in its development as a citizen of the world cannot be separated from the influence of globalization, including the legal system in force in the United States. According to the applicable corporate law in Delaware, Business Judgment Rule is a derivative of the basic principle that a company is managed by its directors. The directors in running the company are required not to despair in fulfilling a fiduciary duty in the interests of the company and shareholders.

Some notions of Business Judgment Rule can be seen, as defined by the Black Law Dictionary saying:

Business Judgment Rule is the presumption that in making business decisions not involving direct self-interest or self-dealing, corporate directors act on an informed basis, in good faith, and the honest belief that their actions are in the corporation's best interest. (Camer., 2014, p. 200)

Whereas in Indonesia, Sutan Remy Sjahdeini said:

> Business Judgment Rule is a business consideration of members of the board of directors who cannot be challenged or contested or rejected by the court or shareholders. The members of the board of directors cannot be burdened with

> responsibility for the consequences that arise, because a business consideration has been taken by a member, the board of directors concerned even if the business consideration is wrong, except in certain cases. (Sjahdeini, 2001)

It can also be seen that Hendra Setiawan Boen provides a definition:

> The Business Judgment Rule arises as a result of the implementation of fiduciary duty by a board of directors, that is the principle of duty of skill and care so that all errors that arise after the principle of duty and skill are implemented it get the consequence that the directors get personal liability if there is an error in their decision. (Boen, 2008, p. 100)

From several definitions above, it can be said that Business Judgment Rule adheres to the principle that a company's directors cannot be held accountable for losses arising from a decision-making action, as long as the directors in making these decisions have been based on good intentions and are entirely in the interested company. Indeed, the Business Judgment Rule in Indonesian corporate law is not explicitly stated, but if we want to examine it, in Law Number 40 of 2007 concerning Limited Liability Companies, several articles clearly require the Business Judgment Rule in managing the company. Article 69 paragraph 4, Article 92 paragraph 1, Article 97 paragraph 5, and Article 104 paragraph 4 in the Limited Liability Company Law.

Article 69 paragraph 4 reveals that Members of the Board of Directors and Members of the Board of Commissioners are exempt from the responsibilities referred to in paragraph 3 if it is proven that the situation is not due to his mistake. Whereas Article 97 paragraph 5 of the Limited Liability Company Law states that members of the Board of Directors cannot be held responsible for losses as referred to in paragraph 3 if they can prove:

a. The loss is not due to error or negligence;
b. Has done management in good faith and caution;
c. For interests and following the purpose and objectives of the Company;
d. Do not have a conflict of interest, either directly or indirectly, over management actions that result in losses; and
e. Has taken action to prevent the occurrence or continuation of these losses.

This article expressly states that the directors are responsible for all actions and decisions made, but the directors can avoid the demands of personal accountability, if the directors can prove the basis and reasons

referred to in Article 97 paragraph 5 of the Limited Liability Company Law. Explanation of Article 97 paragraph (5) letter d states that what is meant by "taking actions to prevent arising or continuing losses" includes steps to obtain information regarding management actions that can cause losses, including through the Board of Director's meeting forum.

Then, Article 104 paragraph 4 of the Limited Liability Company Law states that directors are not responsible for the bankruptcy of the Company as referred to in paragraph 2 if it can prove:

a. Bankruptcy is not due to an error or negligence;
b. Has done management in good faith, prudence, and full responsibility for the interests of the company and following the goals and objectives of the company;
c. Does not have a conflict of interest, either directly or indirectly, for the management actions taken; and
d. Has taken action to prevent bankruptcy.

Furthermore, the provision of Article 104 paragraph (4) of the Limited Liability Company Law states that as long as the board of directors can prove matters as stated in the provisions of Article 104 paragraph (4) of the Limited Liability Company Law, the member of the board of directors cannot be held accountable for the bankruptcy experienced by the Company That limited.

In the meantime, Article 11 of Law Number 19 of 2003 concerning state-owned enterprises (BUMN) regulates that the management of Persero is carried out based on the Law on Limited Liability Companies, which currently applies is Law Number 40 of 2007 concerning Limited Liability Companies. The ratio logical is if there is a loss experienced by the company or better known as corporate loss caused by the application of the Business Judgment Rule, then the loss does not constitute a State loss but is considered a company loss as a consequence of business as usual.

The theory with the Constitutional Court Decision number 25/PUU-XIV/2016 related to Articles 2 and 3 of the Corruption Act (Tipikor) decided that the word "can" contained in Articles 2 and 3 of the Corruption Law was abolished. Thus, the crime of corruption according to the article must meet the loss of the state or the real country's economy. As for the content of Article 2 paragraph (1) Corruption Law,

Anyone who violates, and commits an act enriches himself or another person or

> a corporation that can harm the country's finances or the country's economy, will be convicted to prison with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) year and a fine of at least Rp. 200,000,000.00 (two hundred million rupiahs) and at most Rp. 1,000,000,000.00 (one billion rupiah).

Then, Article 3 of the Corruption Law states:

> Everyone who aims to benefit himself or another person or a corporation, misusing the authority, opportunity or means available to him because of a position that can harm the state's finance or the country's economy, will be convicted to prison with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) year and a fine of at least Rp. 50,000,000.00 (fifty million rupiahs).

As for the consideration, there is a fundamental reason for the Constitutional Court to change the assessment of constitutionality in the previous decision, because previous assessments have been evident over and over again causing legal uncertainty and injustice in eradicating corruption. Thus the word "can" in Article 2 paragraph (1) and Article 3 of the Corruption Law is contrary to the 1945 Constitution.

In comparison to the State's loss, the case that is currently under investigation is bailout assistance to insurance giant AIG (American International Group Inc). The Federal Reserve said in a statement that it would provide GAO with all records and personnel needed to conduct the inspection. GAO is a unit of audit, evaluation, and investigation of Congress. The AIG itself, through its controversial acknowledgment, has used more than USD 90 billion in federal assistance to fund foreign and local banks. Some of the banks that receive funding from AIG have already received billions of dollars in bailouts from the US government - which are taxpayers' money through AIG. According to AIG, the funds for the banks aim to cover their losses on complex mortgage investments, as well as the need for guarantees for other transactions. AIG received over the US $ 170 billion in bailouts from the US government, and funds for banks were taken from the bailout. The leading company led by Edward Liddy is worried that if AIG goes bankrupt, it will destroy banks and consumers in various countries. The company, which is about eighty percent of its shares now controlled by taxpayers in the US, has announced a list of recipients of funds from AIG. Some of the biggest recipients were Goldman Sachs (USD 12.9 billion), three European banks, Societe Generale, France (USD billion), Deutsche Bank, Germany (USD 11.8 billion), Barclays PLC, United Kingdom (USD 8, 5 billion), and Merrill Lynch for USD 6.8 billion. Other banks received between

USD 1 billion and USD 3 billion from AIG securities loan units, including Citigroup Inc., Swiss UBS AG, and Morgan Stanley. (Data Observation, 2020)

Based on Article 114 paragraph (5) Law No. 40 of 2007 concerning Limited Liability Companies states that members of the Board of Commissioners cannot be held responsible for losses as referred to in paragraph (3) if they can prove:

a. has carried out supervision in good faith and prudence for the interests of the Company and following the purposes and objectives of the Company;

b. do not have personal interests, directly or indirectly, for the management of the Board of Directors which results in losses; and

c. Has provided advice to the Board of Directors to prevent such losses from arising or continuing.

The provisions above are the basis for implementing the Business Judgment Rule. In comparison, in the corporate law in the United States, American states regulating this Business Judgment Rule vary slightly. For example, the State of Delaware has no nearly two-century single formulation of this Business Judgment Rule. However, since 1984 the Delaware formulation is probably very famous. The Delaware standard has shifted in recent years, where since 1984 the Supreme Court of Delaware has consistently established the characteristics of the Business Judgment Rule as (Letsou, 2001, p. 181):

A presumption that in making a business the decision of the directors of a corporation acted on an informal basis, in good faith, and the honesty of the best interests of the company. The decision to establish facts rebutting the presumption.

As a practical matter, the presumption held by the Business Judgment Rule is impossible to master, at least in cases where the director does not have a conflict of interest. In that context, the shareholders as plaintiffs are required to show whether the signing of the substance of the business decision means that "no content businessperson will make that decision" or the board of directors has made a major omission in informing himself of all material information that makes sense available before he acts.

Directors have "duty of care" and "duty of loyalty", "obligation to be careful" and "obligation to be loyal" to companies and shareholders. Differences exist between the two that are run by the directors of the company

and its shareholders. To determine whether a director violates the obligation to be careful, the court uses the Business Judgment Rule and fair standards. The court analyzes the two obligations differently, depending on whether the transaction is a challenge involving an unauthorized, or interested director, a self-dealing director. If the director is not interested, a Business Judgment Rules are applied to determine whether the director in question violates his duty to be careful (duty of care); but if the director is interested, the presumption of the business judgment rule is the fairness applied to determine the director violates his duty to loyalty (duty of loyalty). Directors always have this obligation to the company and its shareholders.

The application of the Business Judgment Rules is a development in corporate law. In the development of a country now, with rapid economic and technological developments, according to Sri Redjeki Hartono, (Hartono, 2007, p. v) making economic activities is sometimes difficult to balance with legal development. These difficulties require state intervention to regulate and provide protection to all parties, both consumers and producers (business actors), which often triggers conflict, both among consumers and actors, and among fellow economic actors. Law should provide a system that makes economic actors do their roles well.

Economic actors, basically have very important functions. Because it has two functions at once, namely as a supplier of all the needs of the community, both primary, secondary, and tertiary. At the same time, they also function as absorbers of community labor, which can economically increase purchasing power. These economic actors can be individuals, business entities not legal entities (Firms or CVs), business entities that are legal entities such as cooperatives and limited liability companies, and economic actors in legal entities with sophisticated qualifications. The Persero PT has technical/non-technical requirements including sufficient financial capability requirements and is supported by professional human resources following their fields. These economic actors are usually on par with global economic actors (Hartono, 2007, pp. 95-99).

According to Law Number 19 Year, 2003 concerning State-Owned Enterprises (BUMN Law) is an entire business entity or part of its capital is owned by the state through direct participation derived from separated state assets. Whereas the company, hereinafter referred to as Persero, is a state-owned company in the form of a limited liability company whose capital is divided into shares whose total or at least 51% (fifty-one percent) shares are owned by the Republic of Indonesia whose main purpose is to pursue profits.

Historically the presence of SOEs in Indonesia existed before Indonesian independence, as explained by Aminuddin, (Ilmar, 2012, p. 73) that in the days of the Dutch East Indies government businesses were known, such as spoorswagen (SS), Gemeenschapelijke Mijnbow Maatscapij Billiton (GMB), the tin mining company on Belitung Island, Pegadaian Company, PLN and so on. Then, after the independence of Dutch companies, because they had strategic values nationalized to become Indonesian state companies. (Prasetio, 2014, p. 79) In the independence era, BUMNs were also established based on the provisions in Article 33 paragraph (2) of the 1945 Constitution.

Then in its historical development, the basic philosophical interpretation of the existence of SOEs rested on the provisions of the 1945 Constitution, Article 33 specifically paragraphs (2) and (3) which contained the intention that; production branches that are important to the State and which control the livelihood of many people are controlled by the State. Then the earth, water, and natural resources contained therein are controlled by the State and are used for the greatest prosperity of the people. Thus the first task of the State to form a business entity is to fulfill all the needs of the community when these sectors cannot yet be carried out by the private sector. Then such tasks are translated as a form of "pioneering" effort by the State that makes BUMNs become agents of development.

BUMN must be independent that is using the instruments it has to achieve the goals set by the political system without any interference from parties outside the BUMN. This is called "instrument independence" not "goal independence". The independent consequence for SOEs is to be more accountable for actions taken in transparent regulation and supervision (Nasution, 2012, p. 2).

The understanding of BUMN as an agent of development continued up to the period of the 80s, which later had a negative impact because the control function of SOEs was considered to be very weak, BUMNs was a hotbed of corruption and so on. In the period of the late 80s, the management of BUMN was addressed to focus its business. This is a reflection of the implementation of Good Corporate Governance (GCG) programs, among others by publishing financial reports, meaning that there has been learning and discipline of SOEs towards the implementation of GCG principles (openness) as well as the learning of capital market protocols starting from that time. By applying the principles of GCG, as well as the intention to be able to separate ownership functions and functions as regulators. If this is not understood, the separation of functions will result in interventions starting with the owner and will be

followed by other parties with interests.

In the reform era, there were BUMN Directors in the form of Persero subject to corruption. Because doing transactions that are considered detrimental to the country's finances. This is due to the unclear formulation of state finances. But the losses suffered because one transaction can still be accused of corruption. BUMN is a Limited Liability Company, thus subject to Law No. 40 of 2007 concerning Limited Liability Companies (PT Law). The supervision mechanism and implementation of company management are subject to the PT Law and its Articles of Association. Violations of the PT Law and its Articles of Association result in perpetrators who have limited responsibility being personal responsibility (atmadja, 2007, p. 26).

The violation is not a criminal offense, except if it is proven that the perpetrator accepts bribes or commits embezzlement into the realm of criminal law because BUMN Persero is a legal entity that has wealth (*vermogen*) separate from the owner's wealth. The rights and obligations of legal entities are completely separate from the rights and obligations of their owners and managers. Besides, legal entities *(rechts persoon*) are legal subjects, namely those who have rights and obligations such as humans *(natuurlijk persoon).* Like humans, legal entities can sue and be sued and have their assets (Khairandy, 2007, p. 32).

Based on Persero's philosophy, the BUMN Directors in the form of a company should not be subject to corruption. Besides, it is confirmed legally in Article 2 letter g of Law No. 17 of 2003 concerning state finance, that state finances, among others, state wealth/regional wealth managed by themselves or by other parties in the form of money, securities, accounts receivable, goods, and other rights that can be valued with money, including assets separated on state/regional companies. Furthermore, Article 4 paragraph (l) of the BUMN Law states that "BUMN is and originates from separated state assets" In the explanation of Article 4 paragraph (1) it is said that:

> What is meant by segregation is the separation of state assets from the State Revenue and Expenditure Budget to be used as state capital participation in SOEs, and guidance and management are no longer based on the State Budget and Expenditure system, but guidance and management are based on content corporate principles.

The aforementioned articles, which constitute a special law on SOEs, are clearly stated that BUMN capital comes from state assets that have been separated from the State Budget, and the guidance and management are not based on the APBN system but are based on content corporate principles

(Ismail, 2007, p. 40).

Provisions that also underlie that BUMN Persero as a legal entity that cannot be subject to corruption is Article 1 point 6 of Act No. 1 of 2004 concerning State Treasury:

> State Receivables are the amount of money that must be paid to the Central Government and/or the rights of the Central Government which can be valued with money as a result of the agreement or other consequences based on applicable laws or other legal consequences.

Furthermore, based on the provisions of Article 8 of Law No. 49 Prp. In 1960 the State Debt Affairs Committee stated that "State receivables or debt to the State is the amount of money that must be paid to the State or Bodies which are either directly or indirectly controlled by the State based on a regulation, agreement or any cause". In his explanation, it is said that the State receivables also include accounts receivable "bodies which are generally part or all of their assets and capital, for example, State Banks, State Universities, State Companies, Supplies and Supplies Foundations, Foodstuffs Foundation and so".

The BUMN Directors are prosecuted for corruption, because law enforcement officers based on Law Number 31 of 1999 concerning Eradication of Corruption Crime as amended by Act No. 20 of 2001, among others, state that state finances are all state assets in any form, which is separated or not separated, including all parts of the state's wealth and all rights and obligations that arise due to being in the control, management and accountability of officials of state institutions, both at the central and regional levels; and is in the control, management and responsibility 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. Furthermore, Law Number 15 of 2006 concerning the Supreme Audit Agency regulates, among other things, that the BPK is tasked with examining the management and responsibility of state finances carried out by the Central Government, Regional Governments, other State Institutions, state-owned enterprises, Public Service Bodies, Business Entities Regional Ownership, and other institutions or agencies that manage state finances. Accordingly, what is meant by state finance includes all elements of state finance as referred to in the law governing state finances (Article 8 of Law No. 49 Prp of 1960 about the State Receivables Affairs Committee).

Legal uncertainty towards legal proceedings is also caused by different

interpretations of state finances. On the one hand, state finance is interpreted separately, on the other hand, some equate it with the state budget. (Tjandra, 2006, pp. 1-3) According to Otto Ekstein, arguing that the budget is a complete breakdown of expenditures and revenues estimated by the government. (Eckstein, 1981, p. 45) Furthermore, Van der Kemp argues that state finance is all rights that can be valued with money, as well as everything (whether in the form of money or goods) that can be used as state property about these rights. On the other hand, Arifin P. Soeria Atmadja examines etymological budgetary words, which are derived from the words "fencing" or "roughly" or "calculation", so that the state budget means an estimate or calculation of the amount of expenditure or expenditure to be spent by the state (Atmadja, 1986, p. 9).

Arifin P. Soeria Atmadja stated that according to C. Goedhart in the Netherlands the budget is called *begrooting* which is derived from the Old Dutch *grotent* which means imitation. This term was later taken over by the Dutch Constitution in 1814. Unlike in England, the budget is called a budget that comes from French *bouge* or *bougette* which means "bag" on the waist made of leather. Then the word budget in England developed means to be a place for letters made of leather, especially those leather bags that are used by the Minister of Finance to store budget documents.

At the time of the Dutch East Indies, the government used budgetary words formally; these words were used both in the Reglement Regering era (RR), as well as in the Indische Staatsregeling (IS) era. During the Japanese occupation period based on the Gunseikan regulation of 2603, the term "budget" was used. Then since the Proclamation on August 17, 1945, the term "Revenue and Expenditure Budget" was used in Article 23 paragraph:

(1) In the 1945 Constitution, which in the subsequent development also officially added the word "State", so that the term "Income Budget and State Expenditures "abbreviated as APBN. (Atmadja, 1986, p. 10)

(2) Regarding the provisions of Article 23 of the 1945 Constitution before amending, Harun

Al-Rasjid interpreted state finances in a narrow sense, namely only related to the State Budget. Harun Al-Rasjid also interpreted the provisions of paragraph (5) based on the grammar, history, and purpose of the intended legal procedure. For the latter interpretation, namely the interpretation according to the law (*teleologishce interpretatie*), Harun Al-Rasjid came to the conclusion that the task of the BPK in examining the government's responsibility regarding

state finances was related to the State Budget that had been approved by the DPR, to whom the inspection must be informed. So that it is known whether the government has implemented the budget properly. (Atmadja, 2005, p. 96)

To interpret the definition of state finance as outlined in paragraph (5) of Article 23 of the 1945 Constitution, does the APBN mean merely or does it mean another "plus" state budget?

In this connection, legal expert A. Hamid S. Attamimi explained the two interpretive constructs as follows: (Atmadja, 2005, pp. 10-11) Paragraph (1) stipulates that the APBN must be stipulated by law. Paragraph (5) stipulates that the BPK is held to examine the government's responsibility regarding state finances. Explanation Paragraph (5) states that to examine the government's responsibility on how to use the expenditure money that has been approved by the DPR, a BPK is needed. So even though in Paragraph (5) it is not called the APBN, it is only state finances, but the explanation of the paragraph shows the APBN. Thus, what is meant by state finance is the state budget. Paragraph (1) determines the APBN must be stipulated by law. Paragraph (4) stipulates that state finances must be regulated by law. The definition of APBN and state finances needs to be further investigated whether or not the two things are different because if it is the same thing, it certainly does not need to be regulated in Paragraph (1) and Paragraph (4) separately, just in one verse. In addition to Paragraph (1), the Act is formal, while in Paragraph (4) the material Law is in addition to formal. Does this mean that the BPK only checks the state finances as stated in Paragraph (5) and does not examine the state budget because the state finances and the state budget are like two different things. Here is the explanation function Paragraph (5). The explanation of this paragraph mentions the concrete areas of government responsibility in state finance (how to use state expenditure that has been approved by the DPR to be commensurate with the APBN Act). Because Paragraph (5) which mentions the state finances by its explanation is called a concrete field of use of the State Budget, in the sense of state finance as contained in Paragraph (4) and thus also in Paragraph (5) further conclusions can be drawn that is meant by state finance is including the State Budget. In other words, the definition of state finance includes other "plus" APBNs.

On the other hand, according to Arifin P. Soeria Atmadja, the definition of state finance can be understood in three interpretations, namely, first, the definition of state finance is narrowly interpreted, which only covers finance originating from the state budget. Secondly, state finance in the broadest

sense, which includes state finances originating from the state budget, regional budgets, state-owned enterprises, enterprises, and in essence all state assets, as a state financial system. Third, if the purpose of interpreting state finances is to know the management system and its accountability, then the definition of state finances is narrow, then to know the system of supervision and audit of accountability, the definition of state finance is in the broadest sense, which includes finance within APBN, APBD, BUMN/D and essentially all state wealth is the object of inspection and supervision (Atmadja, Keuangan Publik Dalam Perspektif Hukum: Teori, Praktik, dan Kritik, 2010, p. 4).

Article 23 Paragraph (1) of the 1945 Constitution considers the APBN as a form of management of state finances, something that is not properly formulated in a constitution. With this perspective, the APBN must be the basis of budget sovereignty, so that the conceptualization of budget policy is a conceptualization of the sovereignty of all sectors to achieve the goal of the state. In its practical level, the National Budget as a form of popular sovereignty shows an efficient posture in organizing the general government, but on the other hand, it has fast responsiveness in public services. Thus, the National Budget is based on people's sovereignty in its policies but is prosperous in its results. (Atmadja, Keuangan Publik Dalam Perspektif Hukum: Teori, Praktik, dan Kritik, 2010, pp. 109-110)

In Article 1 ICW (*Indiesche Compabiliteits Wet*) is not given a legal limit on the definition of state finance. However, it only explained, "The finances of the State of Indonesia Republic are managed and accounted for according to the regulations stipulated in this law. This means that what is meant by state finance in ICW is the state budget. In 1933 Number 320 concerning the *Instructie Algemene Rekenkamer* (Supreme Audit Agency) stated that it received funds and foundations whose finances must be accountable to the BPK. This means that there is an expansion of financial audits conducted by the BPK, which according to Article 23 Paragraph (5) of the 1945 Constitution states, "to examine the responsibility for state finances a Supreme Audit Agency is held, whose rules are stipulated by law. The results of the examination were notified to the House of Representatives." (Atmadja, Keuangan Publik Dalam Perspektif Hukum: Teori, Praktik, dan Kritik, 2010, p. 112)

Conclusion

Based on the description above shows that the development of BUMN as a corporation that carries out social and business missions faces

constitutional juridical problems and faces the challenges of globalization. Factually, at this time legal development cannot be separated from the influence of globalization. Globalization in the economic field has affected various fields of the business sector in the world. Globalization is followed by the globalization of law, which causes substantially various laws and agreements to spread across national borders, which causes the merging of legal principles (especially in the economic sector) from one country to another. For Indonesia, the logical consequence of this development is the demand to harmonize the principles of economic law in Indonesia, with the principles of economic law in the international world. Without harmonization, Indonesia can be ostracized in international business activities, because there is no certainty for legal protection for business and investment activities that are commonly carried out globally. (Nasution, 2008, p. 1)

On the other hand, which is in line with globalization, the development of the Indonesian legal system must be based on one of them as the state philosophy *(philosofische gronslag*). The Pancasila (Five Principle) ideology is used as the basis for regulating state governance and the basis for regulating the administration of the state. There are five principles as *philosofische grondslag* for Indonesia, namely Indonesian nationality, internationalism or humanitarianism, consensus or democracy, cultured social welfare, and divinity. (Thaib, Hamidi, & Huda, 1999)

Pancasila, as philosophical ideal values need a translation in the form of legislative rules. If seen at the opening of the 1945 Constitution, it can be concluded that UUD which is the constitution of Indonesia, internalized the principles of Pancasila philosophical values. In economic activities, Jimly (Asshiddiqie, 2010, p. ix) said that the 1945 Constitution as the highest source of law or constitution, not only contained provisions in the political field but also regulated in the economic field according to Jimly, when the fourth amendment to the UUD in 2012, the title Chapter XIV became "Economic National and Social Welfare, with more detailed content than previously contained in Articles 33 and 34.

In connection with these SOEs (BUMN), the Constitutional Court in case number 48 / PUU-XI / 2013 and case number 62 / PUU-X1 / 2013 dated May 22, 2013, which was read out on September 18, 2014, has ruled that SOEs management uses the Business Judgment Rule principle. The ruling also stated that BUMN (SOEs) finance is state finance. As a result, this decision brought legal certainty about the financial position of SOEs.

The Principle of Business Judgment Rule is an important element in

Law No. 40 of 2007 concerning Limited Liability Companies so that it has standards regarding accountability to be able to see which business decisions are taken following procedures for the benefit of the company or business decisions are taken for the personal benefit of the director.

The Business Judgment Rule Terminology in its library theory is a corporate law doctrine originating from America that adheres to the common law system. The Business Judgment Rule is one of several doctrines in company law that must be carried out by directors to fulfill the fiduciary duty. According to Angela Scheeman, the Business Judgment Rule is a doctrine that teaches that the directors of the company can be released from liability for losses arising from an act of business decision-making, where the decision-making action has been through a process, prudence and in good faith.

In this context, Business Judgment Rule is a business consideration of directors who cannot be challenged or contested or rejected by courts or shareholders. The members of the board of directors cannot be held responsible for the consequences that arise, because a business consideration has been taken by the members, the board of directors concerned even if the business consideration is wrong, except in certain cases. The application of the Business Judgment Rule principle is a development in corporate law. In the development of a country today, with such rapid economic and technological development, it makes economic activity sometimes difficult to balance with legal development. These difficulties require state intervention to regulate and provide protection to all parties, both consumers and producers (business actors), which often triggers conflicts, both between consumers and actors and between fellow economic actors. Here, the law can present a system that makes economic actors perform their roles properly.

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