

The Legal Certainty no Longer Applies to a Nation's Wealth that Has Been Transferred to a State-Owned Enterprise (BUMN)

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Abstract

The inclusion of Separated State Wealth within the scope of State Finance remains an interesting issue to study. The law enforcement agency (APH) has a different view when dealing with cases involving separate State Property Managers. The entire entity in which there is Separated State Property is considered to be BUMN. Separate State Properties held at the International Financial Institution are not touched by the APH. This shows the inconsistency and the minimality of understanding of the BOMN. This situation is becoming more complex due to the disharmonization of various regulations relating to Separation State Properties. Article 2 of Act No. 28 of 1999 on the Maintenance of a State Clean and Free from Corruption, Collusion, and Nepotism states that the Directorate is the Organizer of the State. General Explanation of Law No. 31 of 1999 extends the meaning of "Civil Public Officer, that is, the person who receives salary, salary from a corporation that uses the capital/facilities of the state or society. It is difficult for a profit-seeking director to perform his duties properly if he is embedded in the status of State Organizer and PNS as it is in the Ministry/State Authority. The research was conducted using a method of normative jurisprudence, i.e. testing and using secondary data to obtain clarity of the problem. Disharmonization of various regulations and the minimum understanding of APH in dealing with issues of Separated State Property creates legal uncertainty.

Keywords: Separated, National Wealth, Disharmonization, Legal Certainty

INTRODUCTION

The inclusion of Separated State Wealth within the scope of State Finance, makes all entities in which State wealth is contained treated as BUMN (Asnawi et al., 2020). The misunderstanding in which each entity that manages Separate National Wealth is regarded as BUMN. While Separated State Weight is not only present in BUMN, but also in the International Financial Institutions, such as the World Bank, International Monetary Fund (IMF), Islamic Development Bank (ISDB). Even in some of these International Finance Institutions Indonesia falls into the 10 (ten) largest shareholders, like (Carney & Hamilton-Hart, 2015) : ranked sixth in the Asian Development Bank (ADB), ranked ten in the world Bank, ranked three in the Islamic development Bank (IsDB), and ranked sixty in the Common Fund for Commodities (CFC).

According to Article 4 (1) of the Act No. 19 of 2003 concerning BUMN, the capital of BUMN is derived from the wealth of the State which is separated. The purpose of the separation is to separate the state property from the Budget of Revenue and State Purchases to be used as the participation of the state capital in the Company for further construction and management is no longer based on the system of Budget of Income and Government Purchasing, but its construction and administration is based on sound corporate principles. The capital is divided by the shares used as proof of capital participation and the amount of the percentage depends on how much capital is included. This provision is also reinforced in Article 31 (1) of Act No. 40 of 2007 on Limited Partnerships (PT) which states that "the basic capital of the Company consists of the total nominal value of the shares".

Thus, state ownership of the BUMN (Persero) is equity, not capital ownership, and the legal consequences of equity ownership in a limited company are contained in Article 3, paragraph (1) of Act No. 40 of 2007 concerning the PT which states that "the shareholder of the Company is not personally responsible for the

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alliance made on behalf of the Society and is not responsible for loss of the Association exceeding the shares owned". This misunderstanding affects when legal problems arise with the entity that manages the State Assets Separated (Robé, 2011). When losses arise to the entities that manage the State Property Separate, such losses are always accounted for as losses to the State. However, when the loss to the International Financial Institution arises, they are not counted as national losses. And therein is the wealth of the divided nations. According to article 1 paragraph (1) of the Act No. 19 of 2003 concerning the BUMN, which is meant by the BUMN is an enterprise whose whole or most of its capital is owned by the State through direct participation that originates from the property of the State separated.

BUMN consists of two (two) forms:

A limited company is a company whose capital is divided into shares whose total or at least 51% is owned by the State. Article 1 paragraph (2) State status in PT is as Shareholders (5);

Perum is a BUMN whose entire modality belongs to the State and is not divided over shares Article 1 paragraph (4) On Perum the status of the State is as a Capital Owner Article 1 sentence (5).

If the state shares are less than 51% then it is referred to as a limited company with government shares. The spirit to eradicate corruption is something that is supported by all the components of the nation. Corruption cases, which have caused enormous state losses, formed the basis of the Act No. 31 of 1999 on the Suppression of Criminal Prosecution of Corruptions, as amended by Law No. 3 of 2001. However, as a rule of law, all legal products must meet the element of legal certainty in order to satisfy the sense of justice and feel its benefit to all parties so that the purpose of the regulation can be achieved. Even in the name of the suppression of "corruption" and the interests of the people, a legal product must still meet the element of legal certainty (Anders & Nuijten, 2017). A conditional, emotional arrangement due to a state of confusion cannot be the primary basis for drafting a law by ignoring the principle of legal certainty.

METHODOLOGY

This research is normative legal research, which is a method of legal research carried out by researching libraries or secondary data. The data used are secondary data consisting of primary legal material such as the Basic Law of 1945, the Law No. 17 of 2003 on State Finance, the Act No. 19 of 2003 concerning BUMN, the law No. 40 of 2007 concerning Limited Associations, the act No. 28 of 1999 concerning the Maintenance of the State Clean and Free from Corruption, Collusion, and Nepotism, and the Act no. 31 of 1999 as amended by the Law no. 3 of 2001 on the Suppression of Criminal Prosecution of Corruptions, as well as various other legislative regulations both government regulations, Regulations of the Minister of Finance and Constitutional Court decisions and secondary legal materials such as books and other scientific articles related to this research. Data collection is carried out by means of library research, which is to collect and study various laws, books and scientific articles. The existing data is then processed using a qualitative descriptive approach, which is the approach used to investigate, find, describe, and explain the content or meaning of the rule of law used as a reference in solving the legal problem that is the object of the study. The implementation of the research is limited only to the issue of the impact of the State Wealth Separated on the BUMN (Persero) and how the ideal conception of the management of State wealth is separated for the realization of legal certainty.

RESULTS AND DISCUSSION

Reviewing the Effect of Divided State Wealth on BUMN (Persero) from the perspective of legal certainty.

Rules relating to State Property are separated in BUMN (Persero) very many, both at the level of Laws, Government Regulations, Constitutional Court Decisions, (Djajaputra & Jessie, 2020). Supreme Court Fatwa as well as the Regulations of the Minister of Finance. But not all of these rules are harmonious, rather they tend to be backward, overlapping or even twisted forward to the sectoral ego, in which there are different and even backward definitions between one rule and the other. As a result of this, there is a lack of consistency in adhering to a rule and a different approach in dealing with a similar case.

The Constitutional Court as the last guard in the examination of a Law, also inconsistencies in deciding issues relating to article 2 letter g and i of the Law No. 17 of 2003 on State Losses. Whereas in the ruling of MK No. 48/Law-XI/2013 which examined the law No.17 of 2003 about State Finance in particular article 2 letters g and I against UUD 1945 the Constitutional court held that the property of the State separated on BUMN is part of the regime of State Finance. whereas the MK Decision No. 77/PUU-IX/2011 examining the Act No. 49 Prp of 1960 on the Committee on State Debt Affairs on UUD in 1945 part weighed it stated that BUM N is an enterprise that has property separated from the State property, so that the authority of the management of wealth, enterprise, including the settlement of debt-BUMN, is subject to the law of limited persons on the basis of the law No. 40 of the Year 2007 on Borderless. In two of the Constitutional Court's judgments, we found something very backward. According to Gustav Radbruch, there are four fundamental things related to the meaning of legal certainty (Alexy, 2015), namely: a. that the law is positive, that is, it is cast into the laws. b. that it is based on the facts. c. that facts must be clearly formulated so as to avoid confusion in interpretation, and easy to implement. d. the positive law cannot be easily changed.

The theory of legal certainty according to Nusrhasan Ismail is the existence of consistency in the legal norms of the laws (Eva Rahayu et al., 2023). It means that the provisions of a number of such laws relate to one particular subject and do not conflict with the one and the other. Then, in order for legal certainty to be by every citizen, all the norms created with the aim of regulating or even limiting the lives of the people of a country must be clearly formulated (Raz, 2017). The clarity of the norm formula can be measured from the extent to which people have a similar understanding of a particular norm. With legal certainty, one can measure the limits of freedom that one can have and express. The various regulations relating to the BUMN (Persero) as the entity that manages the Separated State Property that are disharmony will be disaggregated and described in detail to be seen and understood how the rules are. Not only is there disharmony between existing rules, but also inconsistencies (Steinberger, 2011). Even striking the rightful preference of the law should serve as a guideline before making a provision to prevent conflict between the provisions of the laws to ensure the achievement of legal certainty. The following will describe the disharmonized rules relating to the property of the Separated State which exists in the various entities.

Article 2 paragraph (7) of Act No. 28 of 1999 on the Maintenance of a Clean and Free State from Corruption, Collusion and Nepotism versus Article 1 paragraph (9) of Law No. 19 of 2003 on BUMN

The entry of the Commissioners, Directors and structural officials into the BUMN as the organizer of the country has raised a huge problem because the status has resulted in the ranks of BUMN in particular Persero tend to be afraid in taking policy and prefer 'safe' and act business as usual. In order to that goal and to be able to grow its business, it is necessary to undertake unusual actions such as routine government services. Because in Pundak BUMN Persero, especially in the Open Society, the task is to pursue profits as the main purpose and purpose of the foundation. Can a state organizer pursue a profit? The leader of the BUMN is sure that a company should have the courage to expand but keep the precautionary principles and the Bussines Judgement Rule in mind (BJR). Article 1 states: "The State organiser is the State official who performs executive, legislative, or judicial functions, and other officials whose functions and essential duties relate to the maintenance of the State in accordance with the provisions of the regulations of the applicable laws". In making a definition, it is often found that the clause of the "worldship" such as chapter one (Smith, 2019). It was stated at the outset that the Organiser of the State was a state official who performed executive, legislative and judicial functions. If the definition is just this, the meaning is clear and definite. But the next motto is 'and other officials whose main functions and duties relate to the maintenance of the state', which then makes the definition of the organizer of the country very broad. It can be anything as long as it is considered related to the maintenance of the state in accordance with the provisions of the laws (Sloane, 2012). The extension of the definition of the State Organizer is increasingly visible from the sound of section 2: "The State Organiser includes: 1) State Officer at the highest State Institution; 2) State Officer at the High State Institutions; 3) Minister; 4) Governor; 5) Judge; 6) Other State officials in accordance with the provisions of the regulations of the applicable laws; 7) Other officials who have strategic functions in relation to the maintenance of the state in conformity with the terms of the legislation in force".

The clause on the number (7) again becomes a clause that invokes broad interpretation. To find out who is meant by Article 2, paragraph (7) can be seen in the explanatory section of Article 2 paragraph (7): “The term “other officials with strategic functions” means officials whose duties and authority are in carrying out state-sensitive maintenance of corruption, collusion, and nepotism practices, which include: (a) the Directorate, Commissioner, and other structural officials of the BUMN and the Regional Property Authority; (b) the Head of the Bank of Indonesia and the head of the National Banking Board; (c) Head of State Colleges; (d) Eselon 1 officials and other equivalent officials in the civilian, military, and State Police of the Republic of Indonesia; (e) the Prosecutor; (f) the Investigator; (g) the Panitera of the Court.

For officials mentioned in numbers 2 to 8, it is natural to be categorized as State organizers because they are paid by the state and the operational funds of the institutions they lead using APBN funds following an annual cycle (Adiwijaya, 2022). Looking from the definition of a State Organizer, it would be very inappropriate, even beyond scope, for the Directorate, Commissioner, and other structural officials at BUMN and BUMD to be categorized as State Organizers. In accordance with the Act No. 19 of 2003 on BUMN, in Article 1 paragraph (9) it is stated that the Directorate is the body responsible for the management of BUMN for the interests and purposes of BUMN, as well as representing BUMN both inside and outside the court.

The Act No. 31 of 1999 on Tipikor Abolition as amended by Law No. 3 of 2001 adopted the full provisions of Article 2 (7) of Law no. 28 of 1999 (Wijaya & Ali, 2021), so as to sharpen the disharmonization by affirming that the Directorate and Structural Offices of BUMN as the Organizer of the State. Article 5 (2) of Act no. 21 of 2003 “A public official or organizer of the state who receives gifts or promises as referred to in paragraph (1) letter a or letter b, shall be punished by the same criminal offence as described in paragraph (1)” and in its Explanation it is stated that “What is meant by the ‘organizer of state’ in this Article is the organiser of the country as defined in Article 2 of the Act of No. 28 Year 1999 on the Organizer of a State that is clean and free from corruption, collusion, and Nepotism. The definition of ‘organiser of such state’ also applies to the subsequent articles of this Act”.

Article 1 (2) of Act No. 31 of 1999 on the Suppression of Criminal Acts of Corruption as Amended by Law No. 3 of 2001 versus Article 1 (1) of Act no. 43 of 1999 concerning the Amendment of the Law no. 8 of 1974 on the Treasures of Persecution and Article 87 (1) of Law No.19 of 2003

The Act No. 31 of 1999 on the Redemption of Civil Officers broadened the definition of civil civil civil servants by ignoring the definitions of the PNS under the Act on the Tree of Citizenship in force at the time, namely, the Act no. 43 of 1999 On the Amendment of the Act of No. 8 of 1974 on Tree Of Citizenships, which in Article 1, paragraph (1) states: “A civil servant is any citizen of the Republic of Indonesia who has qualified as specified, appointed by an authorized official and assigned to a state office, or assigned other state duty, and paid according to the provisions of the laws in force”. In the Act No. 31 of 1999 on the Suppression of Criminal Offences of Corruption there is an extension of the concept of State Officers as mentioned in Article 1 paragraph (2), that what State Officials mean is to include (Fijnaut & Huberts, 2000) : (a) State officials as provided for in the law on civil service; (b) State officers as referred to in the Code of Criminal Law; (c) persons receiving salaries or wages from the state or local finances; (d) individuals receiving wages or salaries from a corporation receiving assistance from the State or local financials; or (e) people receiving pay or wage from other corporations using the capital or facilities of the country or public.”

General Explanation Act No. 31 of 1999 increasingly emphasizes the extension of the concept of "civil public officials, which are, inter alia, persons who receive salaries or salaries from corporations using capital or facilities of the State or the community. According to Article 87 (1) of the Act No. 19 of 2003 on BUMN, “BUMN Employees are employees whose appointment, termination, position, rights and obligations are determined by joint employment agreement in accordance with the provisions of the legislation in the field of employment”.

Explanation of Article 2 (1) of Act No. 31 of 1999 on the Suppression of Crimes of Corruption as Amended by Law No. 20 of 2001 versus Article 1 (22) and Article 67 (2) of Law no. 1 of 2004 on the State Treasury.

The definition of state losses is not strictly defined. According to article 2 of the Act No. 31 of 1999 on Tipikor Rebellion, State losses are: “acts of enriching oneself or others or a corporation that may harm the state's finances or the economy of the state”. This formula shows that the existence of a state's loss is determined only by the fulfillment of the element of action, not by the occurrence of consequences (delik formil). This is affirmed in the Explanation of Article 2 which states: "In this provision, the word "may" before the phrase "damaging the financial or economic of the State" indicates that the crime of corruption is a formal hole, that is, the existence of a criminal offence of corruption is sufficient to fulfil the elements of the act already formulated not with the occurrence of consequences".

Article 1 (2) of the Act No. 1 of 2004 on the State Treasury states: “The loss of the State is a lack of money, securities, and goods, which are real and certain amounts as a result of acts against the law, whether intentional or unintentional. From the sound of this article it is clearly stated that a new state loss can be called a loss if there is a shortage of cash, security, and real and definite amount of goods (material deficit)” (Werner, 2016). According to the caution Article 35 (4) of the Law No. 1, of 2003 on State Finance, it is said that the provisions on the reimbursement of the state loss are regulated in the law on the state treasury. In article 37 (4) of Law no. 17 of 2003 On State Finance it is stated, that as long as has been regulated by this law, it no longer applies. This means that the definition of state loss and reimburse of State loss regulated before the law came into force.

Article 67 (2) of the Act No. 1 of 2004 on the State Treasury states: “The provisions of the settlement of state/regional losses in this Act also apply to the managers of state-regional corporations and other bodies organizing the financial management of the State, as long as not regulated in its own laws”. In the Explanation of Article 67 paragraph 2 it is expressly stated that (Peers et al., 2022): “the amount of compensation of the state losses to the manager of the general corporation and the entire corporation or at least 51% (fifty-one percent) of the shares held by the State of the Republic of Indonesia is determined by the Financial Supervisory Authority, so long as it is not governed by its own legislation”. This means that the determination of state losses by BPK only applies to BUMN but does not apply to Limited Corporations where state ownership of shares is less than 51% (lima puluh satu persen). But in reality, article 67, paragraph 2, of Act No. 1 of 2004 on the Treasury of the State has always been ignored. All entities that manage KND even if they are not BUMN because state shares less than 51% (fifty-one percent) remain checked by the BPK. Two contradictory definitions like this must create legal uncertainty in dealing with the problem of losses of BUMN (Persero) which is always associated with state losses. For the sake of legal certainty, the definition of State losses under article 1, paragraph (22) of Act No. 1 of 2004 on the Treasury of the State should become a *lex posterior derogat legi priori* against the definitions of state losses contained in article 2, paragraph (1) of Law No. 31 of 1999. This is in line with MK Decision No. 77/Law-IX/2011 which in its consideration stated that the Law No. 1 of 2004 on the State Treasury is a *lex posterior derogat legi priori* against the Act No. 49 of 1960 on the Committee on State Debt Affairs as regards the definition of State debt.

In the General Explanation of the Act No. 31 of 1999 on the Abolition of Tipikor, the definition of state finance is mentioned (Foster, 2023). The State's finances are all the property of the State in any form, whether separated or not, including all parts of the state's property and all rights and obligations arising from: a. be in the possession, management, and responsibility of officials of State institutions, both at the central level and at the regional level; b. be in possession of, management and accountability of BUMN/Regional Property Enterprises, foundations, legal bodies, and corporations that include state capital, or companies that include third-party capital under agreements with the State.

The formula is even wider than the formula of state finances regulated in Act No. 17 of 2003 on State Finances (Bird, 2018). If this broad state financial concept is applied consistently, then Persero's property will

be considered as state property will affect unlimited liability (unlimited liability). Can the wealth of the country separated on BUMN (Persero) be seized to settle the bill? Article 50 of Act No. 1 of 2004 on the Treasury of the State stipulates that: "No party shall be prohibited from carrying out seizures against"; 1. money or securities belonging to the State/territory, whether it belongs to a Government agency or to a third party; 2. money to be deposited by a third person to a State/Territory; 3. movable goods belonged to the state/territorium, whether they belong to Government agencies or to third parties; 4. immovable property and other proprietary rights of the State or territory; 5. belongings of third parties controlled by the State (s) which are necessary for the maintenance of governmental duties".

The APH side of the State's finances is very broad, covering the wealth of the state that is separated on the BUMN Persero, but on the other hand cannot be enforced consequences of the expansion of the financial definition of the country where the responsibility of state becomes unlimited (unlimited liability). The expansion of the country's financial significance is also in practice always inconsistent, and tends to be discriminatory (Broner et al., 2014). This is reflected in the Separated State Property held at the BUMN (Persero) with the International Financial Institution (Wicaksono, 2022). At the International Finance Institution the management mechanism and responsibility are subject to the law applicable to each of the respective international financial institutions. While the state money invested was huge and even in some International Financial Institutions, Indonesia was ranked as one of the largest shareholders, ranging sixth in the Asian Development Bank, tenth in the World Bank, third in the Islamic Development Bank and sixth on the Common Fund for Commodities.

Why against the International Financial Institution governments are conscious and subject to corporate law where the Separated State Wealth is implanted. Whereas the Separated State Property is held by domestic entities, the smallest amount does not use the provisions of corporate law but always uses the Anti-Corruption Criminal Act. Of course, the country's financial expansion is unfair and creates legal uncertainty for BUMN (Persero) (Anggriani, 2022).

The Ideal Concept of State Wealth Management Separated in BUMN (Persero)

Providing legal certainty in the resolution of problems on BUMN Persero.

Legal certainty is crucial in any action or activity, especially when it comes to the state's finances. The neglect of this aspect of legal certainty in the management of the entity in which the KND is present will cause chaos or a marrow in its implementation on the ground. The condition of BUMN in Indonesia can be said way in place and has not met the purpose of its formation (Syahrul Ansari, 2019). For that, legal certainty is an absolute thing if you want to see the BUMN advance and develop and generate profits for the country according to its purpose. Legal certainty can only be achieved if all parties are committed and consistent in its implementation. There are two (two) major steps that play an important role in ensuring legal certainty:

Conducting an evaluation of the various provisions that apply to BUMN

Evaluation is a set of activities that compare the results or achievements of an activity with the standards, plans, or norms that have been established, and determine the factors that affect the success or failure of the activity in achieving its objectives. If you look from the definition, then an evaluation of the various provisions that overlap on the BUMN should be done. The purpose is to know the provisions that are not harmonious, contradictory or backward that have a major impact on the success or failure of the BUMN (Persero) and then the provision is deleted. Evaluation can be done by harmonizing various rules and provisions related to BUMN (Persero) (Sunarto et al., 2024). Harmonization of legal regulations is very important in dealing with state finances, especially those relating to Separated State Property, because often problems arise when losses are always identified with the state losses. With the existence of harmonization of the legal regulation both vertically and horizontally will be possible to obtain legal certainty and justice for all parties. Without harmonization, then a regulation tends to result in multiple interpretations resulting in differences in its application depending on the point of view of the law enforcement apparatus.

Harmony is derived from the word "harmony" which means a statement of taste, action, ideas and interests, harmony, and harmony. The National Law Building Agency defines the harmonization of law as a scientific activity towards the process of harmonization (alignment/compliance/balance) of written law which refers to philosophical, sociological, economic and jurisprudential values. L.M. Gandhi argues that harmonization in law is: "includes the adjustment of the rule of laws, governmental decisions, judges' decisions, the legal system and the legal foundations with the aim of enhancing the unity of law, legal certainty, justice (justice, *gerechtigheid*) and equity (equit, *billijkheid*), the usefulness and clarity of the law, without obscuring and sacrificing the pluralism of law if necessary".

Harmonization of law plays a very important role and must be carried out from the initial stage of the drafting of a provision of legislation so that further processes go smoothly and produce rules that are not overlapping or contradictory, but rather rules of law that can function well in society, and form an integrated holistic that does not cause multiple interpretations. Indonesia recognizes the hierarchy of laws regulated in Article 7, paragraph (1) of Act No. 12 of 2011 on the Creation of Regulations of Legislation (Desyanti et al., 2022). The type and hierarchy of the Regulations of the Legislation consists of: (a) the Basic Law of the Republic of Indonesia of 1945; (b) the Ordinance of the People's Assembly; (c) the Act/Regulation of the Government that replaces the Law; (d) the Regulation of Government; (e) the Presidential Regulation; (f) the Regional Regulations; (g) the District/City Regulations.

With the hierarchy of legislation, then the harmonization of law must be done both vertically and horizontally (Syahlan, 2021). This means that a legislation binding on a provision of a law may not contain substance contrary to a higher provision (vertical harmonization), but may make a specific rule of a rule equal to a general rule (horizontal harmonization). Harmonization can be carried out in several ways, namely: i. Using the legal base of preference "For vertical harmonisation can be done by using the base *lex superior derogate legi inferiori* (a higher rule/law that excludes a general provision/law of a lower nature). Whereas horizontal harmonisation may be done using the basis *lex posterior derogare legi priori* (the newest provision / law that replaces an old provision) and *asas lex specialis derogate legi generali* (the special provision or law which excludes general provisions/laws)". ii. Use the constitutional rule establishing any legislative rule A rule that is established by a legislative authority for the exact purpose of the type of rule which the official must not bear in mind, is that the rule or rule on the basis of which the authorities must be established. d. can be implemented is: is that any Formation of Regulations Legislative must take into account the effectiveness of the Regulations of such laws in society, both philosophically, sociologically, and jurisprudentially. e. disclosure and application is: that every Regulation Legislative is made because it is really necessary and useful in regulating the life of society, the nation, and the nation. f. the clarity of the formula is : that each Regulation of the legislative must meet the technical requirements of the drafting of the Regulation, the systematics, the choice of words or terms, as well as the legal language clear and easy to understand so that does not cause various kinds of interpretation in its implementation. g. openness is : That in the Creation of Regulations Legislation starts from the planning, drafting, formulation, confirmation or establishment, and legislation is transparent and open. Thus, the whole layer of society has an extensive opportunity to contribute to the formulation of legislative regulations.

In addition to the above basis, Article 6 of the Act No. 12 of 2011 on the Formation of Regulations of the Legislation states that the loading material of the Regulations must also reflect the basis: a. the regulation is: that every Loading Material shall serve as a protection to create a peaceful society. b. humanity is : that each Load Material shall reflect protection and respect for human rights as well as the dignity and dignity of every citizen and population of Indonesia in a proportionate manner. c. nationality shall be : that every Material Loading Regulations Legislations must reflect nature and character of the Indonesian nation that is consistent with the observance of the principles of the Republic of Indonesia Union. d. relativity is that each Material Load Regulation Legislative Regulations should reflect its dignity in order to attain the perfection in each Decision. e. each measure is that : The Material of the Constitutional Law of the Year 194 is a part of the laws of the entire territory of the Indonesia Constitutional Republic and the legislative system of the country. f. The sole principle is that the material of the regulations of the laws must take into account the diversity of the population, religion, tribe and group, the special conditions of the region as well as the culture in the life of

society, the nation, and the country. g. justice : is that every material of the Load Regulations Legislation must reflect justice proportionately to every citizen. h. the equality of position in law and government is : that every Material of the load Regulation Legislations must not contain matters of distinctive nature based on background, among other things, religion, tribe, race, group, gender, or social status. i. order and legal certainty is : That every Material Of the Loat Regulations Law-Law must be able to realize order in society through guarantees of legal certainness. J. Balance, compatibility, and alignment are: that every Material Loading Regulations Legislation must reflect the balance, compatibilities, and harmony, between the interests of the individual, the community and the interest of the nation and the state.

For the sake of legal certainty: (i) Article 1 paragraph (9) No. 19 of 2003 on BUMN This becomes a lex posterior derogat legi priori against Article 2 paragraph (7) of Act No. 28 of 1999 on the Maintenance of a State Clean and Free from Corruption, Collusion and Nepotism. (ii) Article 1, paragraph (22) of Law No. 1 of 2004 on the Treasury of the State It becomes the lex posterior Derogat Legi Priori against the definition of State losses contained in the Explanation of Article 2, paragraph (1) of Act no. 31 of 1999. The same has been done by the Constitutional Court through the decision of MK No. 77/PUU-IX/2011 which in its consideration stated that Article 1(6) of the Act No. 1 of 2004 on the State Treasury constitutes a lex posterior derogat legi priori against the Law No. 49 of 1960 on the Committee on State Debt Affairs as regards the definition of State debt.

Equalization of perceptions between law enforcement, academics and practitioners in BUMN losses (Persero).

Perception is the process of a person knowing things through his senses. Another meaning of perception is the direct response (acceptance) of something. From that definition, perception has a chance to make a difference (Mannix & Neale, 2005). That's why it's a mandatory rule of certainty and no multi-interpretation. In countries with civil law systems such as Indonesia, where rules of law (written rules) are the primary source of law, there is a high chance of conflict between norms. In view of the abundance of written law, it affects the relationship between one written law and the other, because it relates to the binding power of the written law in order to create legal certainty. A conflict of norms arises if there are two or more conflicting legal norms in regulating the same object. This is a very crucial problem because when one of the norms is applied, then there will be another norm being violated or ignored. In order to avoid conflict between legal norms, the preference base is used as the basis for conflict resolution. The preference base is used to determine which norm will prevail if there is a conflict between several rules. In practice on the ground, the Act No. 31 of 1999 on Tipikor Disarmament as amended by the Law No. 20 of 2001 has become a "mock" for the ranks of the Directorate of a KND managing entity in particular BUMN (Persero). A complete overview of this has been explained in the previous chapter. Similarly, some of the provisions of the legislation that cause conflict of norms if tested with the application of the preference base can be seen in table 22 of this study.

In general, the cause of differences in perception between law enforcement agencies (Ermasova et al., 2020), academics and practitioners in compensating BUMN (Persero) losses is due to disharmonization between existing rules, inconsistencies in their application, as well as the failure to use the basis of preference as a guide (filter) in the formulation of a provision of the legislation thus creating a conflict of norms. Then how can we a common perception between the law enforcement, academics and practitioners in dealing with the losses of BUMN (Persero)? Of course by eliminating the causes of multi-interpretation as mentioned above, i.e. eliminating various regulations that create multiple interpretations, consistency in the application of legal rules for the same object and ensuring application of the basis of preference in any handling of legal cases.

Enhancing the competence of law enforcement agencies on BUMN

The competence or competence of the law enforcement apparatus plays an important role in dealing with a legal case . In applying a rule must be based on the study of epistemology, ontology and axiology . In order to be able to deal with the problem of Separated State Property, then the law enforcement apparatus must have a comprehensive understanding of the State Finance, even knowing the brochure or record containing explanations of the formula of the articles in a rule (epistemology) so as to acquire certainty in its meaning

(ontology) and not to use rules that are contrary to the problem faced. (aksiologi). If the law enforcement apparatus has comprehensive competence and understanding of State Property Separated on different entities, then differences in perception and inconsistencies in handling similar cases can be avoided.

CONCLUSION

The impact of KND's presence on BUMN (Persero) has created legal uncertainty. Legal uncertainty is caused by disharmonization of regulations, characterized by overlapping, contradictory and even “emotional” regulations with a clause of “globality” because of the spirit of corruption eradication. This situation is aggravated by differences in perception between the law enforcement apparatus in the understanding of what is meant by BUMN (Persero) so that it creates multiple interpretations in dealing with the loss of BUMN (Persero). A new entity is called a BUMN if the ownership of government shares is at least 51%. The ideal concept of managing the wealth of the state separated on the BUMN (Persero) is to harmonize the overlapping and contradictory rules by removing the articles contained in the rules that are considered to be contrary. In addition to making harmonization, it is necessary to equalize perceptions between law enforcement, academics and practitioners in compensating BUMN (Persero) losses, and also inconsistencies in the application of a rule in a similar case as well as application of the basis of preference in every handling of legal cases so that it does not cause conflict of norms. The top of this scourge will be broken down if a special law is drafted to regulate the wealth of the separated nations.

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