

CONSTRUCTION OF ARRANGEMENTS FOR CALCULATING STATE-OWNED ENTERPRISE LOSSES AS STATE LOSSES IN EFFORTS TO INCREASE THE EFFECTIVENESS AND EFFICIENCY OF CORRUPTION ERADICATION

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Abstract

This study aims to find answers to the arguments why the calculation of BUMN losses has not been regulated as state losses so that the quality of eradicating corruption is less effective and efficient and to formulate regulation of BUMN losses as state losses to increase the effectiveness and efficiency of eradicating corruption. This research is sociologic using a case approach, legislation, comparison, and context analyzed with legal analysis theory from an economic perspective, Anthony Allot's theory of effectiveness and legal cybernetics with a summary of the literature related to BUMN, good corporate governance, state losses and corruption, and corporation crimes. The results of the study show the argumentation why BUMN losses have not been regulated as state losses so that the quality of corruption eradication is less effective and efficient because there are problems that include juridical problems of a dualism of BUMN accountability, casuistry problems in calculating state losses after the Constitutional Court Decision Number 25/PUU-XIV/2016 and interventionist problems regarding the direction of SOE policies. Meanwhile, the construction of regulations for calculating BUMN losses as state losses to increase the effectiveness and efficiency of eradicating corruption is realized through the construction of juridical regulations aimed at BUMN laws, limited liability companies, corruption crimes, and state finances. Furthermore, there is an audit of institutional construction and a system for calculating BUMN losses, the arrangements for which are embodied in a separate law.

Keywords: BUMN Losses, State Losses, Construction, Corruption

1. INTRODUCTION

One form of state business according to De Loy is carried out through the government's role in optimizing economic activities either directly through government actions, and policies or by maximizing the role of SOEs. Public service as the main function of SOEs must be maintained to support the development of the Indonesian economy. Reducing or eliminating the form of applying authority from the state to BUMN also creates problems, because state institutions such as BUMN will transform or change into non-state institutions. The Act, cannot be an element of the authority of the state. In addition, the business results of BUMN are also not fully one of the elements of public income or it can be said that the aspect of public service is reduced. Changes in share ownership can affect company policy, which means that private shareholders play a role in determining the government's economic decisions, especially in some sectors which are even in a position to dominate the lives of many people. This was found in the privatization of water resources and the commercialization of minerals and coal which was saved by the Constitutional Court's decision. The implications that occur are very fatal and can potentially cause services to the community not only oriented to the public interest but also

profits.

In its development, SOEs, especially those with a Persero form, have also been justified as playing a role in committing acts of corruption, including due to or under the guise of various government interventions in business activities and SOE policy directions, as can be manifested in various forms of interest. This is exacerbated by the still considered reasonable losses from SOEs. Juridical, implementation and structural arguments are still hegemonic against the idea of calculating BUMN losses which are primarily caused by government intervention to become state losses. Therefore, it is necessary to initiate construction efforts to calculate BUMN losses as objects of criminal responsibility, especially for directors and government officials who are proven to be decision-makers who make policies that harm BUMN. This solution is challenged by regulatory patterns in Law Number 19 of 2003 concerning State-Owned Enterprises and Law Number 40 of 2007 concerning Limited Liability Companies whose existence provides an exception for state-owned companies so that losses cannot be classified or counted as state losses and object of responsibility for criminal acts of corruption

This is still an immunity for state-owned enterprises' losses which cannot yet be counted as state losses. As a result, the loss of BUMN Persero is considered reasonable as a logical consequence of a company. In fact, in BUMN one can find capital from the state through APBN or APBD, either completely (BUMN Perum), or partially (BUMN Persero). The causality of SOEs with corruption is reinforced by the statement of SOE Minister Erick Thohir, who said he would thoroughly investigate and take firm action against SOEs because they had found 53 SOE corruption cases that were detrimental to the state. Various estimates of BUMN loss figures that can be found by the author through the media are as follows:

Figure 1: Table of losses for several State-Owned Enterprises from various media

No	BUMN	Loss
1	PT Garuda	4,15 (Rp 62,3 triliun) on 2021
2	PT Waskita Beton Precast Tbk (WSBP)	Not yet audited (determination of four people as suspects in investigations into allegations of corruption and misappropriation of development funds)
3	PT PLN	Rp 2,25 triliun on 2016
4	PT Pertamina	Rp 568 billion
5	PT KAI	The status of 92.8 million m2 or 28% of the total assets of KAI is still unclear. Not yet estimated (Basoetta Train Development in 2019-2020)

Cases of losses that occurred at PT Garuda, PT Pertamina, PT KAI, PT PLN, PT Waskita, and several other state-owned enterprises, show that there is no effective mechanism for controlling this loss. PT Garuda suffered a loss attributable to the parent entity or a net loss of US\$4.15 billion. If converted to rupiah, PT Garuda's net loss in 2021 will be IDR 62.3 trillion assuming the current rupiah exchange rate against the US dollar is IDR 14,993. Furthermore, other evidence was strengthened in the determination of four people as suspects in the investigation into allegations of corruption and misappropriation of development funds by PT Waskita Beton Precast Tbk (WSBP) and opening a new investigation related to allegations of corruption in the procurement of the 2016 PT Perusahaan Listrik Negara (PLN) transmission tower worth

IDR 2.25 trillion. In addition, BUMN corruption cases often make convicts the number one person in BUMN. Since the early 2000s, the President Director of PT. PLN (Persero) has stumbled on corruption cases three times. Since the early 2000s, three main directors of PLN have been arrested for corruption, namely Eddie Widiono (already released), Nur Pamudji, and Sofyan Basir.

Eddie was convicted of corruption in the Information System Master Plan project, Nur Pamudji for corruption in the procurement of High-Speed Diesel fuel oil, and finally Sofyan Basir for the PLTU bribery case. The case that ensnares the Main Director of PT Pertamina Persero is also interesting because the Main Director Karen Agustiawan had succeeded in bringing Pertamina to the international stage, but then became a prisoner in a corruption case.

Karen Agustiawan succeeded in bringing PT Pertamina to the Fortune Global 500 list in 2014 at position 123. However, Karen was named a suspect in March 2018 because she was accused of causing losses to Pertamina of IDR 568 billion. Karen is considered to be detrimental to Pertamina because of the disappointing results of oil and gas exploration in the Manta Gummy block in Australia. The losses of state-owned enterprises so far have been the cause of conflicting thoughts and implementations, regarding whether losses from state-owned enterprises can be classified as state losses. The difference of opinion, summarized by the authors, is caused by at least two factors. First, the substantive factor of statutory regulations that are contradictory and gives rise to a conflict of norms regarding the classification of state losses. This is understood between the arrangements in Law Number 17 of 2003 concerning State Finance, Law Number 40 of 2007 concerning Limited Liability Companies, and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Acts Corruption Crime. This fact is increasingly ambiguous with the interpretation of the Constitutional Court through the Constitutional Court Decision No. 003/PUU-IV/2006, which has stated that the meaning of harming state finances or the country's economy is not a consequence that must be declared to have occurred. Second, in the realm of practice, the activities of Persero BUMN have not been significantly separated from state intervention, as evidenced by the many assignments through Presidential Regulations aimed at the Ministry of BUMN. To understand this, one must first know the position of SOEs, especially in corruption cases, and whether losses can be criminally responsible

Losses from SOEs directly indicate the negligence of parties who have related authority or have responsibility or authority in exercising control over the business activities of SOEs. This is indeed enough to trigger distrust which leads to skepticism as manifested by the question, namely whether indeed the parties who are responsible or have the authority to exercise control over the business activities of the BUMN have been controlled by elements who are structured and systematic in carrying out corruption through BUMN. If explored further, such a statement creates causality between the form of intentional losses for BUMN, which indeed has never been attempted to evaluate or count them as state losses. This condition, if also analyzed from a corporate perspective, can also be understood from the elements of intentionality committed by legal entities and therefore labeled corporate crime because BUMN is also in contact with business activities involving private companies in various sectors through cooperation or

assignments from the government. . The assignment, as well as the form of cooperation, becomes an analytical study, especially regarding the form of accountability when losses of BUMN are found in the future. The Deputy for Business Infrastructure of the Ministry of State-Owned Enterprises, in media reports also stated that in the future the government will give more special assignments to BUMN, especially in urgent situations that require the role of BUMN. In addition to this, related to the profit and loss position obtained from BUMN business activities during the assignment or cooperation is regulated in laws and regulations. This shows that the government is still dictating the direction of policies and business activities of SOEs, even leading to losses.

SOEs are understood in the context of being state-owned corporations that carry out economic actions, the loss of which can also be a form of accountability for criminal acts of corruption. So, the BUMN losses that must be proven first are a state loss to be able to meet the criteria for state losses as stated in Article 2 and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. The realm of doctrine, states that there are at least three elements of action that qualify in terms of corruption, namely: bribery (bribery), extraction (extortion), and nepotism (nepotism). Thus, the above constitutes the anatomy of a crime of corruption with a concrete extension that corruption: (i) always involves more than one person; (ii) corruption generally involves secrecy; (iii) corruption involves elements of obligation and mutual benefit which are not always in the form of money; (iv) covert acts behind legal justifications, the perpetrators usually have a strong influence, both high economic status and political status; (v) contains an element of deception; (vi) contains elements of betrayal of trust, and the act violates norms; and (vii) duties and responsibilities within the social order.

The context of calculating BUMN losses has never been carried out by the BPK in practice. It is understood that in conducting audits, the BPK only calculates state financial losses based on the budgeting system. This means that new losses can be declared as state financial losses if there is a discrepancy between budgeting and implementation that causes a nominal loss as stipulated in the Constitutional Court Decision Number 003/PUU-IV/2006. Thus, the calculation of state losses carried out by the BPK does not calculate losses due to the inaccuracy of BUMN business activities but calculates the budgeting of state organs, agencies, institutions, and government agencies that use financing and budgeting from the state and/or regional budgets. These calculations tend to be carried out by the Inspectorate General of the Ministry of SOEs, which is structurally a supervisory element in the domain or competence of the Ministry which has the task of carrying out the internal supervision of SOEs. However, the inspectorate is not an auditing institution and has more scope of supervisory duties on BUMN assets, not in calculating losses. Meanwhile, BUMN losses are only mentioned and reported in the General Meeting of Shareholders (GMS) to calculate dividends and profits from these BUMNs.

This provision stipulates that as long as there is a real loss or actual loss to BUMN, then this has harmed the state's finances. Directors can be held accountable and can be charged with committing a criminal act of corruption. Bearing in mind that BUMN apart from being state

administrators, are also economic actors and market players, which have the function and duty to provide welfare for the community and public services. The case ensnare the directors of a BUMN or BUMD who were charged with committing a criminal act of corruption because the company led by them had caused losses to state finances. This is because there are provisions that stipulate that 51% of the capital obtained by companies such as BUMN Persero or BUMD Persero comes from the state. Although there is resistance stating that SOE capital is separate state property losses are subject to Law Number 40 of 2007 concerning Limited Liability Companies.

2. PROBLEM FORMULATION

1. Why has the calculation of BUMN losses not been regulated as state losses so that the quality of corruption eradication is less effective and efficient?
2. How is the construction of the regulation for calculating BUMN losses as state losses to increase the effectiveness and efficiency of eradicating corruption

3. METHOD

This research is sociolegal using a case approach, legislation, comparison, conceptually analyzed with legal analysis theory from an economic perspective, Anthony Allot's theory of effectiveness and legal cybernetics with a literature review related to BUMN, good corporate governance, state losses and corruption, and corporation crimes.

4. DISCUSSION

4.1: SOE losses have not been regulated as state losses so the quality of corruption eradication is less effective and efficient

The construction of the arrangement for calculating SOE losses as state losses is needed to accommodate the value of justice in BUMN governance. Justice in this case is considered intrinsic which has implications for the responsibility of the state in guaranteeing the right to life of citizens according to the perspective of social justice. This must be quantified, or it is not just that the people are asked to be passive and sit idly by waiting for the results of the policy. For example, in the PT Freeport case, as many economic observers have calculated, how much money would the state possibly receive from gold mining if 100% of the business was managed by a BUMN. Furthermore, the money received can be used to finance the community so that they are free from paying for health insurance, free education fees, and others.

Management independence can start from firm supervision in the form of legal instruments capable of becoming SOE policy control. This should ideally start from regulatory construction to calculate SOE losses as state losses. Without these changes, the hegemony of political and state intervention will continue to result in losses for SOEs which will continue to increase with stagnation in their benefits to society. PT Inalum Persero, for example, will officially control 51% of PT Freeport Indonesia (PTFI) shares. Since 1967, Indonesia has only owned 9.36%

(percent) of PTFI shares and the US mining company Freeport McMoRan (FCX) has 90.64%. Only after 51 years, through the divestment process, PTFI's shares of 51.2% are majority owned by Indonesia through PT Inalum. Admission for 2019-2020 does not exist because it is not yet operational. Only in 2021 and 2022 will Freeport contribute around US\$470 million to each country. Apart from that, in 2022 there will also be an additional metal strip. Problems were also found in compensation for landowners who were released to be used as toll road lanes. Ideally, based on the statutory scheme, these land owners should receive compensation in the form of toll road business royalties, or not just compensation money, and then buy new land as a replacement. While on the other hand, the toll road is operated by investors for a certain period according to the contract with the Government. These two examples are deliberately presented by the author as an illustration of understanding the operation of social justice. The argument is that SOE losses have not been regulated as state losses, thereby contributing to the ineffectiveness and inefficient quality of corruption eradication due to the following various problems.

First, there is a juridical problem of the dualism of BUMN accountability. The dualism problem of accountability for SOE losses is especially aimed at SOE losses which have implications for not being able to add up or count these losses as state financial losses. Furthermore, government intervention in the direction of SOE policies and MK Decision No. 25/PUU-XIV/2016 weakens the idea of calculating BUMN losses as state losses because the Constitutional Court stated that state financial losses must be able to be proven in real terms and through budget audits. Many BUMN losses are caused by disorderly management and are outside the state budgeting system. This is a weakness in the management of SOEs which results in the loophole being used by organized crime, BUMN elements, and government officials who participate in colluding in BUMN activities. The dualism of the function of BUMN is burdened with public service obligations as well as seeking profit in this case including the realm of management and policies that support the BUMN business activities. In principle, the management and policies of SOEs are a form of business to fulfill the desires and needs of the community by optimizing the public service functions of SOEs. Management and policies of SOEs that are not good, thus have the potential to lead to bad public service functions. In essence, the state through the government in carrying out its executive function is required to meet the needs of the community through the participation of SOEs. The management of BUMN policies should ideally be carried out independently, professionally, and apart from the interference of its shareholders, including the state as shareholder and controller. State control is not immediately released because SOEs in this case also have public service goals. SOEs historically was born because of the inability or limitations of the state to guarantee the needs of the people. Apart from being profit-oriented as a statement that is also regulated in Law Number 19 of 2003 concerning State-Owned Enterprises and Law Number 40 of 2007 concerning Limited Liability Companies, SOEs are also still controlled by the state, especially the provision of public services.

Second, there are casuistry problems in calculating state losses after the Constitutional Court decision no. 25/PUU-XIV/2016. The debate over the concept of formal offenses which was initially regulated by Articles 2 and Article 3 of Law Number 20 of 2001 concerning

Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, has developed into a material offense through the Constitutional Court Decision Number 25/PUU -XIV/2016. The decision stated that the phrase "could" harm state finances, contrary to the constitution so it implies that the article does not have binding legal force. The non-binding phrase 'can' contributes to a change in the interpretation of Article 2 and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, namely becoming a material offense. The debate on the concept of loss of state finances in the sense of material offenses as decided through the Constitutional Court Decision can hinder efforts to eradicate corruption. In the practical realm, it is not a problem related to the norms of the two articles. The essence of the offense of the two articles is "enriching oneself and/or other people or a corporation unlawfully or by abuse of authority, position, and opportunity" and not the phrase "can" harm state finances. The element of 'could' harm state finances is an offense element. The condition of the case involving the Main Director of a State-Owned Enterprise as the main stockholder of a public company is more visible in practice by deliberately obscuring BUMN losses even though the action is based on the authority of the Main Director. Provided that the action based on the authority of the Main Director of a BUMN obtains approval from the Board of Directors and the GMS.

It is difficult to make it the object of responsibility for corruption if it has not found a phrase that proves the loss of BUMN as a loss to state finances or a loss to the state economy. This is difficult because based on the Decision of the Constitutional Court Number 25/PUU-XIV/2016, which has become jurisprudence, losses to state finances must be proven in real terms, in the sense of losses incurred by calculations using APBN and/or APBD parameters. The causality, by changing Article 2 and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes after the Constitutional Court Decision No. 25/PUU-XIV/2016 will hinder and become problematic, especially in calculating BUMN losses as state losses to improve the quality of eradicating corruption. This conclusion is based on changing the phrase state loss in Article 2 and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which has implications at the practical level. So, to be able to properly prove a loss to state finances, first look for factual losses through differences in budgeting and budget realization which must be proven not under their designation.

Third, there are interventionist problems regarding BUMN policy directions. The case of PT KAI For example, PT KAI's financial statements for the 2013 period contained a nominal debt of Rp. 9.1 T and debt in June 2020 increased almost threefold to Rp. 26.1 Q. Political intervention has contributed to the addition of this debt, seen from the government's pattern of dictating and positioning PT KAI only as an extension of its arm in the dynamics of BUMN management. This is without being accompanied by understanding or exploitation of the other side of PT KAI's interests as a company that aims to seek profit in carrying out its business activities. This fact becomes a space or loophole for various BUMN activities and managerial errors which in the end can result in losses for it. In the Preamble of the 1945 Constitution of the Republic of Indonesia, paragraph IV mandates that the purpose of forming the Indonesian state is for the welfare of the people. BUMN management must be carried out carefully and

prudently because it relates to business fields in managing certain production or economic branches that are vital and have an impact on the wider community as well as the facilities obtained to be able to open up opportunities for practices that are more profitable to the parties. -certain parties. So, for this reason, control is carried out by the state through ministers who are assigned to supervise business activities and state-owned enterprises. In the Basoetta Cooperation Agreement, the Government does not include any privileges that take into account the interests of PT KAI

The only privilege that is listed is the right to operate public railway infrastructure for the Airport Railroad in the form of a 30-year concession. This is not accompanied by a loss-handling mechanism to anticipate if after the operation of the facilities and infrastructure or after thirty years, PT KAI loses money and cannot cover the funds used in financing and managing the airport trains. Ironically, these assets will be transferred to the Government after the concession period expires without any mechanism for dealing with losses for PT KAI.

4.2: Construction of Calculating SOE Losses as State Losses in Efforts to Increase the Effectiveness and Efficiency of Corruption Eradication

The construction of calculating BUMN losses as state losses to increase the effectiveness and efficiency of eradicating corruption can include the following matters. First, juridical construction is carried out in four forms, namely: (i) Construction of Law Number 19 of 2003 concerning State-Owned Enterprises; (ii) Construction of Law Number 40 of 2007 concerning Limited Liability Companies; (iii) Construction of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes; and (iv) Construction of Law Number 17 of 2003 concerning State Finance. Reconstruction is carried out by confirming the regulation of the classification of state-owned BUMN wealth management which must be distinguished from conventional PT wealth management. Losses resulting from the management of the assets of state-owned enterprises, especially those where the losses are proven to originate from inaccurate governance of business activities and government assignment interventions that cause losses, must be distinguished from losses from conventional limited liability company wealth management. The hope is that in the future there will be no more protection or immunity from BUMN losses resulting from legal loopholes, namely that BUMN losses do not constitute state losses and are only limited to reasonable losses in the BUMN position as a company. Furthermore,

Second, the construction of audit institutional arrangements and the BUMN loss calculation system. This is carried out on institutional audits and the BUMN loss calculation system. The construction of an audit institution for BUMN losses is based on the objective of improving the institutional structure which has so far overseen the management and finances of BUMN. In practice, SOEs have enormous flexibility so that they can compete with the private sector in matters of profit-seeking. In the classification between public finance and private finance, there are several differences of opinion regarding the actual position of SOEs. This difference in interpretation has an impact on SOEs, which ideally should be audited simultaneously by a Public Accounting Firm as is the case with private companies but also audited by the BPK as the Supreme Auditor of state finances. Broadly speaking, it can be concluded that the SOEs in

the audit is part of the state, but not necessarily a direct part of the government as the executive. The government must relinquish its executive functions and must release SOEs from intervention caused by various assignments. In conclusion, the construction of the institution for calculating audits of BUMN losses is realized by an audit institution that is independent of the function of a Public Accountant which is the comparison of BUMN audits by the BPK. Thus, the position of the audit institution is offered to technocrats or experts, professionals, and academics as an example in terms of an audit of BUMN losses which can be projected and optimized from the function of an independent public accountant to maintain objectivity in carrying out audit tasks. the re-construction confirms the classification that the types of BUMN losses originating from inaccurate management of business activities or government assignment interventions that cause losses, are not positioned or included as conventional company losses and must be distinguished from conventional company wealth management losses and accommodate the idea of creation or realization an audit system carried out by a Public Accountant Institution that has an independent nature as a comparison to the audit conducted by the BPK.

Then, the construction of the SOE loss audit calculation system was prepared using an approach from an economic point of view, especially in calculating state losses as classified. This is also a form of follow-up because fiscal calculations will involve professional auditors such as public accountants. Thus, this condition complements the science of law which can be analyzed from an economic point of view to determine a detailed calculation of state losses. Furthermore, through this law, the mechanism and nominal value of state losses originating from BUMN losses are determined to increase the effectiveness and efficiency of eradicating corruption. Thus, the construction of a BUMN loss audit system must accommodate the idea of creating or realizing an audit system carried out by a Public Accountant Institution that has an independent nature as a comparison to an audit conducted by the BPK. The pattern of state financial losses must also be expanded, not only limited to evidence of budgeting from differences in the budget that are not used according to their intended purpose.

5. CLOSING

The argument is that SOE losses have not been regulated as state losses so the quality of eradicating corruption is less effective and efficient because there are problems that include juridical problems of the dualism of BUMN accountability, casuistry problems in calculating state losses after the Constitutional Court Decision Number 25/PUU-XIV/2016 and interventionist problem of policy direction BUMN.

The construction of calculating BUMN losses as state losses to increase the effectiveness and efficiency of eradicating corruption is realized through the construction of juridical regulations aimed at BUMN laws, limited liability companies, corruption crimes, and state finances. Furthermore, there is the construction of an audit institution and a system for calculating BUMN losses, the arrangements for which are embodied in a separate law

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