

Implications of the Establishment of State-Owned Enterprises to Improve the National Economy Based on Law No. 19 of 2003 Concerning State-Owned Enterprises

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Abstract. Apart from taxes, Indonesia needs another source of income to run the country's economy, namely by establishing a State-Owned Enterprise (BUMN). The purpose of this study is to find out the aims and objectives of establishing a State-Owned Enterprise in helping to improve the country's economy as well as the constraints and solutions to achieve the goal of establishing a State-Owned Enterprise. This study uses a normative juridical approach with secondary data types which are analyzed qualitatively. The results of the study show that one of the obstacles for BUMN to achieve its main goal is when there is a loss of income and the assets owned by BUMN cannot be confiscated. For the loss of revenue, the government gave injections to BUMN which did not benefit the state but harmed the country's economy. In addition, the method of selecting directors and commissioners has not prioritized professionalism because the government is still using the politics of revenge. This study suggests that the first is to separate BUMN assets from state assets, so that when a BUMN loses or goes bankrupt, its assets can be confiscated. Second, the government needs to select professional directors and boards of commissioners so that parties within BUMN have the knowledge and expertise to increase the economic activities of BUMN.

Keywords: State-Owned Enterprises (SOEs), National Economy, State Revenue.

1 Introduction

Indonesia is a legal country with basic state law, the 1945 Constitution of the Republic of Indonesia. Based on the fourth paragraph of the opening of the 1945 Constitution of the Republic of Indonesia, in the formation of the State, Indonesia aims to advance the general welfare and realize social justice for all Indonesian people. In this case, the state has an important role in protecting and prioritizing every citizen's basic economic and social needs to guarantee a minimum standard of living. Therefore, the Government of the State of Indonesia can do everything to achieve the general public's well-being [1, 2].

National Economy and Social Welfare is listed in Chapter XIV of the 1945 Constitution. The arrangement chapter related to the National Economy has a goal to achieve good financial growth and playback to achieve Social Welfare, namely fulfilling the basic needs of the Indonesian people in supporting their lives.

One of the articles in Chapter XIV of the Constitution, namely Article 33 which has the charge to put forward the national economy in the interests of the people. In P of origin 33,

paragraph (2) of the Constitution reads, "Production branches which are important for the state and which affect the livelihood of many people are controlled by the state," so this verse implies that the presence of the state is indispensable for matters that are felt to have a relationship with the livelihoods of many people. The article also emphasizes that the production branches which are important for the state must be controlled by the state with the aim that these things are not misused by parties with bad faith, especially if the production branches in fact, have such a big impact on the lives of many people. State reasons as the authorities in the hope that the state will run these production branches according to the people's expectations and prioritize the people's needs as a reference in their implementation [3].

When other parties control the production branches needed by the people, in this case not the state or the government, they may be implemented without considering the economic conditions of the people. The presence of the state to take care of these production branches is the right step with, of course, so much consideration rather than being controlled by other parties.

Referring to Article 33 paragraph (3) of the Constitution, the state must control the earth and water and the natural resources contained therein with the aim that these things can be enjoyed by the Indonesian people to be used for the greatest prosperity of the Indonesian people. Then on mastery of earth, water, and natural wealth that, confirmed in Article 33 paragraph (5) of the Constitution, government has space to make derivative legal rules so that state control can be accommodated. Formed and ratified Law No. 19 of 2003 concerning State-Owned Enterprises became the main basis for the formation of State-Owned Enterprises, referred to as SOEs.

The birth of the above legal basis for the formation of SOEs is very felt for the people to fulfill the contents of Article 33 of the Constitution, especially for the national economy. The existence of SOEs will certainly facilitate the President's steps as an executive agency to move the economy forward and provide benefits for the country so that all Indonesian people can enjoy it [4]. Furthermore, the hope is that the existence of SOEs in Indonesia will bring positive things to realize social welfare among the people [5].

SOEs as a business entity whose capital is wholly or most of the capital is owned by the state through direct participation from separated state assets. Therefore, it should as one of the state assets be able to provide benefits to the state in the hope that these profits can be allocated to help the prosperity of all people.

The establishment of SOEs as a company will continue to prioritize the main goal, namely to obtain as much profit or profit as possible. However, departing from the company's goal will give the people hope that SOEs must contribute profits to the state for its benefit [6, 7].

SOEs as a business entity that is expected, SOEs could add state revenue in its running sometimes meet obstacles so that the goal of obtaining profits cannot be achieved. However, if refers to Law No. 19 of 2003 concerning SOEs, in providing SOEs profits must also pay attention to other main objectives to harmonize with the goals of SOE companies. Given the many views of the Indonesian people who see SOEs only for destinations that add state revenue, but do not understand the history and purpose of establishing SOEs as stated in Law No. 19 of 2003 concerning SOEs.

Presumption *iures de iure* is a legal principle that means that everyone is considered to understand the law. Law No. 19 of 2003 concerning SOEs is one of the legal products. If it is associated with the above principles, all Indonesian citizens should already understand that Based on the law, the formation of SOEs consists of many goals.

It has a reality many people do not understand the purpose of establishing SOEs in Law No. 19 of 2003 concerning SOEs so that cause understanding that considers that SOEs fail to achieve their targets that are chase profit. The goal to be meaning the establishment of State-owned Enterprises is to help improve the country's economic development, and still there is other SOE goals.

Based on the background the back that has been described above, there are a number of formula problems that will be discussed in this study, namely:

1. What are the aims and objectives of establishing a State-Owned Enterprise in helping to improve the country's economy?
2. What are the obstacles and solutions to achieving the goal of establishing a State-Owned Enterprise?

2 Research Methods

This study uses a method approach juridical normative to study and analyze legal principles that are carried out against legal norms, which are the benchmark for behaving or doing appropriate actions [8].

Specification research used in this study is descriptive analysis. Analytical descriptive is an analysis of data that does not use numbers but provides an overview, description, explanation, and analysis of the findings in the study [9].

This type of research uses a normative juridical method. Normative research is library research, namely research on secondary data. Secondary data in this study can be divided into primary, secondary, and tertiary legal materials. This study was sourced from secondary data. Secondary material is law that explains the primary legal material [10]. Secondary legal materials in this writing are books, legal journals, papers, and other research results relevant to this research's object.

Data collection methods in this study are using library procedures. Literature study is with concepts, theories, and opinions or findings closely related to the subject matter. The literature is in the form of statutory regulations and scientific works of law scholars.

The method used to analyze and process the collected data is analysis qualitative, namely by compiling the data that has been obtained systematically for further qualitative analysis to achieve clarity on the problems to be discussed [8]. The analysis is carried out qualitatively, applies to the cases studied, and the analysis results are reported in the form of a thesis.

3 Results and Discussion

3.1 The Purpose and Objectives of Establishing a State-Owned Enterprise in Helping Improving the State's Economy

In Article 33 of the 1945 Constitution, the government was given the mandate to create the economy as a joint effort by implementing the principles of togetherness and economic democracy. In realizing this, the government formed a new institution, namely State-Owned Enterprises (SOEs). The presence of SOEs is a solution so that it does not conflict with the government's duties where the government cannot be commercial in all matters relating to the

welfare of its people [1, 11]. So that the formation of SOEs can prioritize the state in attracting profits in administering the government.

Law No. 19 of 2003 concerning State-Owned Enterprises is the legal basis to cover the purpose of establishing SOEs. Based on the SOE Law, article 2 explains 5 (five) kinds of goals for the establishment of SOEs as follows:

1. Contributing to the development of the national economy in general and state revenues in particular;
2. Pursuit of profit;
3. Organizing public benefits in the form of providing high-quality and adequate goods and/or services to fulfill the needs of many people;
4. Being a pioneer in business activities that the private sector and cooperatives cannot carry out;
5. Actively providing guidance and assistance to entrepreneurs from economically weak groups, cooperatives, and the community.

Related to the aims and objectives of the establishment of SOEs as stated in the SOE Law, as well as the impacts on improving the country's economy will be discussed in 6 (six) sections, namely:

Nationalization of Colonial-owned Companies into State-Owned Enterprises

As long as Indonesia was under its colonies, the colonizers formed companies in their colonies to fulfill their needs. The Netherlands has been the country that has colonized Indonesia for the longest time, bringing various companies in the Netherlands to have representatives or branches in Indonesia [12].

The Dutch established local Dutch companies in Indonesia in various business fields. For example, in the electricity and gas sector, the Dutch established the company Algemeene Nederlandsche Indische Eletriciet Maatschappij (ANIEM), which controlled 50 percent of electricity in Indonesia before nationalization. The Indonesian government is certainly aware that electricity is the main need of its citizens, so it needs to be under the control of the Indonesian government. This is just one example of a Dutch-owned company still in Indonesia and has had a large impact on economic growth.

Another Dutch-owned company is also engaged in mining and industry, namely Nederlandsche Indische Ardolie Maatschappij (NIAM). The company was engaged in Indonesian mining oil used and sold by the Dutch to make a profit for them. Although in the end, the company was nationalized under the Indonesian Armed Forces in the Army and then handed over to the state to form a new Indonesian-owned company [4].

The Indonesian government realizes that it is very important to take control of Dutch-owned companies so that they can be managed by the nation's best sons and daughters to be used to fulfill Indonesia's interests. The Indonesian government issued Law No. 86 of 1958 concerning the Nationalization of Dutch-owned Companies. President Soekarno had high hopes that the takeover by Indonesia could provide distinct advantages for Indonesia, especially in improving the national economy [13].

Contribution to National Economic Development in General and State Revenue in particular

The operation of the government is certain to require money, such as things arranged in Law No. 17 of 2003 concerning State Finance as an expenditure. Before using state-owned money, the central government submits a draft state budget. The expenditure is included in the expenditure category. Central government spending is divided into routine spending and development spending. Routine expenditures consist of:

1. Employee spending includes salaries of civil servants and retired civil servants as well as allowances;
2. Spending on goods used for government activities;
3. Payment of debt interest to pay interest and installments of the principal loan;
4. Subsidies for the community including fuel oil, food, electricity, and others.

The government also has spent on the development sector. The development is divided into two, namely physical development and non-physical development. Physical development is centered on facilities and infrastructure such as the construction of roads, bridges, markets, agriculture, and irrigation, in contrast to non-physical development, which is sometimes difficult for the community to understand, such as education, health, economy, and socio-culture [14].

There are many state expenditures, so the government must have income in order to meet all these expenditures. One state income is tax payments. Tax payments by the community have a coercive nature to help the wheels of government, but the amount of tax receipts is still insufficient for the state budget. Therefore, the government is thinking of a way out so that the rights and obligations in the financial management system can be resolved. In dealing with the large state budget, the government expands state revenues which do not only refer to paying taxes. Increasing state revenue sources is a duty for the government to innovate and is a must because the development and dynamics of people's lives are increasing in the state and nation. The government must optimize its functions to produce solutions to increase revenues in meeting state spending needs. One of the steps the government has taken is to make a policy so that state revenue is not only in paying taxes [15, 16].

The government issued a solution by adding sources of state revenue that do not only refer to tax revenues by adding two elements, namely Non-Tax State Revenue and Grant Revenue. Rule related to Latest Non-Tax State Revenue set in Law No. 9 of 2018. The government took this step by using its function of making policies in accordance with Article 5 paragraph (2) of the 1945 Constitution.

The existence of the Non-tax revenue (hereinafter PNBP/ *Penerimaan Negara Bukan Pajak*) Law is the first step taken by the government in creating a new idea for state revenue outside of relying on tax revenues and grants. The PNBP Law provides a forum for optimizing state revenue sources and establishing administrative order and procedures for depositing into the state treasury. The presence of the PNBP Law forms a way of thinking with a direction so that this country learns to be more independent in meeting the needs of the nation and state.

The regulation on general requirements regarding objects such as Non-Tax State Revenue has been regulated in the Law to provide limitations regarding objects that can contribute to state revenue. In addition, the classification of these objects has been regulated in Part One, Chapter II of the Law, which reads:

Article 3

- a. *All activities, matters, and/or objects are a source of state revenue apart from taxation and grants declared as object PNBP.*
- b. *The PNBP object, as referred to in paragraph (1) has the following criteria:*

- c. *implementation of government duties and functions;*
- d. *use of funds sourced from the state budget of revenues and expenditures;*
- e. *management of state assets, and/or stipulation of laws and regulations.*

Article 4

- 1) *PNBP objects, as referred to in article 3, include:*
 - a. *Utilization of Natural Resources;*
 - b. *Service;*
 - c. *Separate Management of State Assets;*
 - d. *Management of State Property;*
 - e. *Fund Management; and*
 - f. *Other State Rights.*
- 2) *The PNBP object, as referred to in paragraph (1), is detailed according to the type of PNBP*
- 3) *The type of PNBP, as referred to in paragraph (2), is regulated by law, government regulation, and/or Ministerial Regulation.*

In implementing the PNBP Law, subjects must use and manage the objects that have been regulated to contribute to state revenues. Therefore, the PNBP Law regulates these subjects in Article 5, which reads:

Article 5

- 1) *PNBP subjects include:*
 - a. *private person;*
 - b. *And the body, from within the country or overseas who use, obtain benefits, and or have links to PNBP objects as referred to in Article 4.*
- 2) *The PNBP subject, as referred to in paragraph (1), is obligated to pay in terms of having an obligation to pay PNBP following the provisions of the legislation.*

Referring to the PNBP Law, in this case, the presence of SOEs fulfills the element of being a subject who has to provide obligations in the form of state revenues. SOEs, as one of the subjects of PNBP, must pay attention to the objects that have been determined and the criteria as a space limitation for PNBP subjects. The formation of SOEs using the state budget in the form of capital participation makes SOEs mandatory to pay PNBP that has followed the criteria in terms of subject and object.

It is hoped that the presence of SOEs can work by consistently implementing the principles of Good Corporate Governance throughout its operation. That way SOEs can reap the maximum profit possible so that these profits can be allocated for the interests of the nation and state in the form of PNBP. Although not all of these profits are given to the state but will first be set aside for reserve funds and SOE operations, the remaining profits are only handed over to the state.

Table 1. Data Table of SOEs that Provide the best and worst PNBP.

SOEs that provide PNBP with the highest dividends	SOEs that have not provided maximum dividends to the state
PT. Pertamina	PT. Garuda Indonesia
PT. Telekomunikasi Indonesian	PT. Asabri
PT. Bank Rakyat Indonesia	PT. Life Insurance

Giving Profit

1945 Constitution of the Republic of Indonesia guarantees freedom to its citizens, which is human rights. The granting of freedom to citizens can be reduced to legal subjects in the form of individuals or legal entities. The government uses this freedom by forming a legal entity to conduct business. The government presents SOEs as legal entities in the civil sector so that they can conduct business and seek profits as long as they do not conflict with applicable legal regulations.

The main presence of government in the community is to provide public services. Still, the existence of SOEs is an extension of the government as a business actor (entrepreneur). It appears that there are conflicting goals in its implementation. There are two different concepts between state and business. In terms of the state, the government must prioritize its people's needs without any reciprocal frills in the future [15]. All services provided by the government are usually provided free of charge or there are costs incurred according to applicable regulations. From a businessman's perspective, this clash, where all actions are taken, will refer to profit.

The existence of SOEs in Indonesia is a must so that the state has room to move in seeking profits. The existence of SOEs can certainly be separated from the scope of the government to provide public services so that it does not contradict the operation of SOEs. It is hoped that the presence of SOEs can contribute to the national economy through the profits earned to achieve social welfare for the entire community.

Article 9 of the SOE Law explains that SOEs consist of Persero and Perum. SOEs, in its implementation form of a Persero, must follow the general Persero operating system where profit is the main purpose and objective. Although in the operation of SOEs in the form of a Persero, it is necessary to understand the presence of SOEs as an extension of the government, then in certain cases, it is possible to get an assignment from the government to provide public services to the community. The assignment needs to have calculations in terms of business so that it does not interfere with the main aims and objectives of the existence of the SOEs. This is different from SOEs, which are public companies whose existence is indeed to assist the community in providing goods and services for the public interest, but still, pay attention to the procedures for managing a healthy company [17].

Organizing Public Benefit in the form of Provision of High Quality and Adequate Goods and/or Services for the Fulfillment of People's Lives

Indonesia as a legal state has a foundation law or the basis of the state, namely the constitution . The constitution provides one of the following: mandate to the nation and state as stated in Article 33 paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia which reads:

(2) Production branches that are important to the state and which affect the livelihood of the people are controlled by the state.

(3) The earth and water and the natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people.

The framers of the constitution must have had their own reasons so that the verses above can be part of the Constitution . One of the reasons for giving authority to the state to control

these production branches is so that the government can provide gaps in the national economy. In this case, if the government is the holder of control over these production branches, the government can adjust the community's circumstances to their economy because the government has the main goal of providing public services to the community.

To fulfill the mandate of the Constitution, the government established SOES with guidelines based on Article 2 paragraph (3) of the SOE Law. SOES is a substitute for the government in controlling production branches that are important for the state and control many people's lives. The SOES does not prioritize profits in its sustainability but still pays attention to the healthy financial management of the company. The SOES was established as a Public Company or Perum, which has a different purpose from the Persero, which aims to pursue profit.

In forming this SOE which is Perum, it cannot exist only by taking the meaning of Article 33 paragraph (2) of the Constitution 1945 clearly but must be interpreted fully. The formation of SOEs to fulfill this constitutional mandate does not only Perum but can also be a Persero (PT). The constitutional message can have meaning at three different points, as follows:

1. Branches of production that are important to the state and affect the livelihood of many people;
2. Production branches that are important to the state but do not affect the livelihood of the people; or
3. Branches of production that are not important to the state but control the lives of many people.

The points of understanding Article 33 paragraph (2) of the Constitution helps to understand the requirements in fulfilling the constitutional mandate. The government has an obligation to find solutions so that the government can control the production branches that are important to the community and achieve social welfare. The control of these production branches is to use the rights and functions owned by the government. One of the steps that the government can take is to make regulations or regulations so that the constitutional mandate can be fulfilled for the community's welfare.

In fulfilling the control of production branches that are important for both the state and the people, the existence of the government as a regulator maker has sparked the establishment of SOEs as the solution. The existence of SOEs remains under the supervision of the Ministry of SOEs, which is directly responsible to the President as the head of the central government. so that in its operation, it can still be controlled, and controlled and can be intervened by the development and sustainability of the central government. The purpose of government intervention is to prioritize the people's interests and resolve the country's economic problems.

The meaning of the contents of Article 33 paragraph (2) of the Constitution The 1945 Constitution of the Republic of Indonesia also provides space to protect production branches that are important to the state, even though they may not serve the interests of the people directly. If you look at the countryside, so many companies or sectors' efforts must be controlled by the government to maintain national economic stability and maintain state security. Some examples of businesses that must be under government control are money printing companies or currently controlled by the Republic of Indonesia Money Printing Public Company (Perum Peruri). In terms of state security, the government has also established a business in the field of weapons manufacturing, namely PT Pindad.

If you imagine if one company is under the control of a private party that cannot be intervened by the government in its operations, from the point of view of the state economy, a

money printing company can happen. Issuance of money without coordination with the ministry of finance and state institutions that have a stake then could cause the failure of the wheels of the economy, such as inflation or deflation and chaos sell-buy goods in the community [18]. From the perspective of state security, it would be very dangerous if the control of weapons manufacturing industrial companies was under the control of the private sector, the government would find it difficult to access the circulation of weapons in Indonesia, and the worst thing could happen to sell buy weapons on the side which will abuse function.

Another purpose of the presence of SOEs is to implement the contents of Article 33 paragraph (3) of the Constitution NRI Year 1945. Looking more deeply into the contents of the article, there are important matters, and they are divided into three points, namely; (1) Earth and Water and the Natural Wealth contained therein, (2) controlled by the state, and (3) used for the greatest prosperity of the people. For example, interpreting the word deep water earth chapter covers all dimensions of land, sea, and air as long as it is still under the archipelago's territory; of course, its natural content can be assessed economically.

The state must control these valuable assets so management can anticipate operations by foreign countries taking over the business and enjoying the property. The main purpose of the government's presence in this control is for the prosperity of the nation's life according to the constitution's mandate. As a citizen, of course, it is a common thing to be able to enjoy and feel the wealth owned by his country and avoid thinking that the wealth of the country enjoyed by parties foreign.

From the problems of the state 's economy in carrying out public benefits, the government feels there is a separate interest and urgency to form and establish SOEs. It is hoped that the formation of SOEs can become a forum to help provide goods and/or services of high quality and adequate for the fulfillment of the needs of many people. SOEs can also help manage valuable assets owned by the state so that the people still enjoy them. As government representatives, SOEs are still present as state-owned companies that support the economy for the people. They will continue to uphold the company's basic values with a sound financial management system.

Becoming a Pioneer of Business Activities That the Private Sector and Cooperatives Have Not Been Implemented

As a newly independent country, Indonesia has not been able to provide for all the community's needs from various aspects. These needs are not included in the priority agenda of the central government, but in some other countries, these needs can be provided by the private sector and cooperatives. For example, suppose you analyze from an entrepreneur's perspective. In that case, you see a newly independent Indonesia, so entrepreneurs are not ready and mature to jump into opening the business sector in Indonesia [19].

Looking at it from the point of view of entrepreneurs who were not brave enough because of several main factors, such as large enough capital, lack of confidence in purchasing power at that time, and other things that had not been included in the economic calculation. So instead of these problems, it directs the government to assign SOEs to be the initiators and/or pioneers of economic activities that have not been able to enter the national economic market and can be expected to become one of the needs of a national scale in the future.

Assignment of SOEs to start as the initiator of business activities where entrepreneurs from the private sector and cooperatives have no intention of starting. With the existence of SOEs as business actors, entrepreneurs have the opportunity to be able to analyze traffic in

business trade as long as they are still under the control of SOEs. Suppose in business calculations, it is profitable to enter the national economic market and can be expected to become one of the needs on a national scale. In that case, this reason can change the thinking of entrepreneurs to establish business activities in Indonesia [20].

Actively Provide Guidance and Assistance to Entrepreneurs of Weak Economic Groups, Cooperatives, and Society

Assistance from SOEs is not immediately given for economic growth, but SOEs provide support to the community from another angle. One of the assistances from SOEs is to prevent stunting in children under five by providing fortified rice which is loaded with various kinds of nutritional content and vitamins, one the aid program for stunting prevention is run by the Public Logistics Affairs Agency (Bulog) in Central Kalimantan in collaboration with the Health Service and the local Posyandu. The program's implementation is carried out with the realization of giving 1 kilogram of fortified rice to children under five per child.

The Ministry of SOEs established a forum in the form of the SOE Creative House (RKB/*Rumah Kreatif BUMN*) so that SOEs could participate in strengthening their role of SOEs in the community. One of the RKB programs driven by Telkom Indonesia is the Digital SME Village program throughout Indonesia to provide lessons on the importance of using digital media in selling and adjusting to current conditions. The program forms SMEs to start using digital media to introduce or market their products or services in order to increase their sales results.

3.2 Barriers and Solutions in achieve the Goal of Establishing a State-Owned Enterprise

Required Separation to Treasure Wealth Managed by SOEs from Treasure State-Owned Wealth

The government's efforts to help improve the national economy and realize the SOEcommunity's welfare towards a better direction by forming SOEs to ease the duties and obligations of the government. Various things need to be prepared to establish a SOE, including in terms of material, namely funding, or in business terms, it is called capital. As one of the actors in business activities and the form of a legal entity, authorized capital is needed to form and start these activities. The SOE Law has provided the basic foundation regarding capital for the establishment of SOEs as stated in Article 4, which reads:

Article 4

- 1) *SOE capital is and comes from separated state assets.*
- 2) *State equity participation in the context of establishment or participation in SOEs comes from:*
 - a. *State budget;*
 - b. *reserve capitalization;*
 - c. *other sources.*

Article 4 paragraph (1) of the SOE Law confirms that SOE capital comes from state assets and the existence of emphasis where the capital is separated from the wealth of the state. It means that the capital obtained mainly from the state budget cannot be equated with the

procedures for fostering and managing other state budget systems. The operation of SOEs has different procedures for fostering and managing the system because SOEs refer to the principles of a healthy company. All government activities that refer to the state budget system must be carried out openly and responsibly for the greatest prosperity of the people and to maintain the balance of progress and national economic unity. Therefore, the operating system of the government and SOEs is different, where the government prioritizes public service while SOEs has the nature of pursuing as much profit as possible, giving reasons for the separation.

The sources of capital participation in paragraph (2) are divided into three sources; namely the State Revenue and Expenditure Budget, capitalization of reserves and other sources. Submissions of capital to be allocated to SOEs from the state budget are generally submitted by the Minister of Finance, Minister of SOEs and/or Technical Ministers related to the SOE's line of business to the parliament (DPR RI/ *Dewan Perwakilan Rakyat Republik Indonesia*) for approval. So that they can be used in the coming year. In addition, changes in capital participation from the state budget can also be used for SOEs already running in the form of State Equity Participation as an injection of funds, so that related SOEs are deemed to need assistance in increasing capital.

Another component that can be invested in is the capitalization of reserves. Capital derived from reserve capitalization is the addition of capital originating from reserves. Apart from the capitalization of reserves, equity participation comes from other sources. One of the sources is asset revaluation, where there is a re-calculation so that the latest asset value can be found in the hope that the asset's value will increase and increase the capital of the SOEs [21].

Capital participation in the operation of SOEs comes from state assets. Capital from the state is an investment allocated to SOEs with the hope that this investment can return the initial capital. In addition, it can develop into a larger company and provide special income for the state. Investing in SOEs is an innovative and visionary thought for a developing country with many needs. Even though in running a company, not everything can run as expected, many companies experience losses or even go bankrupt according to court decisions. Failures that occur in companies, in general, can also happen to SOEs. Therefore, one of the principles that must be implemented is: prioritized by SOEs is professional [18].

Suppose some companies have entered the stage of a financial crisis. In that case, the bankruptcy filing process can be submitted in accordance with Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations in article 2, which contains:

Section 2

- 1) A debtor who has two or more creditors and does not pay off at least one debt that has matured and is collectible is declared bankrupt by a court decision, either at his request or at the request of one or more creditors.*
- 2) The application, as referred to in paragraph (1), may also be submitted by the public prosecutor's office.*
- 3) If the Debtor is a bank, the application for a declaration of bankruptcy may only be submitted by Bank Indonesia.*
- 4) If the Debtor is a Securities Company, Stock Exchange, Clearing Guarantee Institution, Depository, and Settlement Institution, the application for a declaration of bankruptcy can only be submitted by the Capital Market Supervisory Agency.*

- 5) *In the event that the Debtor is an Insurance Company, Reinsurance Company, Pension Fund, or State-Owned Enterprise operating in the field of public interest, the Minister of Finance can only apply for a declaration of bankruptcy.*

Referring to Article 2 paragraphs (1) and (2) of the Bankruptcy Law, If there are business actors who are unable to fulfill their obligations to pay debts, an appeal can be submitted by the prosecutor to the court so that they can give the fairest decision. The bankruptcy filing process provisions differ for several legal subjects, including in this case when it occurs to SOEs. The application is SOEs generally submitted by the prosecutor's office but differs if the subject to be bankrupted a SOEs, per Article 2 paragraph (5) that the party authorized to apply is the Minister of Finance.

The Minister of Finance can only submit the application for bankruptcy filing against SOEs because capital participation for the establishment of SOEs can be given with the approval of the Minister of Finance in the drafting of the State Revenue and Expenditure Budget. These provisions make it very difficult for SOEs to be able to declare bankruptcy because the Minister of Finance will definitely provide great support to SOEs experiencing an economic crisis in the form of injections of State Equity Participation so that the authorized capital of the SOEs is increased so that they can solve their debt problems.

The Minister of Finance has the intention that the assets owned by SOEs do not disappear just because of debts that cannot be settled. It is hoped that with the injection of funds to SOEs, they will be able to rise again and be able to pay their debt obligations and help the government for national economic growth. Loss of SOE assets would be contrary to Article 50 Chapter VIII of Law No. 1 of 2004 concerning the State Treasury, which contains:

Article 50

- a. Any party is prohibited from confiscation of money or securities belonging to the state/region, whether in possession of a government agency or with a third party;*
- b. Money that must be deposited by a third party to the state/region;*
- c. Movable goods belonging to the state/region, both those in government agencies and with third parties;*
- d. Immovable property and other property rights belonging to the state/region;*
- e. Goods belonging to third parties controlled by the state/region are needed for the implementation of government duties.*

When a SOE is declared bankrupt by a court decision, all of the SOE's assets are also confiscated by the court to be used as compensation for debt obligations that cannot be settled. In fact, many scientists argue that SOE assets are not assets under state protection because, according to the emphasis on Article 4 paragraph (1) of the SOE Law, there is a separation between capital for SOEs from state assets. Although in the end, several parties submitted a judicial review to the Constitutional Court regarding the wealth of SOEs in state finances. Constitutional Court Decision no. 48/PUU-XI/2013 and no.62/PUU-XI/2013, in their consideration by the Panel of Judges, explained that assets managed by SOEs are still part of state assets. With Article 50, SOE assets have a legal basis for protection so that they cannot be confiscated.

To SOE bankruptcy, government could provide injections of funds from the state budget will continue to decline on the recommendation of the Minister, of course, because With this injection of funds, bankruptcy will never touch SOEs, which makes SOEs not serious in carrying out their duties and obligations as a result consequence from Article 50 of Law No. 1

of 2004 so that the principle of professionalism in SOEs cannot be achieved. So, it can be interpreted that when a SOE goes into bankruptcy, it is certain that State Equity Participation will be present as assistance to increase the authorized capital of the SOEs.

The government has used legal channels through the Constitutional Court by submitting a request for a judicial review of the Finance Law and the SOE Law to separate SOE assets from state assets. In the end, the Constitutional Court rejected all incoming applications. In this case, the government has done its best even though in the end, the results have not given satisfactory results.

The only solution to this problem is the separation of SOE's assets from state assets, making it easier for SOEs to develop their assets so that the risks that arise will not have a financial impact on the state [18]. It is hoped that the Government can submit an application to the Constitutional Court with the final result that the panel of judges can grant the request.

The Impact of Political Competition Influencing the Selection of the Board of Commissioners/Supervisors and Directors of SOEs and their Competencies

As one of the actors in economic activities whose aim is to support the wheels of the national economy, SOEs must be managed professionally and led by people with a good track record. Therefore, the SOE Law has regulated positions to support the operation of SOEs along with their main duties and functions as stated in articles 5 and 6, as follows:

Article 5

- 1) *The Board of Directors carries out the management of SOEs.*
- 2) *The Board of Directors is fully responsible for the management of the SOEs for the interests and objectives of the SOEs and represents the SOEs, both inside and outside the court.*
- 3) *In carrying out their duties, members of the Board of Directors must comply with the articles of association of SOEs and laws and regulations and must implement the principles of professionalism, efficiency, transparency, independence, accountability, responsibility, and fairness.*

Article 6

- 1) *The Commissioner and the Supervisory Board carry out the supervision of SOEs.*
- 2) *The Commissioners and the Supervisory Board are fully responsible for the supervision of SOEs for the interests and objectives of SOEs.*
- 3) *In carrying out their duties, the Commissioners and the Supervisory Board must comply with the Articles of Association of SOEs and the provisions of the regulations, laws, and regulations and must implement the principles of professionalism, efficiency, transparency, independence, accountability, responsibility, and fairness.*

Article 5 outlines the responsibilities that will be entrusted to the board of directors and the procedures for their implementation. The Minister of SOEs regulates more rigid provisions in the Regulation of the Minister of SOEs No. Per-11/MBU/07/2021 concerning Requirements, Procedures for Appointment, and Dismissal of Members of the Board of Directors of State-Owned Enterprises. The SOE Minister Regulation explains the procedure for searching for candidates for SOE directors with an initial stage, namely the selection carried out by SOE ministry officials to the fit and proper test stage by the Succession Committee.

The results of the selection made by the Succession Committee will be given to the deputy for administration. Candidates for directors who have passed the fit and proper test are submitted to the Minister of SOEs for approval to be appointed directors according to existing procedures. The appointment of candidates for directors at Perum has a different procedure from SOEs in the form of a Persero. The Minister of SOEs, as a delegation from the President issued a Decree regarding the appointment of SOE directors in the form of Perum based on the results of the fit and proper test that had been carried out. This is different for Persero where the Minister of SOEs can only appoint new SOE directors at the General Meeting of Shareholders (GMS) because the owner of the Persero is not only owned by the state but is also owned by other parties. The government is the overall owner of SOEs in the form of Perum because all of its capital comes from state assets.

In the running of SOEs, checks and balances must be created on the performance of the board of directors. To create this, the board of commissioners/supervisors was appointed to supervise the performance of the board of directors so that the interests and goals of SOEs can be realized. As a supervisor of a state-owned company, the board of commissioners/supervisors must have sufficient competence to carry out their supervision with good [4].

Before the appointment of SOE commissioners/supervisors, a selection of SOE ministry officials was held according to the needs of SOEs. The selection of commissioners/supervisors is based on the Minister of SOE Regulation No. Per-10/MBU/10/2020 concerning Amendments to the Regulation of the Minister of SOEs No. Per-02/MBU/02/2015 concerning Requirements and Procedures for Appointment and Dismissal of Members of the Board of Commissioners and the Board of Directors. Supervisor of State-Owned Enterprises. This SOE Minister Regulation contains procedures for selecting commissioners/supervisors.

After conducting the screening of candidates for commissioner/supervisor candidates, the Minister of State-Owned Enterprises and the ranks will be submitted to the deputy concerned for administration. Candidates must meet all the requirements this Minister of SOE Regulation sets and participate in a series of selections, both written exams and interviews. The results of the selection of these candidates will be given a score with a qualitative assessment between "recommended" and "not recommended." For candidates who are suggested, the files will be given to the Minister of SOEs for further consideration.

Suppose the Minister of SOEs has chosen the board of commissioners or the supervisory board. In that case, the final stage will be carried out, namely the appointment, which has more or less the same procedure as the procedure for appointing the board of directors. However, for SOEs whose shares are wholly owned by the state, the Minister of SOEs only needs to issue a decree of the Minister of SOEs containing the selected candidates and dismiss the previous official. This is different if the state does not own the ownership of shares, but a general meeting of shareholders must be held first. At the meeting, the new board of commissioners will be announced as well as the dismissal of the previous board of commissioners [5].

The Minister of SOE's regulations governing the appointment of the board of directors, board of commissioners, and supervisory board are ideal rules and very rational selections. Even though on the ground, many things deviate from the appointment and are in the public spotlight. One of them is delivered in one of the news by an economist, Faisal Basri; according to him, the appointment of the board of commissioners of SOEs seems to be a position of gratitude for volunteers or supporters of the authorities during the campaign period [22].

The statement from Faisal Basri can be proven by the news related to 19 Volunteers becoming commissioners published by Kompas [23]. The news explained in detail the volunteers who became commissioners where they were all supporters who played an active role during the campaign.

The Minister of SOEs elected by the president by Political parties will, of course, issue political policies and things that benefit several parties. The Minister of State-Owned Enterprises is an extension of the President in making decisions for the appointment of the board of directors, board of commissioners, and supervisory board.

The appointment of the board of commissioners and the supervisory board, if mixed with political conditions, cannot provide maximum results in the management of SOEs. It is hoped that government could put forward the principle of professionalism with putting forward skill candidate office SOEs that will be selected and selected.

4 Conclusion

Based on the problems that have been discussed in the chapter before, can draw a conclusion as following: 1). The establishment of SOEs has the main objective to contribute to improving the country's economy. Profits from SOEs are allocated to assist the operations and needs of the state and its citizens as well as to increase state revenues. SOEs exists as a forum that provides public benefits, especially for services and/or goods needed by many citizens. The presence of SOEs can be a bridge to start business branches that do not yet exist in Indonesia so that the country's economy can still run according to the economies of other countries. The hope of the establishment of SOEs is to guide and assist small entrepreneurs, cooperatives, and weak citizens so that they can improve their economy. 2). SOEs as companies certainly have obstacles. To avoid obstacles, there must be a separation of SOE assets from state assets so that when SOEs experience losses or lead to bankruptcy, SOE assets can be recovered. Confiscated. Based on the State Treasury Law, state assets cannot be confiscated. This has resulted in the government having to provide an injection of funds in the form of state equity participation or PMN (*Penyertaan Modal Negara*) so that SOEs can continue to operate even though they are currently operating in state bankrupt. SOEs have a board of directors, a board of commissioners, and a supervisory board that should be competent according to the company's field under them. However, sometimes the election of the board of directors and the board of commissioners and supervisory board still interferes with state politics, such as the politics of reciprocation.

4.1 Suggestion

1. Separation of SOEs assets from state assets is carried out so that when SOEs experience losses or lead to bankruptcy, SOE assets can be confiscated.
2. Selection of the board of directors, board of commissioners and supervisory board must carry out by the government professionally so that the existing parties in SOEs are the party who owns knowledge and expertise for increased activity the SOE economy.

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