

RESPONSIBILITY OF DIRECTORS STATE OF ENTERPRISE / SOE (PERSERO)

Eny Suastuti

I. PRELIMINARY

Under the civil law Regime, the State-owned stocks is the State assets is separated from the STATE BUDGET, so that the stock is not the property of the State. The provisions of article 2 of ACT No. 17 of 2003 about the finances of the State explained that the country's assets include the country/region property, managed by the Government or other parties in the form of money etc. The provisions of article 2 and article 3 of ACT No. 31 of 1999 jo. ACT Number 8 of 2001 about the eradication of Corruption indicates that who begs the State financial losses or the economy of the country may be subject to criminal corruption.

Hence, the responsibility of directors (soes) have stated essential function as many prosecution corruption in soe which the body is increasing every day sparking legal problem to be solved. Considering soes (persero) is a form of private business entities controlled by private law identical with pt private generally that is occupied by a state to menjalan the national economy. Adoption of this raises a debate that is , government -owned capital assets separated from the state in the SOE (Persero) is a state asset . Second, the losses incurred in the SOE (Persero) is a form of state financial losses , so the directors were held responsible for the losses. Third , the implications of the provisions of Article 2 of Law No. 17 of 2003 on the existence of state-owned enterprises (Persero) is the applicability of the provisions of Article 2 and Article 3 of Law No. 31 of 1999 jo . Law No. 20 Year 2001 on Combating Corruption to the directors of state enterprises (Persero) .

Law No. 19 Year 2003 on State-Owned Enterprises (SOEs) consists of 2 (two) types of SOEs , namely Perum and Persero . Article 1 paragraph (2) of the Act states that only limited Persero PT - PT that at least 51 % of shares are owned by the Republic of Indonesia , which distinguishes PT form established by the state to the private PT usual form , then to form the PT that this country was founded by a Limited Company called abbreviated Limited.

II. PROBLEMS

Based on civil law perspective, a form of business entity state (Persero) which was established by the State which is subject to private law, so that the State-owned stocks is the asset of the country which is separated from the STATE BUDGET and not the assets the Government anymore, so the legal issues would cause the deed Board of Directors can be qualified as a criminal act corruption if there is one of the top STATE-OWNED wealth management (Persero).

III. THE CHARACTERISTICS OF STATE-OWNED ENTERPRISES (PERSERO): BODY OF PUBLIC LAW OR PRIVATE LAW BODIES

Characteristics of a legal entity is established by the people, has its own separate wealth of personal and property managers. SOE (Persero) as a legal entity, its staff conducted by an organ. Stewardship of an organ in a Limited Liability Company is the same as the principle organ in SOE management (Persero), because SOE (Persero) is not a special form of PT in general. It says SOE (Persero) only in part because of its shares owned by the state.

There are 3 (three) organs at SOE (Persero) , the AGM , the Commissioner and the Board of Directors . State as shareholder in SOEs (Persero) position as shareholder countries can not interfere in the management conducted directors . The position of the AGM as the highest organ of the companies listed in Article 1 paragraph (13) of Law No. 19 Year 2003 on SOEs as it is said Abdulkadir Mohammed , GMS exclusive powers not assigned to other organs stipulated in the Company Law and the Articles of Association . A description of the duties and authority of the AGM is set out in detail the terms of the budgets of the Company Limited

Commissioner is organ SOE (Persero) is in charge of supervising and providing advice to directors in carrying out the maintenance activities of SOEs (Persero) . Duties of commissioners can be found in Article 31 of the Law of SOEs . The Board of Commissioners is the organ that supervises the company's management policies and management actions by the directors . just for the sake of the company alone . Therefore , the provisions regarding the responsibilities of Directors as a board SOE (Persero) to represent the interests and goals as well as state-owned enterprises , both inside and outside the court . The Board of Directors is authorized organ of the company and are fully responsible for the management of the company for the benefit of the company , both inside and outside the court in accordance with the provisions of the articles of association . The provisions of Article 95 paragraph (5) of Law No. 40 of 2007 , in the company's managing director has a certain freedom entrusted to manage the company , and can not be prosecuted before the Court on the basis of the decision that has been taken . In corporate law , business judgment known doctrine that teaches that the directors of the company are not liable for damages arising from an act of decision-making , if such action is based on goodwill and carefully . Judgment business rule doctrine is to encourage directors to be more willing to take risks than overly cautious , so the company is not the way . Directors have legal protection without the need to obtain shareholder or justification of the court over his decision in the context of the management of the company . This principle reflects the assumption that the court can not make a better certainty in business rather than directors . The judges generally do not have the business skills and began studying the issue after the facts . According to Ridwan Khairandy , a loss in a particular business transaction does not in itself cause any harm to the company . There must be a profit and loss statement in the annual balance sheet of the company, as represented regulated in Article 66 of the Law of PT . expressed directors prepare an annual report for submission to the General Meeting which shall include a report that consists of the calculation of the final

balance of the new financial year and the previous calculations of profit and loss for the year as well as an explanation of such documents will be reflected financially actual state of the assets, liabilities, capital and results of operations of the company during the current year.

Parameters of the loss under the provisions of Article 66 paragraph (2) of the PT can not be determined based solely on one financial year only, because a loss in a particular financial year can be closed with a profit in the previous financial year. As consideration Judge of Appeal, the High Court Decision Number: 121/Pid/2006/PT.DKI., Dated August 31, 2006, as follows: "to determine when losses can arise countries have two (2) kinds of calculations, according to Erman Rajaguguk, so the law firm (business law), overall losses occur. There are people making 10 contracts, 1 loss, and if you add up 9 profit is still a profit, not loss. Recent losses, if 10 were all losses."

Furthermore, expert witness testimony in the case Andi Erman Radjaguguk Alam, Director of the Social Security stating that: "to determine the country's financial losses in SOEs must wait 1 year. If SOE profit and loss 100 M 10 M, the state's loss has not occurred. Against these problems, Andi Hamzah stated as follows: "that the experts agree with the statement of Erman Radjaguguk on condition that the defendant 10M loss not a profit. Suppose a stock purchase 1 billion that should only 750 million, then A'm part of the 200 million shares the seller, then the act is clear corruption". Therefore, the losses suffered by state-owned companies (Persero) for a particular transaction does not mean losses for state-owned enterprises, as there may be profitable transactions, so it is not appropriate if the loss on a particular business transaction with the company itself becomes a loss, especially loss of state says, this is reflected in the practice of the court to an error where the directors of state enterprises (Persero) imposed charges of corruption in a particular transaction.

In connection with the losses suffered by the state (Persero), the Board of Directors of State-Owned Enterprises (Persero) accountable for all policies that have executable before the General Meeting of Shareholders (AGM). GMS can accept or reject the policy and accountability report of the directors. An example is the GMS PT Nusantara Plantation, which states:

On May 24, for the financial year from January to December, among others GMS grant exemptions to the directors and commissioners accountable for their actions in their respective fields for the financial year in question throughout the matters reported by directors and commissioners; Dated June 20, 2001 for fiscal year 2000, among others, decided that the directors and commissioners granted exemption from responsibility (acquitted et de charge), for all their actions in the field of each task in fiscal year 2001.

The decision of the meeting, used by the Surabaya District Court as legal considerations in the release of the defendant as the Surabaya District Court, No. 672/Pid/B/2003PN.Sby, dated May 4, 2004 in the case of corruption in the name of defendant Ir. Mochtar Adyarto Soewadji and Drs. The Ratio decidendi stating that the defendant has been acquitted of responsibility in the GMS PTPN XI, and the defendant is approved by the Commissioner. If GMS accept any policy that has been implemented by the Board of Directors and has been accounted for, then there is no other organ that can hold directors on policy issues and responsibilities associated with managing directors of state-owned enterprises (Persero). In this connection Rudhi Prasetya stated, if the policy in running the SOE (Persero) and the accountability of directors has been accepted by the AGM, the directors legally exempt from responsibility for losses incurred in the management of state-owned enterprises (Persero), and should be considered to have completed the responsibility of the Board of Directors, which in law is named as Directors of the company has obtained "volledige acquit et de charge". In English is said to be the Board of Directors has obtained "release and the charge". From the word "acquit" had no meaning as a recurrence. Has given "release" (liberation). Liberation of "de charge" (demands). Application of the principle of "volledige acquit et de charge" can be seen from consideration of the decision of the Supreme Court Number: 1912.K/Pid.Sus/2008, dated June 25, 2009 in essence stated the defendant had been acquitted of responsibility in the GMS PTPN XI.

IV. AT THE STATE CAPITAL INVESTMENT CHARACTERISTICS SOE (PERSERO)

In the PT system, the management of a company's management is in the hands of the board of directors or one director if there are more day-to-day under the control of the commissioner or commissioners culminating in the General Meeting of Shareholders (AGM). Therefore, the organ at the SOE (Persero) when viewed in terms of its structure on the face there is no difference with the organs in the private PT in general.

The position of the AGM is an organ that is the last place convey directors accountable for all policies that have been implemented by the board of directors. So it can be said that the AGM is the last organ where delivered BOD accountable for all policies that have been implemented by the board of directors. Thus, GMS has the authority to decide important matters of policy a SOE (Persero) is not limited to the appointment or dismissal of directors only, as stipulated in Article 17 of Law on SOE.

In the PPT system, the management of a company's management is in the hands of the board of directors or one director if there are more day-to-day under the control of the commissioner or commissioners culminating in the General Meeting of Shareholders (AGM). Therefore, the organ at the SOE (Persero) when viewed in terms of its structure on the face there is no difference with the organs in the private PT in general.

The position of the AGM is an organ that is the last place convey directors accountable for all policies that have been implemented by the board of directors. So it can be said that the AGM is the last organ where delivered BOD accountable for all policies that have been implemented by the board of directors. Thus, GMS has the authority to decide important matters of policy a SOE (Persero) is not limited to the appointment or dismissal of directors only, as stipulated in Article 17 of Law on SOE.

Directors as an organ of state enterprises (Persero) is required to take full responsibility for the management of SOEs in the company to interests and goals as well as representing the company both inside and outside the court. In addition, the Directors are also required for specific tasks given to SOEs (Persero) that perform the functions of public benefit set out in Article 66 Law on Enterprises, by taking into account the intent and purpose of the activities of SOEs. This is certainly not easy to bear by the Board of Directors of State-Owned Enterprises (Persero). Because of the SOE (Persero) no state shares, the issue of accountability of directors in the event of mismanagement of state-owned enterprises on properties (Persero) to be important for analyzed in this chapter.

According to Law No. 19 Year 2003 on State-Owned Enterprises, the state in running the business can choose two (2) different forms namely Persero and Perum. Limited is a state-owned limited liability whose capital is divided into shares that are wholly or at least 51% owned by the State of RI whose main objective pursuit of profit. According to Article 11 of Law No. 19 of 2003, the provisions of all applicable Limited and principles that apply to the Limited Liability Company as set forth in Law No. 40 of 2007.

In relation to this policy Seno Adji Indriyanto directors declared the following : SOE Leader in providing policy decisions on the management of the company that actually causes mismanagement or loss is the area of Public Administration as a policy of the state apparatus (Overheids a regulation) , as head of state enterprises is subject according to the Law of Civil Servants understanding PTPK , while the approval process associated with the management in SOE (Persero) is the area of civil law as " privaatrechtelijkheid " , defaults that can not be interpreted as an act against the law in criminal law , as a source of engagement are different between the two. Default is the issue of consent is based on legislation, while rooted in tort actions unauthorized person and of no relevance to the laws So for example, are not able to BLBI a civil issue , not and can not be interpreted as an act of law against corrupt as the empirical experience .

In addition, the issue of state losses in element PTPK Law is the basis for justification for the public prosecutor to file a deed of Directors of SOEs (Persero) which resulted in the company despite losses in SOEs (Persero) which is included in the scope of the power of private law. This is visible on the demands of the public prosecutor to indict Sri Meitono Purbowo aka Tony Purbowo, President Director of PT Patra Jasa has resulted in financial losses the state as stipulated in Article 3 jo. Article 18 of Law PTPK.

Existing financial status to the SOE (Persero) has always been associated with the concept of state assets are not separated state financial sense in the State Finance Act and the General Explanation of the Law PTPK. In the case of the PT Patra Jasa, the Prosecution argues PT Patra Jasa which is a subsidiary of PT Pertamina (Persero) with a composition of 99.99% shares of PT Pertamina dimiliki Patra Jasa it is to be categorized as a state asset. Sales of state assets should be in accordance with SVTO as defined in the Ministry of Finance letter dated August 12, 2002.

This is something that is very unusual since in practice the application of criminal sanctions on charges of Article 3 of the act of the Board of Directors of Law PTPK SOE (Persero) on the basis of losses that are not recognized in the provision of financial management.

Legal judgments in state losses of SOEs (Persero) which is subject to private law will certainly bring consequences to prove whether there is any aspect of state assets in the field of private law. Though setting berkaiatan with the interpretation of the facts valuation losses in the state of SOEs (Persero) is very important, given the known presence in the criminal law principle of legality which the legal protection for the people of the country and become treatment limiting state authority in carrying out its power.

Vagueness in the interpretation and provide a definition of financial separated state as stated in Article 4 paragraph (1) SOE Act and Article 1 point 7 of Regulation No. 44 Year 2005 on Procedures and Administration of State Capital Investments in SOEs and Limited Liability Company Law as well as up to now is still being debated and the scene of an academic study of the various groups and legal experts . Understanding of these three rules are not in line with the provisions contained in the Explanation of the General Law PTPK and Law on State Finance .

According to the concept of corporate law , if the board of directors in carrying out their business activities have been approved and have been accounted for in the AGM and has gained Acquit de charge , then all the actions it has taken the directors can not be prosecuted by any institution including prosecution . In fact the practice of SOE directors can still be prosecuted by the public prosecutor of corruption by the application of Article 2 and Article 3 of Law PTPK layered indictment .

The number of cases in which the Board of Directors of State-Owned Enterprises (Persero) has been prosecuted for corruption acts violate the provisions of the Decree of the Board of Directors or for violating the provisions of the Articles of Association on charges of Article 2 and Article 3 of Law PTPK. Though the criminalization of the directors of state enterprises (Persero) with bases in violation of the Decree of the Board or the Articles of Association is opposed to the principle of legality. Related to this issue Basuki Minarno Nur expressed the principle of legality in criminal law is a principle that is global, universal. Every criminal rule over the world because of the principle of legality is always diadoptir legality principle basically aims to protect the human rights / rights of human nature.

Convict on the Board of Directors of State-Owned Enterprises (Persero) is only based on a violation of the decree of Directors or the Articles of Association is a mistake . Given SK SOE directors (Persero) and the Articles of Association are not included in the definition of legislation referred to in Article 7 of Law No. 10 Year 2004 regarding legislation . As Nur said Basuki

Minarno, laws and regulations are local legislative product that is the manifestation of the democratic process, therefore, to impose punishment should be based on laws or local regulations. Such provision has been formalized with the issuance of Law No. 10 Year 2004 regarding legislation.

Therefore, pursuant to the provisions of Article 11 of Law concluded that SOE can basically SOE (Persero) is identical to the PT, so that it shall apply to all the provisions and principles in the PT. This is because SOE (Persero) is a corporation which, according to the civil law is a legal person (rechtspersoon) and is a legal entity that has the legal personality trait.

In connection with the organs of state owned company (Persero) was expressed by Sentosa Sembiring that states, "... even though the role of the state is still quite strong in liability company let alone the state has a stake one hundred percent, but the principles of professionalism in managing the business world still upheld high. The principles of professionalism in managing the business as stated in dictum First of Presidential Instruction No. 8 of 2005 on the Appointment of Members of the Board of Directors and / or the Commissioner / Board of Trustees SOE as follows:

In order appointment of members of the Board of Directors and / or the Commissioner / Board of Trustees of SOEs, the Minister of State Owned Enterprises, as representative of the Government as a shareholder at the AGM or Limited, or as representative of the Government as the owner of capital on Housing, in order to observe and promote the expertise, professionalism and integrity of the candidates member of the board of directors and / or the Commissioner / Board of Supervisors is concerned, to promote and develop the company

The position of the Board of Directors of SOEs (Persero) under the provisions of Article 13 of the Law on SOEs jo. Law Article 1 paragraph 2 of Law Company Limited, the company stated organ is the General Meeting of Shareholders, directors and commissioners. In verse 4 the General Meeting of Shareholders is stated hereinafter referred to as GMS, is the highest decision making organ of the company and the company does not hold any authority given to the directors or commissioners. In subsection (5) its otherwise, the company's board of directors is authorized organ and is fully responsible for the management of the company for the benefit of the company, in accordance with the purposes and objectives of the Company and to represent the company, both inside and outside the court in accordance with the provisions of the articles of association. Furthermore, subsection (6) the organ of the company stated the board is charged with the general supervision and or give advice to directors in running the company.

The lack of clarity regarding the cash position of the state capital in SOEs that resulted Limited directors be held accountable for losses in state-owned enterprises (Persero) using PTPK Act. Though capital injection at the time of the establishment of state-owned enterprises in the form of an investment in shares, means the participation of countries taking part in a legal entity that is realized through stock agencies. Therefore, legally it can be said that the inclusion of the state in the form of a business entity SOE (Persero) is a state asset that is separated so the state to include such property, then that property becomes property by law SOE (Persero). So the nation's wealth in the SOE (Persero) the tangible stock, and not the wealth of SOEs (Persero) is concerned.

In relation to the investigation and prosecution of cases of corruption in SOEs (Persero) so aggressively by using a basic law that many PTPK provoked much criticism, because it does not understand the concept of a legal entity. The use PTPK Act in the case of losses in the state is contrary to the Company Law and the Law on SOEs which the existence and activities of the business. In this case Siswo Lewis questioned whether the concept of thinking about compensation set forth in Article 1365 of the BW is now no longer able to be used as the basis for the settlement of various state losses in the case of SOEs (Persero). Given the state organs in SOEs (Persero) is a professionally managed, the government plays its role as an individual who has a profit motive. In this case the government is not acting as a public official. Immunity public as a ruler no longer valid, and fully applicable to him and the subject of private law, even though the company's stock one hundred percent state owned.

V. Directors Liability For Loss In SOE (Persero)

Motivation countries forming SOE (Persero) is based on Article 2 of Law No. 19 of 2003 with its main purpose is to pursue profit. Any differences in the interpretation of modal view SOE (Persero) which is associated with the apparent state assets as stipulated in the provisions of Article 4 paragraph (1) of Law No. 19 Year 2003 on SOEs. Understanding of the provisions of the article related to the desire of the state to participate in the economy for the success of the business activities of the country. By choosing the pattern of private legal entities expected to be more agile in making decisions and actions.

Organ on SOE (Persero) in terms of its structure there is no difference with the organ in a private PT in general. Therefore financial SOEs (Persero) is not a state finance, but it is a corporate finance. The controversy over the expansion of the state finances arising in connection with the provision in Article 2 (g) of Law No. 17 Year 2003 on State Finance. According to the article is a wealth of the country, though the company has separated the country remains a country's finances. The existence of the Supreme Court of the Republic of Indonesia Fatwa Number: WKMA/Yud/20/VIII, dated August 16, 2006 which states, "SOE accounts receivables is not a country", has clarified the controversy. The Supreme Court issued a fatwa answer letters question the Minister of Finance of the Republic of Indonesia Number: 324/MK.01? 2006, dated July 26, 2006.

The question of Directors of SOEs (Persero) which is owned by the state will not affect the structure of the existing Limited Liability accountability, because there is an element of business entities that this country is not included in the category of business entities of public law. SOE (Persero) is a private legal entity. That is, the SOE (Persero) that there is a problem state shares responsibility for managing the company's directors remain on the GMS, as emphasized in Article 1 paragraph 13 of Law

No. 19 Year 2003 on SOE stating , GMS is an organ Limited which holds the ultimate power in the Limited and holds all the authority that is not submitted to the Board or the Commissioner . Article 11 of Law No. 19 of 2003 , the provisions of all applicable Limited and principles applicable to the limited liability company as set forth in Law No. 40 of 2007 on Limited Liability Company .

Under the second clause, any policy that has been taken by the Board of Directors of SOEs (Persero) , then the policy has been accepted by the AGM , the directors considered to have finished the responsibility for the things that have accounted for it . It is in the company law the directors have obtained the so-called " *aquit et de charge* " , it means the board of directors has granted exemption from all charges , so that when they are accountable to the AGM and have obtained liberation , then it is nonexistent anymore other organs can ask for more accountability of directors on issues concerned that the exemption has been granted.

Therefore , it is appropriate verdict of the Supreme Court of the Republic of Indonesia Number : 1912 K/Pid.Sus/2008 over the defendant Ir . Soewadji (Former Director of PTPN XI (Persero) Surabaya , and Drs . Adyarto Mochtar (Former Director of Finance PTPN XI (Persero) Surabaya , which in its consideration (taking over consideration Surabaya District Court judge) , stated , that the defendant has been acquitted of responsibility in GMS PTPN XI , of the actions of the defendant have been approved by the Commissioner of PTPN XI . Based on consideration of the Surabaya District Court Number : 672/Pid/B/2003/PN.Sby , dated May 4, 2004 , defendant was not proven ash and convincingly guilty of committing acts crime charged in the indictment the primary and subsidiary , and acquit the defendant of all charges and restore the rights of the accused in the capabilities , status and dignity and dignity . judge of the Supreme Court and states appeal of the Public Prosecutor at the Tanjung Perak Negari prosecutor can not accepted . Pputusan the Supreme Court , it can be concluded that the question of Directors of State-Owned Enterprises (Persero) is equal to that of the private PT in general . Provision of PT which is subject to the Act No. 1 of 1995 shall also apply to state-owned companies (Persero) , as affirmed in Article 11 and Article 11 Explanation of Act No. 19 of 2003. Similarly, the fact in practice the whole procedure applicable to the establishment of the Limited Liability Company shall apply also in the establishment of state-owned enterprises (Persero) .

The provisions of Article 19 of Law SOE stated, in carrying out their duties, members of the Board of Directors must devote energy, thought and attention fully on the tasks, duties, and the achievement of company objectives. Similar provisions can be found in Article 85 paragraph (1) and Article 95 paragraph (2) Company Law states that each member of the board of directors shall be filled with goodwill and responsibility running errands for the company's interests and efforts. Both the provisions of the Act both SOEs and Company Law requires the directors to take full responsibility for the management of the company that is charged and must be implemented with full responsibility for the benefit of people and companies. Related to this Ridwan Khairandy states, directors are fully responsible for the management of the company, meaning that it must carry out the fiduciary standard of care for the benefit of the company.

In connection with the establishment of the mechanism of SOE (Persero) that there are differences in the provisions of Company Law. Company Law gave signs that the establishment of state-owned enterprises (Persero) subject to the provisions of Article 7, paragraph 7 of the Act PT. As defined in Article 7 paragraph (1) of the Company Law states, the company founded by two (2) or more by notarial deed made in Indonesian. Thus the provisions of Article 7 (1) of the PT can be remained unfulfilled, because establishing SOEs (Persero) there is only one party, in this case the Republic of Indonesia.

Existence SOE (Persero) on the one hand in carrying out its activities as a business entity must be able to compete with other businesses, given the goals to be achieved by SOE (Persero) is not solely the pursuit of profit, but on the other hand there is a mission that must be carried by the state (Persero) as defined in Article 66 of Law on SOEs. Therefore, it is necessary to implement a good cooperation of all organs in the SOE (Persero).

In determining when and how the responsibilities of directors are deemed to have violated these principles is very difficult when seen in the legislation . Directors responsibility issues in the corporate world requires a container in the form of legal entity with limited liability , so that the economy continues to grow , so that limited liability was introduced to the nature of limited liability for directors . In common practice doubts over responsibility issues . Article 2 of Law No. 19 of 2003 stated that the primary purpose of the establishment of PT Persero is to pursue profit . By choosing a form of PT Persero expected success in business activities of the country concerned , so that the gains can be achieved as much as possible . If countries choose other forms such as public law , it will be covered by legal and bureaucratic atmosphere that will lead to stiffness which would reduce the success of the business activities in the country . Therefore , by choosing the pattern of private legal entity state is expected to act agile as possible in making your decisions and actions , so that minimized the enactment of public law.

As a legal entity SOE (Persero) has *rechtsbevoegdheid*, which may have acted as a wealth and person, make agreements, sue and be sued, and exercise the rights and obligations provided by the State. Based on the wealth status of SOEs (Persero) and is no longer separate from the country's wealth. Thus when the wealth of the country has been separated for inclusion in the SOE capital, then such property is no longer entering the realm of public law, but entered the realm of private law. This means that once the capital included in the SOE or the Limited Liability Company are realized in the stock, then it takes on a completely capital or property rights and state-owned companies or limited liability companies.

State financial arrangements and state losses in Law No. 17 of 2003 and Act No. 1 of 2004 has always been associated with the notion of state finances that has separated the country made capital investments in setting up state-owned enterprises (Persero). In the practice of state participation in the SOE (Persero) is said to be the state capital, accountability Directors SOE (Persero) in

a negligent or wrongful conduct may be subject to corruption. This is apparent in the case of PT Bank Mandiri (Persero) and PT Social Security (Persero).

Investments in the country in the company referred to in Article 4 paragraph (3) of Act No. 19 of 2003 was government intervention in the field of economy can be understood as a form of participation in civil court for the benefit of the country's economy, in order to achieve a just and prosperous society, as mentioned in preamble of Act No. 2003. In terms of government action in civil court and subject to the rules of civil law, the government acts as the representative of a legal entity, not a representative of the office.

In connection with the SOE (Persero) whose shareholders are the responsibility of the Central Government from the existing structure of PT did not affect the SOE (Persero) means that even if shareholders are the Government Center Board of Directors remains accountable to the GMS, rather than to the Central Government, which is reinforced by the provisions in Article 1 paragraph (13) of the SOE.

VI. CONCLUSION

The position of SOEs in the context of the existence of the state capital in the category of private legal entities or public law . This categorization is necessary to determine the principles and rules of law applicable to these enterprises to find a new legal formulation . Confusion of the position and status of the state finance law in criminal law will omit the separation of state corruption by role and status as a legal entity of public and private legal entities . Special assignment as stated in Article 2 paragraph (1) and Article 66 of Law No. 19 of 2003 makes the position of state-owned enterprises (Persero) is no longer a civil legal entity , but rather becomes a special form of legal entity of public law entities , so that if there are losses in the management of SOEs (Persero) is a state financial losses as Article 2 and Article 3 of Law No. 31 of 1999 . The provisions of Article 2 letter c jo . Article 66 of Law No. 19 of 2003 which regulates the function of the organization of public benefit civil incorporate SOE (Persero) which is generally controlled by a special form of private law into a public legal entity , which is contrary to Article 11 of Law No. 19 of 2003 jo . Law No. 40 of 2007 ;.

SOE directors (Persero) is an officer in the civil law (private) and public officials are not addressat of position or public office . The subject of the offense of abuse of authority in Article 3 of Law PTPK is not appropriate to be applied to the Board of Directors of State-Owned Enterprises (Persero) , because the authorities of the Board of Directors of SOEs (Persero) in the category of private authority .

The existence of differences of opinion among experts over the use of the criminal law Article 3 of the Board of Directors of State-Owned Enterprises Act PTPK (Persero) in the event of mismanagement over the assets of the business entity , which is considered to have committed " abuse of authority " . Authorities of the Board of Directors of SOEs (Persero) is regarded as a public authority . Special assignment as stated in Article 2 paragraph (1) and Article 66 of Law No. 19 of 2003 makes the position of state-owned enterprises (Persero) is no longer a civil legal entity , but rather becomes a special form of legal entity of public law entities , so that if there are losses in the management of SOEs (Persero) is a state financial losses as Article 3 of Law PTPK ;

References

- Abdulkadir Muhammad, Hukum Perusahaan Indonesia, Citra Aditya Bakti, Bandung, Cet ketiga Revisi, 2006.
Abu Daud Busroh, Pemeriksaan Keuangan Negara, Rineke Cipta, Jakarta, 1993.
Adji, Indriyanto Seno, Korupsi Kebijakan Aparatur Negara Dan Hukum Pidana, Diadit Media, Jakarta, 2007.
Chidir Ali, Badan Hukum, Alumni, Cet. III, Bandung, 1999.
Gunawan Wijaya, Resiko Hukum Sebagai Direksi, Komisaris, & Pemilik PT, Forum Sahabat, Jakarta, Cet. I, 2008.
Hadjon, Phillipus Mandiri Cs, Pengantar Hukum Administrasi Indonesia (Introduction to the Indonesian Administrative), Gadjah Mada University Press, Maret 2002.
Hutchinson, Tery, Researching and Writing in Law, Lawbook, Sydney, 2002
Marzuki, Peter Mahmud, Pengantar Ilmu Hukum, Kencana Prenada Media Group, Jakarta, 2008.
-----, Penelitian Hukum, Prenada Media, Edisi I, Cet.I, 2005.
Nugraha, Safri, Privatisation of State Enterprise in the 20 Century A Step Forwards or backward? (Comparative analysis of privatisation scheme in selected welfare states), 1987
Prasetya, Rudhi, Kedudukan Mandiri Perseroan dan Terbatas, Disertasi Dengan Ulasan Menurut UU Nomor 1 Tahun 1995, Citra Aditya Bakti, Bandung, 1995.
Ridwan Khairandy & Camalia Malik, Good Corporate Governance, Perkembangan Pemikiran dan Implementasinya di Indonesia dalam Perspektif Hukum, Kreasi Total Media, Yogyakarta, 2007.
Saleh, K. Wantjik, Tindak Pidana Korupsi dan Suap, Ghalia Indoensia, Jakarta, 1983.
Sembiring, Sentosa, Hukum Perusahaan tentang Perseroan Terbatas, Nuansa Aulia, Bandung, 2006.
-----,
Soeria Atmadja, Arifin P, Kapita Selektu Keuangan Negara Suatu Tinjauan Yuridis, Universitas Tarumanagara, , Jakarta, 1996.
-----, Hukum Keuangan Negara, Suatu Tinjauan Yuridis Historis, , Gramedia, Jakarta 1986.