

Limited Company Financial Assets based on State-Owned Enterprises

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Abstract: The purpose of this study was to determine the company's financial position in the form of state-owned legal entities; to find out the essence of a State-Owned Enterprise as an independent legal entity; and to know and explain the responsibilities of the founding parties and company organs for the management of the company's finances as equity participation in a legal entity in the form of a state company. The type of research carried out is included in normative legal research, which is carried out by examining secondary data. Normative research includes library law research, namely research conducted by tracing legal principles and then proceeding with existing rules and being tested with general legal principles.

Keywords: Legal Entity, Limited Company Financial, State-Owned Enterprise

Date of Submission: 14-07-2020

Date of Acceptance: 29-07-2020

I. INTRODUCTION

A State-Owned Enterprise, also known as SOEs, is a legal entity that is different from other legal entities. In accordance with what is stated in Article 33 section (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), regulates that "*important sectors of production for the country and affect the life of the people are under the powers of the state*". Based on this article, it can be concluded that the State as the ruler or owner of the State-Owned Enterprises needs to include capital for the operation of the State-Owned Enterprise itself.

According to Article 1 number 1 of Law of the Republic of Indonesia Number 19 of 2003 on State-Owned Enterprises (hereinafter referred to as Law No. 19 of 2003), explain that: "*State-Owned Enterprises, hereinafter referred to as SOEs, are business entities whose entire or most of their capital is owned by the state through direct participation from separated state assets*". The difference between a State-Owned Enterprise and another legal entity based on the above definition is:

1. all or most of its capital is owned by the State;
2. through direct participation; and
3. derived from separated State assets.

State-Owned Enterprises as a corporation its legal independence status must be absolutely clear, also understood clearly and intact both by stakeholders, government, and legal institutions. If a State-Owned Enterprise is an independent legal entity, then the State-Owned Enterprise has its own wealth and responsibilities. State-owned companies also need to manage their assets as independent legal entities. Conversely, if the finances of a State-Owned Enterprise are still interpreted as State Finances derived from separated state assets, then if there is a transaction that causes losses, it can enter into offense like a person commits a loss in a government institution, for example corruption.

The Company is an independent legal entity that bears its own rights and obligations including the right to assets separate from the personal wealth of the founders and their management. The Company gained recognition for "having the capacity in its own name to acquire and hold property, to enter into contracts, to sue and be sued, and to have an existence with duration independent of the persons comprising its shareholders. Based on this conception, it is clear that every Limited Liability Company must obtain legal recognition of its independent status as a legal entity.

Through such an arrangement, it is clear that all the principles of independence of a Limited Liability Company by law apply to a State-Owned Corporation. As stated, legal opacity occurs when the provisions of Law No. 19 of 2003 are juxtaposed with the provisions of Law of the Republic of Indonesia Number 17 of 2003 on State Finances (hereinafter referred to as Law No. 17 of 2003). Law No. 17 of 2003

categorizes “state enterprise wealth as part of state finance”. This provision seemed to provide legitimacy for the state to intervene in the management of State-Owned Enterprises, which are actually independent legal entities. This is what then has so many implications both in the normative level and in the practical level. One of them is regarding state intervention in the management of State-Owned Enterprises Persero which is continually being carried out to cause various problems and often even gives rise to an indication of monopoly.

II. STATEMENT OF THE PROBLEM

1. What is the company’s financial position in the form of legal entity?
2. What is the essence of a State-Owned Enterprise as an independent legal entity?
3. What is the responsibility of the company’s organs for managing the company’s finances as equity participation in a legal entity in the form of a company?

III. THEORETICAL FRAMEWORK

A. Theoretical Basis

1. Theory of Nature

The term true language comes from the word “Al-Haq”, which means truth. If it is said to be the Science of Nature, it means that knowledge is used to find the truth.

Another name for the theory of nature is the theory of the state (Langeveld), ontologically, the state is often also called metaphysics, is part of the theory of nature. What is essence? Nature is reality, reality is reality, “real” means actual reality, the actual state of things, not mere circumstances or circumstances that are deceptive, not circumstances that change.

The nature theory stated above has become important in strengthening the scholarship of this research as a legal study of the nature of corporate finance in the form of legal entities. This theory can be used as a basic argument for studying various prospective laws, so that the financial nature of a company can be comprehensively studied in determining the position of a State-Owned Enterprise as a legal entity independent entity and explaining the responsibility of the founder and corporate organ of the financial management of a state-owned company as a capital investment of the Business Entity State Owned.

2. Theory of State Financial Law

The state is a social institution that has a ruling territory and government supported by its citizens in the region in order to achieve certain goals. Philosophically, the state was founded with the aim of advancing the welfare of its people, protecting its people, and fulfilling the various interests of its people. This is in line with the views of philosophers about the purpose of the state, including Plato who argues that the purpose of the state is to meet the diversity of needs that cannot be fulfilled individually by humans. In addition, Aristotle was of the view that the purpose of the state was to organize a good life for all its citizens. (Asshiddiqie, 2017).

Understanding of state finances can be found in laws and regulations and opinions of legal experts so that there are variations in the understanding of state finances. Some legal experts equate the definition of state finance with the State Budget (Indrawati, 2014). Other experts differ, Balfas (2012) who constructs the notion of state finance not only the State Revenue and Expenditure Budget but also includes the Regional Revenue and Expenditure Budget, and the budget of state-owned/regional companies.

Larasati (2009) in essence the state finance in the narrow sense is a part of the state finance in the broad sense. In relations with the state, state finance in the narrow sense is the state budget or state budget. The substance of state finance in the narrow sense is different from the substance of finance in the broad sense so that the two should not be juridically equated. Thus, the substance of the state finances in the strict sense is only aimed at the state budget which is determined annually in the form of a law.

On the other hand, Article 1 number 1 of Law of the Republic of Indonesia Number 40 of 2007 on Limited Liability Company (hereinafter referred to as Law No. 40 of 2007), is a legal entity which is a capital alliance, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and meet the requirements set out in this law and the implementing regulations (Nadapdap, 2018). Then, Article 7 section (4) of Law No. 40 of 2007, regulates that “*The Limited Corporation obtained legal entity status on the date of issuance of a Ministerial Decree on the ratification of the legal entity Limited Corporation.*”

In legal theories, Riawan Tjandra (2014) states that various conceptual analyzes relating to state finances and State-Owned Enterprises are linked to the historical approach to the birth of Law No. 17 of 2003. In law enforcement, the legal jurisdiction that must be used is positive law in force. This is to provide legal certainty (rechtszekerheid) in the context of implementation and law enforcement. State money separated and managed by a State-Owned Enterprise is included in the classification of state finances which must be accounted for by its management to the people of its governance in the State-Owned Enterprise. Arrangements

regarding the definition of state finances and including state finances managed by State-Owned Enterprises must be placed in the perspective of constitutional thinking based on welfare state theory.

3. Limited Company Theory

Nadapdap (2018) historically the legal arrangements of the company were first regulated in Article 36 through Article 56 of Staatsblad Number 23 of 1847 on the *Wetboek van Koophandel voor Indonesie*/Commercial Code of Indonesia. Furthermore, since 1995 Indonesia has Law of the Republic of Indonesia Number 1 of 1995 on Limited Liability Company. Finally, since August 16, 2007, Law No. 40 of 2007 came into force.

Every change and substitution of the law always brings changes in accordance with the interests and needs of the era. Law No. 40 of 2007 brings new enthusiasm and new norms. For example, regarding the need for corporate social care not only to shareholders, but also to wider stakeholders, leading to the issuance of regulations related to corporate social responsibility (Suparmoko, 2012).

Syamsi (2015) the term Limited Liability Company is used today, formerly known as *Naamloze Vennootschap*, abbreviated NV. The term has become standard in the community and in various laws and regulations, for example, Law No. 40 of 2007 and Law of the Republic of Indonesia Number 8 of 1995 on Capital Market.

Ikhsan (2016) as a consequence of adopting the definition of a Limited Liability Company is a legal entity (*rechtspersoon*) established under an agreement, then Article 7 section (1) of Law No. 40 of 2007, regulates that: "*Limited Corporation is established by 2 (two) or more people with a notarial deed made in Indonesian*". The person referred to is in the sense of an individual (person) or legal entity (*rechtspersoon*).

Limited Liability Companies are established by a minimum of two people, because Limited Liability Companies are always preceded by an agreement. A person does not always mean an individual person, but can also be a legal entity. So it is possible for two Limited Liability Companies to enter into an agreement to form a new Limited Liability Company. The agreement must be made with a notarial deed and in Indonesian. The agreement or deed of establishment of a Limited Liability Company is contained in the Articles of Association of a Limited Liability Company and other information.

4. Theory of Equity Participation

Authorized capital consists of shares or shares (*aandelen*, share, stock). The capital consisting and divided of these shares is included in the shareholders' status as a member of the company by paying the shares to the Limited Corporation. So, there are a number of shareholders who are allied to raise capital to carry out Company-managed activities. The total authorized capital of the Limited Corporation is based on Article 31 section (1) Law No. 40 of 2007, regulates that: "*The authorized capital of the Limited Corporation consists of all face value of shares*". However, for commercial banks capital must still have a minimum capital, which is regulated in Bank Indonesia Regulation Number 10/15/PBI/2008 on Minimum Capital Adequacy Requirement for Commercial Banks.

The existence of institutions that coordinate investments or equity participation in Indonesia has a very strategic role because with the existence of these institutions will determine the level of investment invested by investors, both foreign and domestic investors. The better the service provided to investors, the more investors will be interested in investing in Indonesia. So far, there have been various complaints from investors that the services provided by the competent institutions are very complicated, bureaucratic, and require large costs. This is due to the existence of two institutions that coordinate investments in Indonesia, namely the Investment Coordinating Board.

Financial implementation cannot be separated from government policies adopted, both in terms of the effectiveness of the management of revenues and revenues that are elaborated through the target of the State Revenue and Expenditure Budget and its realization, as well as viewed from the efficiency and effectiveness of regional expenditure through direct and indirect expenditure. Regional government investment in regional banks is one of regional expenditure in the form of indirect expenditure.

Black (1990) in the theory of assets aims to state that only humans can be made the subject of law and there is a wealth that has no owner but is bound to a specific purpose and then given the name of a legal entity.

Goedhart (2013) provides a theory of collective propriety wherein according to this theory the rights and obligations of a legal entity are the rights and obligations of members together and personal property, property rights and wealth are shared assets. Therefore, a legal entity is only a juridical construction.

5. Theory of Liability

According to Syamsi (2015) accountability must have a basis, that is, a matter that causes legal rights for one person to sue another person as well as things that give birth to the legal obligations of others to give responsibility.

According to Subagio (2011) the theory of responsibility in illegal acts (tort liability) is divided into several theories, namely:

- a. The responsibility resulting from an unlawful act that is done intentionally (intentional tort liability), the defendant must have committed the act in such a way that is detrimental to the plaintiff or know that what the defendant will do will result in losses.
- b. Liability due to unlawful acts committed due to negligence (negligence tort liability), is based on the concept of error (concept of fault) relating to morals and laws that have been intermingled (intermingled).
- c. Absolute responsibility due to acts that violate the law without questioning the mistake (strict liability), is based on his actions both intentionally or unintentionally, meaning that even though it is not his fault he remains responsible for the losses arising from his actions.

B. Good Corporate Governance

The study of corporate financial management cannot be separated from the importance of good corporate governance. The term good corporate governance is nothing but the meaning of the word Good Corporate Governance, and the term has been absorbed into Indonesian.

Good corporate governance is a process and structure that is implemented with the main objective of increasing the value and effectiveness of the company (Demidenko & McNutt, 2010). By applying the principles of good corporate governance, it is expected that globally it will increase the value of shares as a result of the company's high effectiveness and various stakeholder relationships with companies such as creditors, suppliers, business associations, consumers, workers, governments and the wider community.

Meanwhile, according to Tugiman (2006), Corporate Governance is a system of how an organization is managed and controlled. According to him, the Governance system among others regulates the decision making mechanism at the top level of the organization. Corporate Governance regulates the relationship between commissioners, directors, and company management so that checks and balances occur in organizational management.

Tunggal & Tunggal (2002) the application of good corporate governance or good Corporate Governance provides the following benefits:

- a) Improvements in communication
- b) Minimization of potential collisions
- c) Focus on the main strategy
- d) Increases in productivity and efficiency
- e) Continuity of benefits
- f) Promotion of corporate image
- g) Increased customer satisfaction
- h) Acquisition of investor confidence

The application of good corporate governance is an important step in building market confidence and encouraging more stable and long-term international investment flows.

According to Tugiman (2006), Corporate Governance formulates 6 (six) principles underlying Good Corporate Governance, as follows:

- a) Transparency
- b) Accountability
- c) Fairness
- d) Independent
- e) Integrity
- f) Participation

According to Merriam Webster's Collegiate Dictionary, "Principle" is defined as "a comprehensive and fundamental law, doctrine or assumption". From this definition, it can be concluded that principles are very basic and comprehensive matters. Some institutions try to provide basic guidelines which are often considered principles in applying Good Corporate Governance practices. For example, a publication issued by the Organization for Economic Co-operation and Development (OECD) Business Advisory Group in Corporate Governance (April 1998) emphasizes four important elements of Corporate Governance namely transparency, accountability, fairness and responsibility (responsibility).

According to the Organization for Economic Cooperation and Development, corporate governance is a system used to direct and control the company's business activities. Corporate governance regulates the distribution of duties, rights and obligations that have an interest in corporate life, including shareholders, the board of directors, managers and all members of non-shareholder stakeholders. Corporate governance also presents provisions and procedures that must be considered by the board of directors and directors in making decisions related to corporate life.

IV. DISCUSSION

A. The Company's Financial Position in the Form of Legal Entity

Good corporate governance or also referred to as Good Corporate Governance is a process and structure implemented in running a company, with the main objective of increasing the value and effectiveness of the company, by applying the principles of good corporate governance, it is expected that globally it will increase the value of shares as a result from the high effectiveness of the company and the intertwining of various stakeholders with companies such as creditors, suppliers, business associations, consumers, workers, government and the wider community.

The application of Good Corporate Governance or in Indonesian terms as good corporate governance is recognized as helping to "thicken" the company from unfavorable conditions, in many cases good corporate governance has been proven to also improve corporate performance by 30 percent above the rate of return (rate of return) normal.

The application of good corporate governance is an important step in building market confidence and encouraging more stable and long-term international investment flows.

Observing matters relating to the principles of good corporate governance or formal legality, can be explicitly known in Article 3 Decision of Minister of State-Owned Enterprises of the Republic of Indonesia Number KEP-117/M-MBU/2002 on Implementation of Good Corporate Governance Practices on State-Owned Enterprises (SOEs), regulates that the principles of Good Corporate Governance as referred to in this Decision include:

- a. transparency, namely openness in implementing the decision making process and openness in presenting relevant information about the company;
- b. independence, which is a situation where the company is managed in a professional manner without conflicts of interest and influence/pressure from any party that is not in accordance with applicable legislation and sound company principles;
- c. accountability, namely clarity of functions, implementation and accountability of Organs so that company management is carried out effectively;
- d. accountability, namely aligning company management with applicable legislation and sound company principles;.
- e. fairness, namely justice and equality in fulfilling the rights of stakeholders that arise based on agreements and applicable legislation.

B. The Essence of a State-Owned Enterprise as a Legal Entity Independent Entity

One of the roles of the state as an economic agent is realized through the establishment of a State-Owned Enterprise. Format of state involvement in a country's economic activities is based on the country's political economy. State involvement in the economy according to Friedmann (Zakariya *et al.*, 2017) is placed in 3 (three) forms of state enterprises, namely:

1. Department of Government Enterprise, is a state company that is an integral part of a government department whose activities are engaged in public utilities.
2. Statutory Public Corporations, are state companies that are actually almost the same as government departments, only in terms of more autonomous management and their business fields are still public utilities.
3. Commercial Companies, are state companies which are a mixture of private capital and are subject to private law.

Basically, forms of state business are based on Article 1 of Law of the Republic of Indonesia Number 9 of 1969 on Enactment of Government Regulation in Lieu of Law Number 1 of 1969 on the Forms of a State Enterprises Becoming Law (hereinafter referred to as Law No. 9 of 1969), regulates that except with or in accordance with the Law, stipulated otherwise, State Enterprises in the form of a company is distinguished in:

1. Service Corporation to PERJAN;
2. General Corporation shortened to PERUM;
3. Limited Corporation shortened to PERSERO;

Regulation of State Enterprises has now been amended to Law No. 19 of 2003. With the enactment of this law, Staatsblad Number 419 of 1927 on the *Indonesische Bedrijven Wet (IBW)*/Regulation of Corporation Financial

of the Indonesian State; Government Regulation in Lieu of Law of the Republic of Indonesia Number 19 of 1960 on State Enterprises; and Law No. 9 of 1969, is repealed and declared ineffective.

Taking into account the nature of State-Owned Enterprises, which is to foster profits and carry out public benefits, SOEs were simplified into two forms only, where based on Article 9 of Law No. 19 of 2003, regulates that “*SOEs consists of a Limited Corporation and a General Corporation*” and aim to cultivate profits and are fully subject to the provisions of Law No. 40 of 2007, and public companies formed by the government to carry out business as an implementation of government obligations to provide certain goods and services to meet the needs of the community.

So SOEs is a state business entity in which its capital is either wholly or partly owned by the state originating from state assets separated by direct participation. The definition of separated state assets as referred to in Article 1 number 10 of Law No. 19 of 2003, explain that “*Separated state assets are state assets originating from the State Budget (APBN) to be used as state capital participation on Limited Corporation and/or General Corporation and other Limited Liability Company*”.

Basically, the existence of a State-Owned Enterprise in Indonesia is closely related to the mandate of Article 33 section (2) and section (3) of the 1945 Constitution, regulates that:

(2) Important sectors of production for the country and affect the life of the people are under the powers of the state.

(3) The land and the water as well as the natural resources therein are controlled by the state and utilized for the optimal welfare of the people.

The control by the State as conveyed by Article 33, is essential so that the welfare of the people is guaranteed by the people being able to utilize the sources of people’s prosperity that come from the earth, water and natural resources in it.

In order to carry out this control, the state through the government then forms a State-Owned Enterprise, which was originally known as a state company, which is tasked with carrying out such control.

State Owned Enterprises, are regulated in Law No. 19 of 2003. This law provides an understanding of the State Owned Enterprise itself. Article 1 number 1 of Law No. 19 of 2003, explain that: “*State-Owned Enterprises, hereinafter referred to as SOEs, are business entities whose entire or most of their capital is owned by the state through direct participation from separated state assets*”.

C. Responsibility of the Company’s Organs for the Management of Company Finance as Equity Participation in a Legal Entity in the Form of a Corporation

After the process of separation of state assets through the Government Regulation Establishment is completed, the establishment of the Persero is then carried out through private law/company law procedures. Through this legal procedure the state investment has changed into Limited Corporation’s capital in the form of shares. Since the Corporation was established based on private/corporate law, the Company was considered to have its own rights and obligations independent of the state. The date of ratification of the establishment of the Persero by the Minister of Justice and Human Rights, is the date of separation of responsibilities between shareholders and Persero as a separate legal entity. In corporate law before obtaining legal status, the state, directors and commissioners are personally responsible for the company’s legal actions.

Organs in SOEs are no different from organs in Limited Liability Companies, because basically SOEs are nothing but Limited Liability Companies whose shares are owned by the State of at least 51% (fifty one percent) of the total number of company shares. The SOE organ consists of the General Meeting of Shareholders, Commissioners and Directors.

Provisions in Article 1 number 13 of Law No. 19 of 2003, explain that “*the General Meeting of Shareholders, hereinafter referred to as RUPS, is the organ of the company which holds the highest authority in the company and holds all authority that is not delegated to the Directors and Commissioners*”. In Article 1 number 9 of Law No. 19 of 2003 explain that “*Directors are SOE organs responsible for the management of SOEs for the interests and objectives of SOEs, and represent SOEs both inside and outside the court*”.

Next Article 1 number 7 of Law No. 19 of 2003 explain that “*the Commissioners are SOE organs whose duty is to supervise and provide advice to the Directors in carrying out the management activities of the Limited Corporation*”.

Based on these provisions, it is clear that the position and role of the Directors of SOEs as one of the organs in SOEs, plays an important and decisive role because the responsibility for managing SOEs is entirely in the hands of the Directors. This means that the progress of the SOE’s business progress and success, whether or not the SOE has carried out its mission (economic and social) as expected by the government as a shareholder is largely determined by the ability and professionalism of the Directors of the State-Owned Enterprises in managing and managing the SOE concerned. This is related to the intent and purpose of establishing SOEs.

V. CONCLUSION

1. Corporate finance is the suitability of corporate financial management for the participation of state capital in Decision of Minister of State-Owned Enterprises of the Republic of Indonesia Number KEP-117/MBU/2002 on Implementation of Good Corporate Governance Practices on State-Owned Enterprises (SOEs).
2. The status of the State Owned Enterprises is regulated in the legislation relating to the State Owned Enterprises, the ministry of State Owned Enterprises and the procedures for the participation of state capital in the State Owned Enterprises and Limited Liability Companies, namely Law No. 19 of 2003, Government Regulation Number 41 of 2015 concerning the Ministry of State-Owned Enterprises, and Government Regulation Number 72 of 2016 concerning Procedures for Participation and Administration of State Capital in SOEs and Limited Companies
3. The position and role of the Directors of SOEs as one of the organs in SOEs, plays an important and decisive role because the responsibility for managing SOEs is entirely in the hands of the Directors. This means that the progress of the SOE's business progress and success, whether or not the SOE has carried out its mission (economic and social) as expected by the government as a shareholder is largely determined by the ability and professionalism of the Directors of the State-Owned Enterprises in managing and managing the SOE concerned. This is related to the intent and purpose of establishing SOEs.

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Muhammad Akhdarisa S.J, et. al. "Limited Company Financial Assets based on State-Owned Enterprises." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 25(7), 2020, pp. 15-23.