



Ambiguity of Financial Management Supervision in State-Owned Enterprises of the Company

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Abstract. The Unitary State of the Republic of Indonesia has the main goal of realizing the welfare of the community as a welfare-type state that focuses on equalizing the welfare of people's lives. The state is required to play an active role in creating equitable community welfare, one of which plays a role in economic development. The arrangement of the separated state financial position that becomes capital in the State-Owned Enterprises of the Company is very important for the development of the country's economy. The state as one of the actors of economic development, in achieving the welfare of the people. In achieving these goals, regulations or constitutions are needed for the regularity of a country in achieving its goals. The implementation of the duties of State-Owned Enterprises is regulated by Law No. 19 of 2003 concerning State-Owned Enterprises, Article 11 is also regulated that the Company's State-Owned Enterprises are subject to the Limited Liability Company Law now is Law No. 40 of 2007 concerning Limited Liability Companies. The problem is the ambiguity of the implementation of supervision/examination from the Financial Audit Agency of the State-Owned Enterprises of the Company, which resulted in many Directors of State-Owned Enterprises of the Company being entangled in corruption cases because they are suspected to have caused state losses, due to the ambiguity of the examination/supervision of the Financial Audit Board on the finances of the State-Owned Enterprises of the Company. This research is carried out normatively, namely using applicable laws and regulations. The purpose of the research is to find out how the supervision/examination of the Financial Audit Board on financial management in the State-Owned Enterprises of the Company based on laws and regulations. Ambiguity occurs because of two regulations governing the supervision of financial management of State-Owned Enterprises, namely in the Limited Liability Company Law and the Financial Audit Board Law.

Keywords: Financial Audit Board · Supervision of financial management · State-Owned Enterprises of the Company

1 Introduction

The goal to advance the general welfare and educate the life of the nation plus the principle of social justice in the formulation of Pancasila in Alinea IV, is very closely

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related to economic policy. Understanding the state of welfare law is often referred to as a modern state of law in a material sense. According to Bagir Manan the concept of the State welfare law is: “The state or government is not solely as a guardian of security or public order, but the main bearer of the responsibility of realizing social justice, general welfare, and the greatest prosperity of the people” [18].

According to Jeremy Bentham in his concept often use the term “utility” (usability) to explain the concept of happiness or well-being, based on the principle of utilitarianism developed by Jeremy Bentham that something that can cause extra happiness (as wide as possible) is something good, but on the contrary that something that causes pain is something that is not good (bad), because of the fact that The government must take actions (policies and programs) that are always directed to increase happiness to the people as much as possible, Jeremy Bentham’s idea to realize the welfare state is directly related to legal reform, the role of the constitution and the development of social policy. Jeremy Bentham’s thoughts made him known as the “Father of welfare state” (The Father of welfare state [19]).

Sir William Beveridge and T.H. Marshall who came from England regarding Social Insurance and allied Services known as Beveridge Report, Sir William Beveridge called by the term Want, Squalor, Ignorance, Disease, and Idleness as “The Five Giants Evils” to be fought, Sir William Beveridge in his report proposed a comprehensive insurance system that is expected to protect people from cradle to grave (from cradle to grave).), the influence of Sir William Beveridge’s thought not only in England, but also spread to other countries such as Europe even to the US and later became the basis for the development of social security schemes in those countries [20].

According to Muchsan, the characteristics of the welfare law state are the State that aims to prosper the lives of its citizens equally, and the state is required to provide the best and widest service to the community. Without good and equitable service, it is impossible to realize welfare in people’s lives. In relation to these characteristics, there are two symptoms that certainly appear in the welfare state, namely first the government’s interference in aspects of people’s lives is very broad and the two discretionary principles are often used in the implementation of government functions. Government intervention in this aspect of people’s lives is demanded for the creation of welfare of the people who are in danger, not welfare according to liberal conceptions. With this intervention, it can be avoided the occurrence of free fight liberalism, which will only benefit the strong party [21].

The state’s ideal of welfare law where the state plays an active role in regulating the economy is contained in the opening of the Constitution of the Republic of Indonesia in 1945. Many terms are used and all of them refer to the well-being of society. The ‘founding fathers’ of our country use the term “just and prosperous” as stated in the second paragraph of the opening of the Constitution of the Republic of Indonesia in 1945. Another term is “general welfare” and social justice contained in the fourth paragraph of the opening of the Constitution of the Republic of Indonesia in 1945. In Article 33 of the Constitution of the Republic of Indonesia year 1945 [22].

Paragraph IV of the opening of the Constitution of the Republic of Indonesia in 1945 which stated “to advance the general welfare of educating the life of the nation, and participate in implementing world order based on independence, lasting peace, and

social justice.” In addition, in the fourth paragraph there is also Pancasila which in the fifth precept states social justice for all Indonesian people. If interpreted in the economic field, the people deserve to be treated economically fairly and can access welfare in their lives. In the Constitution of the Republic of Indonesia of 1945 the conception of the state of Indonesian welfare law is also accommodated in Article 27 paragraph (2), Article 31, Article 32, Article 33, and Article 34. Article 33 of the Constitution of the Republic of Indonesia of 1945 which states regulated in detail as a constitutional basis for the participation of the state in the national economy.

The regulation of the national economic system in the constitution is the laying of the constitutional foundation for national economic policy. The Constitution is a policy reference for the government of a welfare law state in taking every economic policy. The Constitution must not be violated and defeated in the interests of the economy [23]. While Article 34 emphasizes, state philanthropy must be done for those who are unable to work because of neglect, poverty, and neglect. In the Constitution of the Republic of Indonesia of 1945, which has been amended, the social and economic rights of citizens that must be fulfilled by the state are increasingly expanded, towards extensive positive rights.

According to Jimly Ashidiqqie, the provisions regarding the economy in the Constitution of the Republic of Indonesia in 1945 are instruments of control over market dynamics as well as a means of engineering economic development to achieve common ideals, namely the creation of justice (justice), the creation of mutual prosperity and freedom. The Constitution serves as a counterweight between the interests of the state, society and the market [8].

The Constitution clearly wants the realization of a welfare state in Indonesia, where the state confers broad social and economic rights to every citizen, so that in Indonesia, the state is not a minimum state or necessary evil, and not even just an enabling state that only modifies the market while still worshipping individualism. Based on the constitution in Indonesia, the state is a development agent that not only encourages equality of opportunity, but also actively strives to uphold social justice (equality of outcome). The state is clearly mandated to put the interests of society above the interests of the people.

The Unitary State of the Republic of Indonesia was established with the aim of realizing the general welfare and social justice of all Indonesian people, and the founding fathers have set the goal of statehood, that the state be built and formed to create a prosperous, safe and ethical common life.

Social justice in the fourth paragraph of the Opening of the Constitution of the Republic Indonesia 1945, laid out to be one of the foundations of the goals and ideals of the state (*staatsidee*) as well as the philosophical basis of the state (*philosophische grondslag*). Which is contained in the fifth precept of Pancasila, that is, indeed from the beginning the founding fathers established Indonesia on a footing to realize social justice both for its own citizens and the world community [2]. The principle of the welfare state containing political democratic and democratic economic understanding was unanimously accepted.

The welfare state according to the founders of the nation, is a form of democratic government that asserts that the state is responsible for the welfare of the people. [3] The Indonesian welfare state according to Edi Suharto [4] is closer to the institutional model

welfare state, because it does not ignore the role of third sector organization organizations, namely the provision of welfare services in Indonesia is carried out institutionally and with a wide enough scope that the source of financing or funding not only comes from the state but also from the world of business and work, and the duties of the state are basically according to Franz Magnis Suseno [5] was seeking the common good.

According to Bernard Arif Sidharta [6], the Government is domiciled as *primus inter pares* (not as the owner or ruler of the state and people), as a *pamong*, so it is obliged to include the people in the process of rational decision-making in realizing a just and prosperous society. The sign of authority of the ruler is when social harmony can be achieved and there is no unrest in people's lives. The noble mind of a ruler is seen from the way of running the government, the nature of power itself, and the way the use of power must be dignified [7], as well as in making regulations.

Regulations or constitutions are made for the regularity of a country and state as one of the actors of economic development, in order to achieve the welfare of its people. The economic constitution generally regulates at least [8]:

1. about the mastery and possession of the wealth of natural resources as the inheritance of life,
2. about the conception of individual property rights, and
3. about the role of the state and state enterprises in business activities.

One of the roles of the state is to compile juridical instruments in order to make arrangements, services, and protection for the community, namely by making normative rules about how the government is carried out to carry out its functions, so that in the implementation of government there will be a relationship between the government and the community. The quality of the government's relationship with the community can be used as a measure of the implementation of government whether it is good or not included in the constitution in economic policy [9].

The national economy of the Unitary State of the Republic of Indonesia has been regulated in the constitution, namely in Article 33 Constitution of the Republic of Indonesia 1945 and after amendments, Article 33 paragraph (4) Constitution of the Republic of Indonesia 1945 affirmed that the national economy is organized based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental insight, independence, balance of progress, and national economic unity [9].

Market economy policies and civil society in the constitution is a social contract to develop collective life in the realm of the state (state), civil society (civil society) and market (market). The three collective domains have a relationship and are connected by the constitution [8]. According to A. Effendy Choirie [10] amendments to Article 33 Constitution of the Republic of Indonesia 1945 resulted in a new constitutional legal language, namely economic democracy which is the opposite of "people's democracy" and "Pancasila democracy." Because economic democracy has a number of basic rules, one of which is equitable efficiency, in the implementation of the national economy. Equitable efficiency is the foundation of good corporate governance ethics that emphasizes transparency-mediatic, when the state or government makes efforts to transfer productive

assets, in order to support economic development, by establishing State-Owned Enterprises, which are regulated in Law No. 19 of 2003 concerning State-Owned Enterprises, which have a strategic position for improving the welfare of the people [11].

The welfare of the people as a state goal in its achievement has a very close relationship with the existence of State-Owned Enterprises, which is used as one of the tools by the state to be able to realize the state's goals. State-Owned Enterprises as a state company incorporated, managed by taking into account the nature of business State-Owned Enterprises, namely fostering profits and implementing general benefits [12]. According to Refli Harun [13], State-Owned Enterprises has two main functions, namely the first function of the principal as a commercial function in the sense of seeking profit and the second function is a social function as an extension of the state to realize the general welfare.

State-Owned Enterprises established in the Unitary state of the Republic of Indonesia, as based on consideration of the Law of the Republic of Indonesia Number 19 of 2003, concerning State-Owned Enterprises is that State-Owned Enterprises is one of the actors of economic activity in the national economy based on economic democracy which has an important role in the implementation of the national economy to realize the welfare of the community. State-Owned Enterprises has a role in the national economy, namely to realize the welfare of the community that has not been optimal. For its management and supervision must be done professionally and there must be laws and regulations governing State-Owned Enterprises in accordance with the development of the economy and the business world in order to grow faster, both nationally and internationally.

State-Owned Enterprises is a business entity whose entire or most of its capital is owned by the state through direct participation derived from the separated state wealth, which is the embodiment of the role of the state to provide justice in order to realize and prosper the community that needs to be verified as stipulated in Article 1 number 1 State-Owned Enterprises Law. State-Owned Enterprises in realizing the welfare goals of the community, as stipulated in Article 9 State-Owned Enterprises Law, State-Owned Enterprises consists of 2 types of State-Owned Enterprises namely General Company (Perum) and Company Company (Persero).

General Companies are formed by the government to carry out efforts to provide certain goods and services to meet the needs of the community. Perum's business form, although carrying out general benefits, as a business entity is sought to remain independent and get profits for the sustainability of its business, while the Company (Persero) formed by the government to seek profit and based on Article 11 State-Owned Enterprises Law, fully subject to the provisions of Law No. 40 of 2007 concerning Limited Liability Companies [14].

Understanding limited liability companies in Law Number 11 of 2020, concerning job creation, there are changes, legal entities that are capital partnerships, established based on agreements, conducting business activities with authorized capital that are entirely divided into shares or individual legal entities that meet the criteria of Micro and Small Businesses as stipulated in the laws and regulations regarding Micro and Small Businesses, and originally the understanding of Limited Liability Companies Based on Limited Liability Company Law is a legal entity that is a capital partnership, established

under the agreement, conducts business activities with authorized capital that is entirely divided into shares and meets the requirements set out in this Law and its implementation regulations. Legal entities based on agency theory are the founders of the company can make a balanced agreement between the principal (shareholders) and agents (directors). This theory emphasizes the importance of company owners (shareholders) handing over the management of companies that are professionals (agents) who know better in running the business every day. [15].

State-Owned Enterprises of the Company based on Article 1 number 2 State-Owned Enterprises Law, is State-Owned Enterprises which is in the form of a limited liability company whose capital is divided into shares that are all or at least 51% (fifty-one percent) of its shares owned by the Unitary State of the Republic of Indonesia and its main purpose is to pursue its profits, so that the remaining shares can be owned by other than the Unitary State of the Republic of Indonesia, and mix between the shares owned by the Unitary State of the Republic of Indonesia with other shares either privately owned or other communities. so that the opinion that states that finance State-Owned Enterprises of the Company is the wealth of the state is not a problem because indeed all shares are derived from state wealth separated from capital participation in State-Owned Enterprises of the Company so that State-Owned Enterprises of the Company applies public law, while the legal entity in this case is State-Owned Enterprises of the Company formed based on the Limited Rental Law [16], so there is ambiguity from Public Law namely The Audit Board Act, The Act Corruption Crimes imposed on Limited Liability Companies.

The separated state wealth is placed in State-Owned Enterprises of the Company, to realize the welfare of the community with the principle of justice, with the main goal of pursuing profits. State-Owned Enterprises of the Company in carrying out its business or business by subject to Limited Liability Company Law, where Limited Liability Company Law subject to private law, or applicable The principle of *iure gestiones* [16] means that the state has committed civil law actions by including its capital in State-Owned Enterprises of the Company together with other shareholders through the agreement. State-Owned Enterprises of the Company in conducting transactions acts as a party that has the same position as other Limited Liability Company, so that State-Owned Enterprises.

The Company does not have the right of immunity as the state in carrying out public legal actions, so it becomes unfair or unfair if for Negara Owned Enterprises because the Company is enforced by public law, because of the state's actions to instill the power of the state that is separated in Negara Owned Enterprises Because the Company is not an act of the state as an act of public law (*acta jure imperii*) that has immunity from the jurisdiction of any country based on the concept of sovereignty, but rather is a state civil action (*acta jure gestionis*) including if the Company's SOEs trade are not immune to legal jurisdiction, even if public law is enforced, it is considered that there has been a violation by the state. In its capacity as a civil entity [17].

Legal tangents State-Owned Enterprises of the Company is included in the issue of supervision of financial management State-Owned Enterprises of the Company, whether the supervision of the financial management of State-Owned Enterprises of the Company is in public law as stipulated in Article 2 State Finance Law or private law that refers to

Article 11 State-Owned Enterprises Law which states that Negara Owned Enterprises is due to the Company subject to Limited Liability Company Law, Limited Liability Company is included in the realm of civil law. The mixing of separated state finances that transformed into State-Owned Enterprises of the Company, with the shareholder shares carries implications on the supervision of financial management State-Owned Enterprises of the Company whether subject to public law or civil law, which based on Article 11 State-Owned Enterprises Law, has been properly subject to Limited Liability Company Law, because State-Owned Enterprises of the Company is a civil law entity. But in practice it turns out that this supervision arrangement is also different between Law State-Owned Enterprises and Law No. 40 of 2007 concerning Limited Liability Companies hereinafter called Limited Liability Company Law. Based on job creation laws there is no change regarding supervision, so it still follows Limited Liability Company Law namely Law Number 40 of 2007 concerning Limited Liability Companies. Supervision as stipulated in Article 1 number 6 Job Creation Law, carried out by the Board of Commissioners who are the Organs of the Company in charge of conducting supervision in general and/or specifically in accordance with the articles of association and advise the Board of Directors.

The Aim of the research is to find out the laws imposed on financial examinations at state-owned enterprises Persero Persero. The theory used is the theory of justice, is the law applied to the management of State-Owned Enterprises fair?

The background of this research is fact the injustice imposed on state-owned enterprises in the supervision of financial management in doing business.

The doctrinal research method used to answer this research is with the flow of natural law, where the law is conceptualized as the Principle of Justice in the moral system according to the Doctrine of the Natural Law Stream, namely the fairness of the CPC's examination of Persero SOEs, especially justice for shareholders. Based on the doctrinal research method, justice can be concluded from the implementation of examination duties from the Financial Audit Agency at The State-Owned Enterprise Persero.

2 Discussion

State-Owned Enterprises of the Company in realizing its purpose and purpose must be professional, so that in the implementation and to provide justice to all shareholders, for State-Owned Enterprises Agency of The Company is subject to private law which in this case is regulated in Law of Limited Liability Companies, which has been regulated in Article 11 Law against State-Owned Enterprises, namely "State-Owned Enterprises The Company is subject to the rules of the limited liability company and applies all provisions and principles applicable to limited liability companies as stipulated in Law No. 1 of 1995, which is now Law No. 40 of 2007 concerning Limited Liability Companies, so that State-Owned Enterprises The Company, in carrying out its business, must comply with all regulations applicable to limited liability companies, namely Law No. 40 of 2007 concerning Limited Liability Companies here in after called Limited Liability Company Law. State-Owned Enterprises of the Company is a state-owned business entity, so the Board of Directors is a public official who must be subject to all regulations applicable

to public officials, and must run the company as stipulated in State-Owned Enterprises Act.

State-Owned Enterprises of the Company based on Law of Owned Enterprises has the goal to gain profits with the end goal is to achieve social welfare, with the principle of justice carried out with supervision of Good Governance or *Good Corporate Governance* (GCG) in running State-Owned Enterprises especially State-Owned Enterprises Persero. According to David Band, *Good Corporate Governance* (GCG) has a very close relationship with *agency* theory, which arises due to the separation between ownership and management of Limited Liability Company based on balanced agreements, and agents must use expertise, wisdom, good faith and fair and fair behavior in leading the way. Company [15].

Justice must be obtained in addition to the state as the majority shareholder in State-Owned Enterprises of the Company must also be obtained by other shareholders who in this case are the community, but there are differences in understanding the financial understanding of the separated state that is used as capital in State-Owned Enterprises, which causes justice to shareholders other than the state is not obtained.

There is an understanding of separated state finances that become capital in State-Owned Enterprises of the Company is a non-financial state finance State-Owned Enterprises Persero, so the Audit Board (BPK) has the task to securing state finances present in State-Owned Enterprises of the Company as a supervisor, which resulted in the Directors State-Owned Enterprises of the Company is not free in running the Company which in this case is State-Owned Enterprises of the Company to run its business, because it is worried that the actions it takes result in the company's losses which are also categorized as state losses so that they can be entangled in acts of corruption, as stipulated in Article 3 paragraph (1) of Law No. 17 of 2003 concerning State Finances, the company's wealth State-Owned Enterprises is a state wealth, which must be managed in an orderly manner obeying legislation, efficiently, economically, effectively transparent and responsible by paying attention to the sense of justice and propriety, thus applying to the Board of Directors of the Company must also be able to manage State-Owned Enterprises. Well by carrying out the principles of togetherness, equitable efficiency, sustainability, environmental insight, independence, and by maintaining the balance of progress and national economic unity, it needs to be supported by solid economic institutions in order to realize the welfare of the community.

State-Owned Enterprises of the Company as a state-owned legal entity must carry out business activities, in order to generate profits. Referring to Article 11 State-Owned Enterprises Law, Board of Directors State-Owned Enterprises, subject to Limited Liability Company Law. Supervision in running financial management to do business, of course there are those who supervise.

Supervision refers to Article 108 Limited Liability Company Law, namely:

- (1) The Board of Commissioners supervises management policy, the course of management in general, both regarding the Company and the Company's business, and advises the Board of Directors.
- (2) Supervision and provision of advice as intended in paragraph (1) is carried out for the benefit of the Company and in accordance with the purpose and purpose of the Company.

Supervision of State-Owned Enterprises carried out by the Commissioner and the Supervisory Board, as stipulated in Article 6 State-Owned Enterprises Law, reads:

- (1) Supervision State-Owned Enterprises is carried out by the Commissioner and the Supervisory Board.
- (2) The Commissioner and the Supervisory Board are fully responsible for the supervision of State-Owned Enterprises for the benefit and purpose of State-Owned Enterprises.

As for the reporting examination stipulated in Article 71 State-Owned Enterprises, it reads:

- (1) Examination of the company's financial statements is carried out by external auditors set by General Meeting of Shareholder for the Company and by the Minister for Perum.
- (2) The Audit Board is authorized to conduct an examination of State-Owned Enterprises in accordance with the provisions of the laws and regulations.

Understanding the wealth of the separated state which becomes capital in State-Owned Enterprises, is part of the state finances, then it is included in the object of the Examination of the Financial Audit Board, as stipulated in the Law of the Financial Audit Board in Article 6 The Audit Board Act, it reads:

- (1) Financial Audit Board is in charge of examining the management and financial responsibilities of the state carried out by the Central Government, Local Government, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, Regional Owned Enterprises, and other institutions or entities that manage state finances.
- (2) The implementation of the Financial Audit Board examination as intended in paragraph (1), is carried out based on the law on the examination of the management and financial responsibility of the state.

Financial Audit Board checks include financial checks, performance checks, and checks with specific purposes.

- (3) Based on Article 108 Limited Liability Company Law, the supervision of the Company is carried out by the Board of Commissioners, but refers to Article 6 The Audit Board Act, the current reality is because of finance Negara Owned Enterprises. Because the Company, considered as state wealth, then the management of State-Owned Enterprises of the Company is under the supervision of the Audit Board. With the differences in arrangements regarding state finances in the Company's State-Owned Enterprises, it raises ambiguity including in the supervision of the financial management of the Company's State-Owned Enterprises.

Ambiguity according to the great dictionary Indonesian has the meaning of uncertainty or obscurity. Ambiguity of Legal Principles means the vagueness of legal principles and legal uncertainties used in the supervision of financial management in State-Owned Enterprises of the Company whether subject to the principle of public law where the Audit Board as the Supervisor of the Company's State-Owned Enterprises in managing finances, or subject to Law Company limited offal which uses the principle of Civil law,

which is supervised by the Commissioner, as a Supervisory organ in a legal entity in this case the Company.

Refer in Article 2 letter g State Finance Act state finances are including state wealth separated from state companies and refers to Article 1 number 1 of the Law of State-Owned Enterprises "Business Entities" A state-owned enterprise is a business entity whose entire or most of its capital is owned by the state through direct participation derived from the wealth of a separated state" and the number 10 states: "The separated state wealth is the state wealth derived from the State Expenditure Revenue Association (APBN) to be used as the participation of state capital in the Company and/or Perum and other limited liability companies". This means that the finances of state-owned enterprises of the Company are said to be state finances, but there is also an understanding of the separated state wealth that is in the State-Owned Enterprises of the Company is not state finance, bringing the consequence that losses and debts. The Company's State-Owned Enterprises are not state debt but are debts and losses from the company itself, is true, as the opinions of experts Erman Radja gukguk, Nindyo Pramono and Refli Harun. And this is in accordance with the theory of legal entities. Based on the theory of the legal entity, State-Owned Enterprises of the Company is a legal entity, which has its own wealth.

The wealth comes from the wealth of the separated state which has become the capital of State-Owned Enterprises of the Company which has been transformed into shares of state-owned enterprises and not state wealth anymore, because based on the theory of legal entities, State-Owned Enterprises of the Company is a civil legal entity, which is based on Article 11 of State-Owned Enterprises Law, for the Limited Liability Company Law.

3 Conclusion

Separated state wealth that becomes the capital of State-Owned Enterprises of the Company that have been transformed into shares of state-owned enterprises of the Company and not state wealth anymore, so that for the management of wealth over state-owned enterprises of the Company is referring to the Company's regulations which in this case is the Law Limited Liability Company is Law No. 40 of 2007 concerning Limited Liability Companies, as also referred to in Article 11 of Law No. 19 of 2003 concerning State-Owned Enterprises, that State-Owned Enterprises are subject to the Limited Liability Company Law, so that there is no more ambiguity or uncertainty in the financial management of State-Owned Enterprises of the Company.

Authors' Contributions. Providing input on the principle of supervision of financial management supervision of State-Owned Enterprises of the Company in order to provide legal certainty.

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