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THE STATE'S LOSSES AT STATE-OWNED ENTERPRISES IN PERSFEKTIF CORRUPTION

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ABSTRACT

State-Owned Enterprises administered by the professional who works with rule and regulation. Steps in the form of profit in money terms, it is not independent of the existence of the risk in the form of the possibility of losses. In carrying out the actions of The State-Owned Enterprises have always been faced with the possibility of obtaining profits or suffer losses. Therefore, the losses that occur in professional decision making should not be casually (not necessarily should) be considered as a deliberate act which is equivalent to committing financial fraud

Problem management to State-Owned Enterprises and refines that may give rise to uncertainties in law enforcement corruption, losses arising on a transaction conducted by the perpetrators of State-Owned Enterprises was acts that inflict such losses can be seen as a disadvantage the SOES can be raises the loss of State-Owned Enterprises, considering it as a business entity is seeking a profit, which in its management could be profit or loss depends on how could market mechanisms.

Keywords: Loss of State-Owned Enterprises, Perfective, corruption

INTRODUCTION

Corruption as a chronic disease, not just as a problem for national development in every country, but it also has Global development issues. A research that was released on October 18, 2013 by American survey, Gallup, said that people in the rest of the world considers government corruption has been widespread.[1] Indonesia's corruption has been widespread on both the present Government Center to the lower level, as well as no exception on the business sector involving State enterprises (*corporate government*).

State-Owned Enterprises as one of the countries in the activities of the national economy that aims to facilitate economic growth in the context of the achievement of people's welfare, not apart from sickness corruption structurally and systematically which are hard to reach (Offenses beyond the reach of law). The various crimes of corruption in State-Owned Enterprises that have been detrimental to the country's finances have been put forward to trial and has been terminated by the Court. Diverse abuses that have occurred in the management of State-Owned Enterprises as it relates to the granting of bad credit, related purchases of medium term note project procurement of goods and services, with different modes and so on.

[1] Mas Isharyanto, Korupsi berkembang Luas di Pemerintahan, tanggal 24 Oktober 2013,http://birokrasi.kompasiana.com/2013/10/24/korupsi-berkembang-luas-dipemerintahan-603272.html diunduh tanggal 11 November 2012.

Criminal acts of corruption related to State-Owned Enterprises no less sophisticated and variety this is because the powerful the perpetrators of corruption collude with cronies simultaneously by performing acts of corruption and disguise are neat. So in some cases the criminal acts of corruption of judges awards we meet very allows each other happened considerations was unclear and biased, considering the judges we still different views in the country's financial problems and interpret an important element in proving cases of criminal acts of corruption related Soes Persero is "the meaning of State money and the financial loss to the country", but nevertheless give the State money and prove financial losses the State is not simple because often there is a different perception between one party with other parties about the limitations of State money and prove financial loss State. [2]

Among State-Owned Companies argue that at a time when the wealth of the country have been separated, then the wealth of the country is no longer in the realm of public law but in the realm of private law so that wealth is no longer a wealth of the country but rather the wealth of the company. Yet another on the other argued that the wealth of the country separated into the company remains a wealth of the country, it is based on the Act of corruption criminal act which States that the finances of the State, including money that separated in State-Owned Enterprises.Act No. 17/2003 about the finances of the State, puts a wealth of countries including separated into State-owned enterprises is the scope of the finances of the State. Similarly, Act No. 1 of 2004 On the Treasury of the State. In the field of criminal law, financial state has also been expanded in scope. In Law Number 31 of 1999 on corruption eradication, pun stated financial wealth management is included in the management of State-Owned Enterprises. Nevertheless, the debate about the financial position of the country into pros and cons when the sense and scope of State money refers to Act No. 19 of 2003 about limited liability company/Enterprise. Article 1 1 of the Act. No. 19 of 2003 about State-Owned Enterprises said that "State-owned enterprises SOES are hereinafter referred to as the business entity to which all or most of the capital is owned by the State through its investment directly derived from the wealth of the country separated", article 4 number 1 States "the State-Owned Capital comes from the wealth of the country that have been separated by the State Budget and subsequent coaching and management system is not based on State Budget , but rather are based on the principles of a healthy company*".*

In terms of the above legislation, has given a different interpretation of space about the financial position of the country and the loss of State-Owned Enterprises on Persero. The lack of uniformity in the financial sense to interpret the State raises legal uncertainty would cause both for the perpetrators of State-Owned Enterprises running State-Owned Enterprises as well as by law enforcement related criminal acts of corruption specifically related to the existence of a financial loss to the State.

[2] Puslitbang Hukum dan Peradilan Badan Litbang Diklat Kumdil Mahkamah Agung RI, *Makna "Uang Negara" dan "Kerugian Negara" Dalam Putusan Pidana Korupsi Kaitannya dengan* State-Owned Enterprises *Persero, Laporan Peneleitan,* Jakarta, Penerbit Balitbang Pendidikan dan pelatihan Hukum dan Peradilan Mahkamah Agung RI, 2010, halaman 2.

Apart from the problem of disagreements about the financial position of the country that has separated the operations to the State-Owned Enterprises and refines that may give rise to uncertainties in law enforcement corruption, another problem appears related to losses arising on a transaction conducted by the perpetrators of State-Owned Enterprises was acts that inflict such losses can be seen as a disadvantage that could have implications for State-Owned Enterprises on the opinion that the loss as the loss to the countries , considering one of the functions of State-Owned Enterprises is as a business entity, the profiteers in the operations could be profit or loss depends on how could market mechanisms.

State-Owned Enterprises administered by the professional who works with rule and regulation. Steps in the form of profit in money terms, it is not independent of the existence of the risk in the form of the possibility of losses. In carrying out the actions of the State-Owned Enterprises have always been faced with the possibility of obtaining profits or suffer losses. Therefore, the losses that occur in professional decision making should not be casually (not necessarily should) be considered as a deliberate act which is equivalent to committing financial fraud.[3]

The Financial Loss to the State

A large Indonesian Language Dictionary, defines the word loss, losses and detrimental as follows: the word ' damages ' (1) is less than the purchase price or capital (2) lack of capital, (3) "loss" is not avail (benefits), it doesn't have anything useful, "the loss" is a bore or suffering from loss, whereas the word "adverse" incurred loss to the ..., intentionally selling lower than cost of goods*...,"*.[4]

The sense of loss the country can be found in various laws and regulations, so that in accordance with the jurisdiction concerned thoughts on will be different. The sense of loss the country can be found in the field of civil law, the law of the State administration as well as in the field of criminal law. Of different thinking about the losses of the State according to the civil law, the law of the State administration as well as criminal law will show the tangent point between all three.[5]

According To Djoko Sumaryanto[6], is not the loss of such countries in the world in terms of the corporate/commercial, but a loss that occurred because deeds (tort law). In this regard, other factors that caused the losses the State is applying a policy that is not correct, enrich yourself, others, or the Corporation.

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[3] Siswo Sujanto, *Pemikiran Tentang BUMN di Indonesia : Implementasi dan Konsekuensinya,* Makalah yang disampaikan dalam Seminar *Revitalisasi Filosofi Ruang Lingkup Keuangan Negara dan Implementasinya Pasca Putusan Mahkamah Konstitusi Nomor : 48/PUU-XI/2013,* yang diselenggarakan oleh Pusdiklat Anggaran dan Perbendaharaan – Badan Diklat Keuangan Kementerian Keuangan RI di Jakarta tanggal 05 Desember 2014.

[4] Pusat Bahasa Indonesia, *Kamus Besar Bahasa Indonesia, Edisi ke empat 2008, (Departemen Pendidikan nasional*), Jakarta : Penerbit PT. Gramedia Pustaka Utama, hlm. 1186.

[5] Theodorus M. Tuanakotta, *Menghitung Kerugian Keuangan Negara dalam Tindak Pidana Korupsi,* Jakarta : Penerbit Salemba empat, 2009, hlm. 77-78

[6] Lihat Muhammad Djafar Saidi, *Hukum Keuangan Negara,* Jakarta : PT. RajaGrafindo Persada, 2013, hlm. 109-110.

In the legislation relating to the administration of the State, found the term and the sense of loss the country, namely in article 1 paragraph (22) of law No. 1 of 2004 on the State Treasury, which States that the State is reduced Losses of money, securities, and real stuff and certainly in number as a result of tort either deliberately or negligent.

If financial sense to refer to the country as it is in article 1 point 1 of ACT No. 17/2003 about the finances of the State, which mentions "the State finance is all the State rights and obligations can be assessed with the money, and everything good in the form of money or in the form of goods that can be made in relation to the implementation of the State-owned rights and obligations". As well as the scope of the finances of the State, as article 2, which mentions the scope of finances of the State, including: (a) the right of the State to collect taxes, issue and circulate money and doing a loan, (b) the obligation of the State to organize the task of public service and State Governments pay the Bills third parties, (c) the acceptance of the State, State Expenditure (d), (e) Reception areas, (f) the expenditure area, (g) the wealth of the country/region that is self-administered or any other form of money , securities, accounts receivable, goods, as well as other rights which can be assessed with the money, including a wealth of separated on the company's country/region, (h) the richness of the other party controlled the Government in the framework of the Organization of the tasks of Government and/or public interest, (I) the other party's Wealth is obtained by using the facilities provided by the Government.

In article 32 of ACT No. 31/1999 of criminal acts of Corruption that has been modified by Act No. 20/2001, used the term "loss" are spelled out in the explanation of his rule. Article 32 paragraph (1) States: in the event that investigators find and argues that one or more of the elements of the criminal offence of corruption, there is not enough evidence, while outwardly there have been financial losses to the State, then the investigator soon submit dossiers to the Prosecutor the results of the investigation the State Attorney to do the civil suit or consigned to establishments that aggrieved to file a lawsuit ". Explanation the Article stated, "Is" significantly there has been a loss of State "is a loss that can already be counted in numbers based on the findings of the authorized agency or a public accountant appointed".

In a ruling of the Constitutional Court the number 003/PUU-IV/2006, related testing application article 2 paragraph (1) and article 3 with respect to the phrase "can". The Court held that the financial losses of the State must be substantiated and must be calculated, though as estimates or estimation as well as loss of the State has not occurred. The Court further held that the losses that occur in the criminal offence of corruption, especially large-scale ones, it is extremely difficult for proven exactly and accurately. The accuracy required in such a way, would give rise to doubts as to whether if a number of losses posed and not always be proved accurately, but the loss has occurred, will result in the absence of a proven deed prosecuted.

The Onset of the Loss of State

The incidence of loss country according to Yunus Husein strongly associated with transactions, such as transactions of goods and services, the transaction associated with the debts, and transaction-related expenses and revenues. Meanwhile, Djoko Sumaryanto suggests that the

possibility of the loss of the country raises several possible events that could harm the country's finances, as follows: [7]

1) There are the procurement of goods at a price that is not reasonable because far above the market price, so that can harm the financial state of the difference in purchase price with the market price or the price reasonable;
2) Procurement of goods and services prices are reasonable. Reasonable but not in accordance with the specifications of the goods and services required. If the price of goods and services are cheap, but the quality of goods and services less well, then it can be said also to the financial detriment of State;
3) There are deals to enlarge the country's debt are not reasonable, so it can be said to be detrimental to the financial obligations of the State to pay the due debt getting larger;
4) State accounts receivable are not natural can also be said to be detrimental to the country's financial
5) The State's losses could occur if the country reduced due to the asset is sold with a cheap price or given to another party or exchanged for private parties or individual (*ruilslag);*
6) To the detriment of the State is to enlarge the cost of agencies or companies. This can happen either because the waste as well as in other ways, such as creating fictitious charges. And costs are magnified, the profits of the company that became the object of the tax is getting smaller;
7) The results of sales a company reported to be smaller than actual sales, thereby reducing the acceptance of the company's official.

The disadvantage of the country as are the losses of countries in terms of the financial aspect of the law of the country. In a sense related to the financial management of the country conducted by an agency company that relate to the financial state of the company's assets in question. It is aimed at separating the State losses is expressly related to the law of the country with a financial criminal law. Therefore, the Act No. 15 of 2004 concerning the examination of the financial management and Accountability of the State have a substance that looked at the loss of the State not only fixed on the financial management of the State but also detrimental to the economy of the country including.[8]

Djoko Sumaryanto suggests that State losses can occur in two stages, i.e. at the stage of the Fund will go on stage and on the State Treasury funds will come out of the State Treasury. The funds will go to the State Treasury losses can occur through: tax conspiracy, conspiracy, conspiracy of return loss of State and smuggling. While on stage and going out of the State Treasury losses occur due to: mark up, corruption, bad credit, implementation of activities not in accordance with the program and others. While the definition of acts that can be detrimental to the economy of the country is criminal offences against the regulations issued by the Government in the field of its.[9]

[7] Muhammad Djafar Saidi, *Hukum Keuangan Negara,* Jakarta : PT. RajaGrafindo Persada, 2013, hlm. 111.
[8] *Ibid*, hlm. 113
[9] *Ibid.*

Mapping a source of loss to the State, Theodore M. Tuanakotta done by dividing the country's losses in four (4) aspects of the source of the loss of State, namely the loss of the State with regard to assets, liabilities, receipts and waiver. [10]

The Settlement Of The Los Of State

Completion of the Financial losses of the country can be done in 3 settlement mechanisms, i.e. :

a. Through the mechanism of the State administration law, which consists of :
(1) Demands Compensation;
(2) The Demands Of The Treasury
b. Through the mechanism of criminal law
c. Through the mechanism of civil law.

Criminal acts of Corruption related to State Financial Losses

The crime of corruption has almost the same sense of corruption. Corruption comes from the Latin "Corruptus" or "Corruptio" which was then in the United Kingdom and France languages language "Corruption" in the Netherlands "Korruptie language" and next in Indonesia language as "Corruption". Understanding is a symptom where officials, State agencies misusing authority with forgeries and bribery, the occurrence of other Corruptio.

There are two criminal acts associated with the adverse aspects of finances of the State provided for in Act No. 31 of 1999 as amended by law no. In 2001 about the eradication of criminal acts of Corruption, namely: first, the criminal offence under article 2 paragraph (1) that are against the law do enrich themselves or others or a corporation that can be detrimental to the finances of the State or economy State. Second, the criminal acts provided for in article 3 the purpose of the benefit yourself or others or a corporation, abusing authority, opportunity or means of him because of the position or positions that can harm the financial state or economy State.

The Conception of State-Owned Enterprises

One of the countries that can deny the presence of a business entity owned by countries that exist in the world. The countries generally have the business entity engaged in the business which are categorized in the field conducting including service and the public interest (public service and public utilities). It is based on the reason of the existence of a branch of production or businesses that are considered important and vital or strategic to the country and take control of his life, so not many people casually can be left to the private sector for control and host them.[11]

One of the important role the national economy growing is the role of State-Owned Enterprises which currently consists of 141 State-Owned Companies along with its subsidiaries, as one of the pillars of the Organization of the national economy to realize prosperity Indonesia as

[10] Theodorus M. Tuanakotta, *Menghitung Kerugian Keuangan Negara dalam Tindak Pidana Korupsi,* Jakarta : Penerbit Salemba empat, 2009, hlm. 158-170
[11] Aminuddin Ilmar, *Hak Menguasai Negara Dalam Privatsasi BUMN,* Jakarta : Prenada Media Group, 2012, Cetakan Kesatu, hlm. 72

mandated Constitution. The important role of State-Owned Enterprises is not only expected as the last of the interests and service as well as the fulfillment of the needs of the people are many, but also as the biggest contributor in the national economy.[12] This can be seen through his role as the real pioneer business activities-effort (Pioneer). In addition, State-Owned Enterprises also played an important role in implementing the economic sectors that require high capital.[13] Even State-Owned Enterprises are operating almost all sectors of the economy of the country and some of them are included in the category of organizer for his monopolistic economic branches of production that are considered important for the country and that ruled his life crowd.

State-Owned Enterprises is an economic factor prominen nature, especially in the exercise of its role as a business entity that holds the monopoly of the Organization of the production branches are important for the country and that ruled his life. State-Owned Enterprises not only organizes public benefit function in the form of the provision of goods and services of high quality, but will be a driving force for other sectors of the economy to rise up through the business partnership programme as well as a producer of profit or advantage for the country.[14]

Next in article 2 paragraph (1) of Act No. 19 of 2003 About State-owned enterprises stated that: the intents and purposes the establishment of State-Owned Enterprises was :[15]

a. contribute to the development of the national economy in General and in particular the State reception;
b. the pursuit of profit;
c. organizes public benefit in the form of the provision of the goods and/or services that are of high quality and adequate for the fulfillment of his life people;
d. a pioneer business activities that has yet to be implemented by the private sector and cooperatives;
e. undertook to actively provide guidance and assistance to the entrepreneurs of the weak economy, cooperatives, and community.

Until January 2012, out of 141 State-Owned Companies is comprised of 14 State-Owned Enterprises Soes, 109 Perum-shaped shaped Persero, and 18 State-Owned Enterprises which is a Persero open. In addition, the country also has minority shareholdings in 15 business entity. As for the development of the the number of State-Owned Enterprises and State ownership of the minority in 2005-2012 and the aggregate performance of State-Owned Enterprises 2005-2010. [16]

Pay attention to the nature of State-Owned businesses, namely to promote the advantages and carry out public benefit, in Act No. 19 of 2003 About State-owned enterprises, State-Owned

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[12] Harsono, *Kerja Sama Antara Perusahaan Negara, Swasta, dan Koperasi dalam Rangka Menyukseskan Pembangunan Ekonomi di Indonesia,* Pidato Pengukuhan dalam Penerimaan Jabatan Guru Besar, Universitas Brawijaya, Malang, 1986, hlm. 2.

[13] Jonathan L. Parapak, *Manajemen Transformasi BUMN,* Makalah dalam Seminar Sehari untuk Memperingati Almarhum T.B. Simatupang, Jakarta, 1996, hlm. 2.

[14] Aminuddin Ilmar, *Hak Menguasai Negara Dalam Privatisasi BUMN,* Jakarta : Prenada Media Group, 2012, hlm. 71.

[15] UU R.I Nomor 19 Tahun 2003 tentang Badan Usaha Milik Negara, Lembaran Negara Nomor 70 tahun 2003 dan Tambahan Lembaran Negara Nomor 4297.

[16] Rencana Strategis Kementrian Badan Usaha Milik Negara Tahun 2012-2014, hlm. 12.

Enterprises be simplified into two forms, namely the company's Company (Persero) and Public Company (public corporation).

The position of the State in State-Owned Enterprises

State-Owned Enterprises is the personification of the State in his form as the body of the civil law, but aims at supporting national activities for the well-being of the economy together. In concept, the State-Owned Enterprises should be prepared on possible faced losses because of the effort the pursuit of profit is not the main orientation. In a State of market mechanisms can't provide specific goods and services (market failure) State through State-Owned Companies to provide them with the intention of creating perfection of market.[17]

Legally, the State as an entity of public law and the Organization of power would not be able to play an active role and directly in business activities that would reduce its functions to control the Government and the public service. Thus, the State as a public entity and set up an entity that carries out functions of the civil law of economic activity directly, with the purpose of achievement of running business activities without relying on the State Budget, will also be flexible in nature. Therefore, the State has the legal discretion to form a business entity which is an autonomous legal entity are often called State-Owned Enterprises.[18]

A very important role in the business activities of State-Owned Enterprises basically when running a strategic endeavor and effort which included gaining public attention, as well as the business activities which have a risk that not only summarizes the main obligations of the State, but also the needs of the community in this position. In real terms, State-Owned Enterprises strengthen structures of relationships with the State as the holder of the rights to the master in the economy as set forth in article 33 of the Constitution of 1945. In other words, State-Owned Enterprises running business activities with such criteria in line with the duties and authorities given the countries constitutionally.

By law, the position of State-Owned Enterprises as a State is possible in the context of the management of the Organization of the Government and the public service of the country with a clear accountability flow and firmly taking into account the principles of efficiency, transparency, accountability, justice and corporate responsibility. The legal implications of the existence of the position of State-Owned Enterprises, the State is obligated to meet the financing of the business activities with the use of the public budget and State-Owned Enterprises should be accountable to the public cost of managing state in a transparent and accountable.[19]

The position of the State in State-Owned Enterprises which is the owner of the shares, in whole or in part, is the civil law. In the concept of law, from the authority, according to Kamerman and Kahn, there are two legal entities, i.e.:

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[17] Mawardi Simatupang, *"BUMN Pasca UU BUMN",* dalam *BUMN Indonesia : Isu, Kebijakan, dan Strategi,* disunting oleh Riant Nugroho D dan Ricky Siahaan, Gramedia, Jakarta, 2006, halaman 65.
[18] Pandji Anoraga, *Op.cit.,* halaman 41
[19] *Ibid.*

a. Public law bodies (personne morale) who has the authority to issue a public policy, either public binding (e.g. law on taxation of shrimp) or not (State Budget Act).
b. The body of the civil law (personne juridique) which does not have the authority to issue a binding public policy public community.

THE COUNTRY'S FINANCIAL LOSSES AT STATE-OWNED ENTERPRISES

Pros and Cons of the Financial Position of the Country on State-Owned Enterprises

Discussion about the disadvantage of countries that occurred in State-Owned Enterprises are not apart from the discussion about the financial position of the country on State-Owned Enterprises in the form of equity capital. The concept of an expanded state finances as during embraced in legislation in Indonesia, has presented a provoking debate (pros and cons) philosophically. The expanded State Financial thinking departs from the thought in the modern era, where the role of developing countries in a significant way with the development and needs of the community. These developments provide a consequence that both forms, ways and patterns of service provision, will give birth to the institutions as the Government in decision making in the field of finances of the State.

The modern thought, bring about ramifications of the financial state of the conception originally narrow towards the broad sense. Namely, that originally put the Government as a subject, which solely manages the finances of the State to meet the public service through the State Budget, develops into the Government in his new role that includes all the elements of the Government that has the authority of financial decision-making in the framework of the implementation of its role in a broader sense, the conception of this financial concept known as the public sector. In substance, the financial public sector covers financial:[20]

1. Government units producing goods/services as public, namely the Ministry of/State agencies, and nonprofit units;
2. State enterprises under the Ministry of the budget is managed in the State Budget was the task to produce public goods and services;
3. Government financial institutions, including central banks, commercial banks, and insurance agencies.

Law No. 17 of 2003 about the finances of the State, get to know the 3 (three) for the management of the country, sub for the management of fiscal, monetary, and for the management of the sub fields of wealth management countries separated. The dichotomy thought is not ignoring the fact that independent financial authority (the institutions of national policy holders, such as central banks, etc.) is a State institution in the conception of drafting and implementing policies for the benefit of (the economy) that indirectly affect the welfare of society.

[20] Siswo Suyanto, *Keuangan Negara: Sebuah Definisi Legalistik?,* Makalah yang disajikan dalam Diskusi Terbatas yang diselenggarakan oleh Badan Pemeriksa Keuangan Republik Indonesia pada tanggal 12 September 2013 di Jakarta dengan Tema : "*Kekayaan Negara yang dipisahkan : Apakah Tidak Termasuk Keuangan Negara?".* Diskusi terbatas tersebut diselenggarakan dalam rangka menghadapi judicial reviuw Undang-undang Keuangan Negara yang diajukan oleh Pusat Kajian Masalah Strategis Universitas Indonesia dan Forum Hukum BUMN.

Products produced by the authority is not a product that can only be enjoyed by a community that is exclusive, but is also enjoyed by society as a whole. Separation of wealth is meant solely for the guarantee of its ability to manage the policies that are specific, so it's not constrained by the Government budget management pattern.[21] Therefore, the budget of the financial authority, whether or not separated anyway under the supervision of the legislature and a review by the Agency of the Financial Examiner.

Reviewed from a socio-economically, the country also are perceived as perpetrators of economic behavior as befits the perpetrators of other economies. The behavior in question in this case encouraged the existence of economical motive (profit) that underlie the various decision making though not overlooked that in some ways, the State as economists have specificity in comparison with economy in General. Specificity of the country as the economy emerges from the fact made reference to the financial experts of the country, that the needs of the community towards public services turned out to be not entirely can be provided through the system that involves government agencies that are structurally by the use of pricing mechanisms on the basis of a system of non-market (pricing mechanism).[22]

From the other side, the other approach through community needs, it turns out that the role of Government also needed to encourage the development of the national economy through the distribution system and stabilization. Meanwhile, the activities of the institution a nonstructural the Government expected to be a source of reception of the State, any form of government institutions with the character as a private institution then known as the State-owned enterprises (public interprise). However, given the nature and purpose of the existence of the institution, the settings are performed in terms of m, i.e. in Act No. 19 of 2003 about State-Owned Enterprises.

The settings in the legislation intended to give discretion in management (management) with different wealth management countries separated. Theoretically, in particular economic analysis based on the law, there are several theories that can be used as a reference a discussion of finances of the State. While in legal philosophy culture study,[23] the discussion can be identified as a discourse between postpragmatisme and neo-conservatism.

Postpragmatisme, looking at the assets of State-owned assets is a whole State and must be accounted for in this country's Government against its people through Parliament which is reflected in the use of budget revenues and expenditures of the country. However, neo-conservatism defined the concept of the State as belonging to the assets and the control of the State in the field of the law of any kind, either in public or private settings settings.

The existence of a difference of view is basically shows financial rationality discourse in identified countries. Neo-conservatism track financial state as a whole wealth of any country in the region, thus fostering the consciousness that is concrete and substantive for adherents of this State assets which stated there are everywhere. This means the rationality of neo-conservatism looked at State assets sourced, comes, and evolved from the State. There is a spirit of the

[21] *Ibid.*
[22] *Ibid.*
[23] Kultur filsafat seringkali menjadi ideologi yang menjadi faktor determinasi suatu keputusan atau tindakan. Lihat M.D.A. Freeman, *Interoduction to Jurisprudence,* London: Sweet & Maxwell Ltd., 2001), halaman 2-4.

Department of State and in it. This view tends to reduce the Agency's understanding of the law as a subject of law.

Theses neo-conservatism that States there are State assets everywhere are reminiscent of the hypothesis of State sovereignty, which declared the country as a representation of the supreme power. There are three indicators of a thesis familiar in understanding the assets of the State, namely the State as the highest power factors in the field of public law and private law, the intervention of the State organ examination mechanism against assets, and rise of the bureaucratic state influence in the examination of private sector.[24]

The debate on State-Owned Enterprises, the day the more extensive dimensions, not just happen on the Court when the law enforcers faced with cases of abuse of authority committed by officials at the State-Owned Enterprises, but also occur in different lines. According to Sujuanto Siswo, when scrutiny, the debate that occurred during this especially triggered by viewpoints are created from the academic discipline is used as the basis for analysis. When the various parties discuss about State-owned enterprises, they will automatically start with emphasis on concepts developed in agency theory, or the concept of separation of assets is thick with a flourish in the company's legal discipline.

In his dissertation Arifin Atmadja Soeria P.[25] There are errors of law expressed in interpreting the vast country due to financial, first financial management and accountability in the agencies that there were financial the State has been set. Second, the Government undertook to take care of the finances of the institutions and agencies that have a status of a legal entity of its own, so did not enter responsibility.[26]

The application of the principles of criminal law which does not see the value and the principle of a legal entity, it will obscure the legal uncertainty and creating in its application. In addition, combining position and legal status of the finances of the State in criminal law corruption also ruled out the role and his status as a body of public law and private law.

Erman Rajagukguk[27], suggests that wealth is not a State but rather a wealth of State-Owned financial Enterprise itself as a legal entity. The subject of the law have rights and obligations as well as having his own wealth is human (natuurlijk person) and legal entities (rechtperson or legal personality). Legal entities subject to U.S. law to have rights and obligations as well as having his own wealth as human beings. Wealth apart from the founder of a legal entity that, apart from

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[24] Penguatan peranan negara dalam lapangan kekayaan dapat dikaagorikan sebagai *overloaded government* di mana peranan pemerintahan negara mengambil alih peranan sektor swasta dan sektor masyarakat. Dalam kondisi ini alat-alat negara mengembangkan intervensi aktif dalam sektor ekonomi dan kekayaan, sehingga peraturan perundang-undangannya merefleksikan kepentingan negara secara umum.

[25] Arifin P. Soeria Atmadja, *Mekanisme Pertanggungjawaban Keuangan Negara: Suatu Tinjauan Yuridis,* Jakarta, Gramedia, 1986,

[26] *Ibid.,* hlm. 141

[27] Erman Rajagukguk, *Peranan Hukum dalam Mendorong BUMN Meningkatkan Pendapatan Negara dan Kesejateraan Rakyat,* Bahan Disampaikan pada pertemuan "Peranan BUMN Dalam Meningkatkan Pertumbuhan Ekonomi Negara", diselengggarakan oleh Direktorat Jenderal Peraturan Perundang-Undangan Departemen Hukum dan HAM R.I., Jakarta 28 Juli 2008. Lebih lanjut, Erman menegaskan bahwa kekayaan BUMN Persero maupun kekayaan BUMN Perum sebagai badan hukum bukanlah kekayaan negara

property owners, supervisors, and its administrator. This is because the doctrine of legal entities both in the common law system or the civil law.

According To Pramono Nindyo,[28] The nature of the separation of the country's wealth for the inclusion of capital on the State-Owned Enterprises as a body of private law, such as the release is completely refines from its parent, that the wealth of a country or financial state. Legal consequences of the inclusion of the country will be as a shareholder in persero and the owner of the company's capital in General, which in this case represented by the Minister of State-Owned Enterprises. The wealth of the country will be separated into wealth persero and the public corporation. In the language of the Netherlands known as the term split'sen or splitse that means Division or splitting into two. Split or torn in juridical meaning that it contains between one another has not become a single entity.

The Philosophical Foundation of Financial State

The State is a public legal entity formed to achieve specific objectives as listed in the Constitution of the country. In the context of country Indonesia, country objectives as mentioned in the Preamble of 1945 at the fourth Paragraph: "... to protect the whole nation of Indonesia and all the spilled blood of Indonesia, promote the general welfare[29], *the intellectual life of the nation and implement the world order based on freedom, eternal peace and social justice ... ". As legal entities, the country has a wealth of which is aimed at achieving the goals of the State and given the authority to manage it in achieving its objectives.*

Based on the Constitution, Indonesia has been the country's revealing feature of the State that led to the country's welfare system, which of course with full sovereignty is entitled to use all the resources that exist, is no exception to financial resources (including the wealth) to realize the people's welfare as one of the goals of the State. The use of the wealth of this country is meant is widely due to the achievement of a purpose oriented prosperity. Thus in addition to conducting public actions (e.g. the public service), no one did the country do civil action (such as forming a corporation, or other legal entities) within the framework of achieving people's welfare.[30]

In article 33 the Constitution states the following: (1) the economy is structured as a joint venture on the basis of family; (2) the branches of production that are essential for the country and that ruled his life many people ruled by the State; (3) the Earth, water and natural resources contained therein controlled oeh State and used for the most of people's prosperity; (4) the national economy was held based upon the economic democracy with the principle of mutuality, efficiency, fairness, sustainable, environmentally, independence, as well as maintaining the balance of economic progress and national unity. According to Adi Sulistiyono and Muhammad Rustamaji,

[28] Pendapat Ahli yang disampaikan dalam Persidangan Mahkamah Konstitusi dalam Perkara Nomor 62/PUU-X1/2013

[29] Dalam konteks tujuan negara memajukan kesejahteraan umum, negara dituntut berperan aktif dalam pencapaian tujuan tersebut termasuk mengintervensi proses pencapaiannya.

[30] Ningrum Natasya Sirait, *Kekayaan Negara Yang Dipisahkan,* Makalah yang Disampaikan pada Seminar "Revitalisasi Filosofi Ruang Lingkup Keuangan Negara dan Implementasinya Pasca Putusan MK Nomor : 48/PUU-IX/2013", Jakarta, 05 Desember 2014.

principles of economic democracy as mentioned in subsection (4) is the main substance for the economic system of Pancasila.

The provisions of article 33 of the Constitution subsection (2) and (3), it can be concluded that the country concluded all over the land and its natural resources contained therein as well as holding a monopoly against the production branches manage materials vital to the lives of many, such as oil and gas companies, drinking water, power, and so on. But no matter it is the mastery goals so must be used for the most of people's prosperity.

With reference to the concept of the welfare State or the State of the law, according to Miriam Budiardjo, in concept, the Government is responsible for the welfare of all the people or bonum publicum or common wealth, by organizing planning economic and social development as a whole, not just as part of the separation of powers according to Montesquieu. Utrecht provide the understanding of the concept of the modern State of law, which is also called the welfare State, namely: "the Government of a country in modern guarded security law in the sense of existence that is social security in any field of society. In a welfare state, liberal economic times has a liberal economy and tense it has been replaced by an economy led by the Centre or centraal geleide economie***".***[31]

In the welfare State, the active State to regulate all aspects of the lives of its people, not just a night watchman or nachtwakkerstaat, or simply served to make and defend the law. However, as the night watchman State with individual freedom not to yield the desired results, and only creates happiness in a small number of people. In this regard, Jeremy Bentham insisted that the State could not allow the social imbalances that occur, but should create the similarities between people in terms of well-being. The State guarantees the welfare of society for the creation of social and public order by organizing and institutionalizing this objective in the provision of legislation.[32] Article 33 of the Constitution of 1945 and its changes, as already outlined above, has positioned the State as regulator and guarantor of prosperity, and the obligation of realizing the prosperity of most people, and still controlled by the State.In addition to article 33 of the Constitution of 1945, values that reflect the State of welfare (welfare state) are also formulated in article 27, 31, 32 and 34 the Constitution of 1945. Thus as the country that embraced the welfare state, then Indonesia's attempt to refer to a system of 5 (five) the principle of the welfare state, i.e.:

1. An important production branch regarding his life crowd dominated by State;
2. Private efforts outside branches of production that concerns his life people are allowed, but do the settings so it does not happen or build oligopoly monopoly market that can distort the market;
3. The State was directly involved in efforts for welfare;
4. The country can develop a progressive tax system;
5. Public decision making is done in a democratic.

[31] Jonker Sihombing, *Peran dan Aspek Hukum dalam Pembangunan Ekonomi,* Bandung : Penerbit PT. Alumni, 2010, hlm. 88-89.
[32] *Ibid,* hlm. 86-89.

The interpretation of "by country" was delivered by the Constitutional Court. In one of its legal reasoning, the Court stated as follows:
"The people collectively that is constructed by the Constitution gives a mandate to the State to hold policy and action (beleid) management (bestuursdaad) and supervision (toezichcthoudensdaad) for the purposes of most people's prosperity. The functions of the Chairperson (bestuursdaad) by the State conducted by the Government with those powers to issue and revoke the facilities licensing (vergunning), licensing (licentie) and concessions (concessie). Function settings by country (regelendaad) is done through the authority of the legislation by Parliament along with the Government, and regulation by the Government (the Executive). The function of management (beheersdaad) is done via election mechanism shares (share-holding) and/or through direct involvement in the management of State-owned enterprises or State-owned legal entity as an institutional instrument through which countries in particular the Government's control over leverage existing resources were to be used for the most of people's prosperity. Similarly, the functions of the supervision by the State (toezichthoudensdaad) in particular the State Government do in order to supervise and control the implementation of mastery by State in order for the top branches of an important production and/or mastering his life meant a lot of people really do to most people's prosperity*".*[33]

Understanding possessed by the State as stated in article 33 paragraph (2) did not always have to be translated must be owned by the State, as expressed by Udin Silalahi, [34] controlled by the State does not mean the State itself who become entrepreneurs, entrepreneurs or ondernemer. More exactly said, that State power is present on the rulemaking to smooth the path of the economy. That is, the State (Government) has a duty as a regulator in the areas of economic policy to regulate the national economy which has the aim to improve the welfare of society Indonesia. In line with the opinions above, Safri Nugara suggests that the role of Government also undergoes a change from the classical notions of government as the Government has shifted into the understanding of governance as the Governence. This has resulted in a change of the position of the Government, which previously was the sole ruler in a country into the Government as one of the sectors in addition to the private sector and the community as partners on equal footing within the framework of governance.[35] So the notion of Government as "Government is to govern" in a country at this point has shifted to a new paradigm of governance as "the Government is to serve the people", the Government as the servant of society should provide good stewardship through regulation published and through services provided directly to the public.[36]

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[33] Putusan Mahkamah Konstitusi Nomor 021-022/PUU-V/2007 terkait pengujian Undang-Undang nomor 25 Tahun 2007 tentang Penanaman Modal, hlm. 231-232.
[34] M. Udin Silalahi, *Analisis Hukum Privatisasi BUMN (UU No. 19 Tahun 2003),* Tulisan yang disampaikan pada kegiatan Tim Analisa dan Evaluasi Hukum Privatisasi BUMN di Gedung BPHN jakarta, tanggal 27 September 2006. Tulisan tersebut juga termuat dalam Jurnal Hukum Bisnis, Volume 26-No.1 tahun 2007, hlm. 18-25.
[35] Safri Nugraha, *Hukum administrasi Negara dan Good Governance,* Pidato Pengukuhan Guru Besar Tetap FH UI pada tanggal 13 September 2006, hlm. 2.
[36] *Ibid,* hlm. 4.

The principle of the welfare State (welfare state) is a State be active (state intervention) in matters concerning his life crowds and not pass them freely solely on market mechanisms are the main orientation is just profit, not social services in order to realize the maximum prosperity of the people. In a country that is rooted in the country's welfare State not only acted as befits the night watchman is the classic concept of the State. The role of the State in the form of management and supervision is very important so that the management of important State assets in order not to be abused.

To bring about the realization of welfare of citizens required offender in the real economy can provide a contribution towards the improvement of the welfare of the citizens. Under article 33 paragraph (1), subsection (2) and paragraph (3) of the Constitution, the activities of the country's economy is sustained by three (3) major offender, that is, the State (through subsidiaries), private companies and cooperatives. Constitution gives authority to the State to master and use the entire wealth of the country in the form of the management of the economy of the country by forming a company State.

When the State through State run companies role in economic activities and strategic or mastering his life people is part of the implementation of the mandate of Article 33 of the Constitution pointed to the Government undertakes the management of rights and the country's wealth and ruled his life. This is to prevent the occurrence of concerns economic domination by a certain person or economic institutions that can be miserable and oppressed the people. The company was formed by the State in performing economic activities (business) has the dual roles i.e. business entities which are profit oriented simultaneously function as agents of development. The existence of a duty of the State to provide every need of its people, so for certain business sectors of the country founded the company with the kind of effort that is the trailblazer for the private sector is not very attractive since it is not considered prospective in delivering profits.

In various Libraries of finances of the State, nearly all experts agree that the needs of society against the public service, in fact, not entirely can be provided through the system that involves government agencies that are structurally by the use of pricing mechanisms on the basis of the non market (non market pricing mechanism). He explained, that the needs of society against the goods and services that belong to public goods and services that are not only the basics, but also of public goods and services that is an alternative. And certainly, the public goods and services in question is not a goods and services relating to the authority of the Government in its position as an authority.[37]

Finances of the State of their use according to section 23 subsection (1) of the Constitution is used to bigs the people's prosperity, in principle is the cornerstone of the use of, management of, and accountability for the finances of the State. Therefore, the financial policy of the State should have the character of law that legitimized the financial management of the State towards the embodiment of people's welfare. The character of the law must be implemented by establishing

[37] Siswo Sujanto, *Pemikiran Tentang BUMN di Indonesia : Implementasi dan Konsekuensinya,* Makalah yang Disampaikan pada Seminar "Revitalisasi Filosofi Ruang Lingkup Keuangan Negara dan Implementasinya Pasca Putusan MK Nomor : 48/PUU-IX/2013", Jakarta, 05 Desember 2014.

macro-economic assumptions and also very important is to encourage the use of finances of the State for the benefit of the community, so it looks to have legitimacy than just to certain economic interests.[38]

Country financial is an artery in the development of a country and very determine the survival of the economy both now and in the future. Rene Stours, explaining that the nature or the philosophy of the State Budget is a constitutional right which a nation posseses to authorize public revenue and expenditure does not originates from the fect that the members of the nation contribute the payments. This right is based in a loftier ideas. The Idea of Sovereignty. So the fact of public revenue and expenditure Budget is sovereignty.

In the development of the theory of finances of the State, currently is now not only do we see how the Government manages the finances of the State as an authority to meet the public service as is done in classical times. The concept of the modern State of finance adopt the notion of the Government in the wider sense. In connection with that, the conception of the modern State finances reflects the various government financial decision-making authority in the broad sense[39]. Thoughts on the modern era brought dire consequences in the form of changes to the conception of the finances of the State again narrow towards the wider sense, i.e. that originally put the Government as a subject, which solely manages the finances of the State to meet the public service through the budget of the State Expenditures, Revenue then evolved into the Government in his new role that includes all the elements of a Government that represents the financial decision-making authority in the framework of the implementation of its role in the broader sense. This concept became known with the Finance sector of the public.

According to J.B. sens and Vegting, as cited in Utrecht, public finance financial fact placed on public regulation as belonging to the State and its agencies-the public legal entity. Thus public finances not only refers to the country, but like other public legal entities and regions bank Indonesia.[40] David n. Hyman mentions the term public finance (public finance) as, "the fieldn economics that studies government activities and alternative means of financing government expenditures". It thus means that public finance have relevance to the State budget than as public finances as a whole. Public finance in fact aims to analyze the financial role of the State (Government) through the State budget funds allocation and use and the benefits that Government used to reach the destination country.[41]

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[38] Dian Puji N. Simatupang, *Paradoks Rasionalitas ; Perluasan Ruang Lingkup Keuangan Negara dan Implikasinya Terhadap Kinerja Keuangan Pemerintah,* Jakarta : Badan Penerbit FH UI, 2011, hlm.137.

[39] Keuangan negara dalam arti luas meliputi APBN, APBD, Keuangan Negara pada Perjan, Perum, PN-PN, dan sebagainya, sedangkan definisi keuangan negara dalam arti sempit, hanya meliputi setiap badan hukum yang berwenang mengelola dan mempertanggungjawabkannya. Keuangan yang meliputi APBN, APBD dan BUMN serta BUMD, tidaklah tepat apabila menggunakan istilah keuangan negara, yang lebih tepat adalah menggunakan istilah Keuangan Publik. Arifin P. Soeria Atmadja, dalam Adrian Sutedi, *Hukum Keuangan Negara,* Jakarta : Sinar Garfika, 2012, hlm. 10.

[40] Lihat Dian Puji N. Simatupang, *Paradoks Rasionalitas ; Perluasan Ruang Lingkup Keuangan Negara dan Implikasinya Terhadap Kinerja Keuangan Pemerintah,* Jakarta : Badan Penerbit FHUI, 2011, hlm.212.

[41] David N. Hyman, *Public Finance : A Contemporary Aplication of Theory to Policy* (Mason : South-Western, 2008) hlm. 29.

Public finance in fact point to two things, namely the financial sector that is used for the benefit of the stakeholders (Stakeholders) in power. Or finance aimed at organizing the public and Government function of public service. For developing countries, the existence of public finance as well as public administration is a must as presented Irving Swerdlow, "the importance of adequate public administration for economic growth was quickly recognaized and emphasized". In the development of this law, public finance is not only intended to carry out a State function and organizes the will-the will and decisions of Governments are real and organizes laws that set the Government in the financial sector but also expanded in the activities regularly and continuously serving the needs and interests of the public and earn income.

The ruling of the Constitutional Court No. 48/PUU-XI/2013 and no. 62/PUU-XI/2013 MK in an award No. 48/PUU-XI/2013 and no. 62/PUU-XI/2013 related material test against State financial sense as in Act No. 17 of 2003 the following give consideration:

1. *"... the Foundation of the ACT 2/2003 using a formula of understanding broad and comprehensive in order to secure the wealth of the country actually sourced from monies obtained through taxes, levies or state tax instead of acceptance. The sense and scope of the finances of the State that formulated the widely/komprejensif were meant to deny the existence of loopholes in the regulation which can lead to the onset of the country's losses. The Court also considers that the PT BHMN or State-Owned Enterprises/Local is the length of the hand of the Government in organizing a function of governance in the broad sense, thus the position of State-Owned Companies or PT BHMN/BUMD was doing financial management of the country, though it should be understood by applying different paradigm"*

2. *"...expansion of State financial diderivasi understanding of the concept of the welfare State (welfare state) which explicitly embraced within the Constitution, namely the opening of the Constitution, especially the fourth paragraph, to the clauses contained therein, envisioned the establishment of a State Government that Indonesia protect the Nations Indonesia and able to advance the general welfare and so on. The magnitude of the role and functions of the State-Owned PT BHMN or/Owned Companies in managing the country's finances in the intellectual life of the nation and all the spilled blood of Indonesia and to advance general welfare, should be accompanied with an affirmation that the management against State-owned facilities and infrastructure that must be accounted for in accordance with the prevailing paradigm.."*

3. "*...In fact, the Local State-Owned Enterprises or other name like that all or most of its shares belong to the State is the length of the hand of the State, in this case the Government or local authorities, in the field of economy that capital is wholly or partially or completely derived from the finances of the State separated.*

4. *"...State-Owned Enterprises, Local Government or other names like is part of the perpetrators of the ddalam system of the national economy are arranged as upper berdasa joint*

venture basis. State-Owned Enterprises, Local Government, or other similar names that are at the level and in the administration area to manage different businesses that its object is the branches of production that are essential for the country and that ruled his life people or managing a business object from Earth and water and natural resources contained therein. Both kinds of these objects, in accordance with the ideals of the system when the desired form of the economy of the country, controlled by the State and used to sebesar-besar people's prosperity..”

5. *“...Meanwhile, due to the fact that: (1) "infinite human needs, whereas the source of fulfilment is very limited"; (2) the mastery of science and technology make it possible for a nation to do massive exploitation towards natural resources and other economic resources with reasons to improve the welfare of society. But in fact the justrus cause the occurrence of an increasingly wide gap, either internal or a nation among Nations, so injustice..”*

6. *“....The separation of the country's wealth cannot be interpreted as a breakdown in the relationship of the State with State-Owned Enterprises, Local Government, or other similar names. Separation of kekayan State at State-Owned Enterprises, Local, or other similar names are simply in order to facilitate the management of the effort in the framework of the business so that it can follow the development of competition and the business world and do capital accumulation, requiring decision-making immediately but can still accounted for righteousness”.*

7. *“That separation of wealth of the country in question is viewed from the perspective of transaction is a transaction that is not a right to divert, so as a result of the ruling is not happening inbetween the rights from the State to the State-Owned Enterprises, Local Government, or other similar names. Thus the wealth of a country that is separated is still remains one of the country's wealth...”*

An important issue related to the enforcement of criminal law are still relevant to a country losses that occurred in the financial management of State-Owned Enterprises in particular on separated is what parameters were used in determining a loss in State-Owned Enterprises is a disadvantage of countries that can be constructed as a criminal act corruption. Bearing in mind the principle of financial management in different management companies with the management in perspective of structural management of Government. Without prejudice to the respect of us against a high-integrity Enterprise administrators, some of the cases decided by the Court shows that fraud against the management company could still occur despite the losses that occurred due to business transactions are relatively difficult to measure that ultimately the Court rulings against a transaction in the management of the firm pose pros and cons.

The judicial practice in Indonesia, especially in the crime of corruption has been put on the SOES abuses result in losses into the realm of the criminal acts of corruption. In the case of granting Credit investments in Bank Mandiri (Supreme Court Ruling No. 1140 K/Pid/2006), the Court had decided E.C.W Neloe and others guilty of committing criminal acts of corruption with

consideration of which is "the Act of the defendant who intentionally violate the principles of banking prudence principle as creates a loan which is not regulated by law, without approving the transfer of the debt to the Throne PT. troubled Terrain and other matters as considered above for real has been detrimental to Bank Mandiri as a State-Owned Enterprise none other than the loss of State (ruling of MA page 169) ".

In the case of purchase of a plane of Merpati (Supreme Court Ruling No. 417 K/Pid. Sus/2014), the Court has also been punishing the defendant Hotasi D.P. DANN (Ceo of PT. Merpati). In addition many court rulings related to the existence of the losses at State-Owned Enterprises conducted by the steward State-Owned Enterprises.

The law against political Corruption in the private sector

Business Crime

Business is business activities undertaken by the person, business entity or company regularly and continuously. His form in the form of procurement of goods, services, or facilities to be sold or leased with the goal of obtaining a searching. Payment by cash or credit.[42]

In the era of globalization, the challenges of business the more weight because it was faced with the growing competition in the open so that in the business world the steps and actions that are creative, bold and much needed fast to take advantage of every business opportunity. Indeed realized that the absence of courage and reaction speed in taking decisions, then any business opportunity can be lost so that will create an opportunity lost. However for business in State-Owned Enterprises, there is a tendency to make the existence of concerns and implement business decisions will be faced with legal proceedings alleged criminal acts of corruption that can be detrimental to the finances of the State.

Business crimes in the era of globalization has characters that are in line with the development of new technologies. The impact of globalization on the development of business crime is the change of modus operandi that increase the speed of information and communication and transportation, so that law enforcement is getting more complex and it is not easy from the beginning.

Business crimes often identified with evil corporations (Corporate crime), but according to Romli Atmasasmita,[43] understanding business crime more broadly from the sense of corporate crime by a number of reasons, as follows :

1. Modus operandi does not always use the corporations as a means to commit crimes but the Corporation was made a place to accommodate the results of the study of crime. Even corporations are not a perpetrator (dader) and even in terms of corporate responsibility, then the Corporation is represented by its administrator. Whereas in fact, the owner or founder of corporations often become corporate controller that has been proven to perform in tort and the Corporation thus became victims including shareholders primarily on an already limited liability company "go

[42] Zaeni Asyhadie, *Hukum Bisnis, Prinsip dan Pelaksanaannya di Indonesia,* Jakarta : RajaGrafindo Persada, 2006, hlm. 31, dan Gunardi Endro, *Redefinisi Bisnis,* Jakarta : Pustaka Binaman Pressindo, 1999, hlm. 15.

[43] Romli Atmasasmita, *Hukum Kejahatan Bisnis; Teori & Praktik di Era Globalisasi,* Jakarta : Prenmedia Group, 2014, hlm. 43.

public" or a public limited company (PT Tbk). UU RI Number 40 of 2007 concerning limited liability companies, could not reach the deeds governing company-personnel, unless the Board of Directors, Member of the Board of Commissioners, and shareholders;

2. The complexity of the problems in corporate business activities related not only to the national problem but now often associated problems intternasional. Such activities often become legal issues impacting on the interests of the people and even the interests of the legal protection of the Corporation itself. Form and matter of the business activity involves not only the organ of limited liability but also the organs of State power. Even in the money business activities carried out by mulitnasional corporations often used middlemen known as Inter-Mediaries, where on the one hand they are protected by law and includes the activities of legitimate business, but on the other hand, the new principals (new comers) in business activity is often doing that against the law and detrimental to the parties to the agreement or the interests of the State, and to date has yet to be reached by legislation in many countries;
3. The activities of both domestic and international business has been dominated by Multi-National Corporation (MNC) which has a working network between countries so that has led the legal complexity related to corporations, especially in terms of criminal law violation has occurred by corporate agents who have acted without the knowledge of the principals who is based in another country. In addition to the komplekasitas settings related business activity, the existence of MNC has raised the issue of jurisdiction in the event of the occurrence of criminal acts by the MNC. In MNC activity until the current involvement of three parties the Corporation represented by the Board of Directors, Member of the Board of Commissioners and Shareholders as well as Intermediaries, coverage of the law requires a comprehensive and adequate. On the basis of these considerations, then understanding the term business crimes have the legal reach of the scope more adequate compared to the understanding of the term corporate crime;
4. International business network with significant capital and spread, in some countries, have a major impact both in terms of financial, labour and people's welfare in the country concerned. These conditions require a clear legal umbrella and spacious and has a prediction was able to see the future of international business activities both within the life of the people where the Multi-National Corporation operates. The legal umbrella for mengatus activity of Multi-National Corporation requires an adequate term pengertia, i.e. the crime business.

Philosophically, the understanding of the term "evil business" meaning that there has been a change of values (values) in society while a business activity is operated in a way that is very detrimental to the interests of the wider community, such as capital investment activities in various private export labor intensive or capital markets activities of which shareholders are the public at large including the Middle down. Changes to these values is that, among the businessmen already less or do not appreciate more honesty (honesty) in national and international business activities in order to achieve the goal of profit sebesar-sebesarnya. Even a healthy business ethics are often excluded and disservice sesame fellow business person is okay as a tool for achieving the objectives. [44]

[44] *Ibid, hlm. 45.*

In sosilogis, the sense of the term "evil business" has shown the real circumstances that have occurred in the world of business or activity but, on the other hand shows that business activity is no longer there "hospitality" (business-unfriendly atmosphere) or as if there is no longer a credible among the perpetrators of the bisinis. Understanding the real term is a result of the panic of the businessmen who see business activity already strayed far from the goals and ideals of the reconstruction that is growing the kepecercayaan and honesty in a profit. Increasingly complex market characteristics, the more complex legal issues that must be faced. In the sociological sense of the term, above shows also demands (demand) from the perpetrators of the deplorable business to restore comfort in doing its work.[45]

According To D. Andhi Nirwanto,[46] Business and financial crimes were often identified as a deviant behavior of economic actors, with the ultimate goal to benefit as many. Of course the advantages that accrue to the perpetrators in a manner not reasonable, regardless of the manner or the process of getting the advantage. This is actually on the side of the tangent point between the question of the law with the principles of economy, both of which can be so contradictory but complement each other. Like a production process, plans and malicious intent is source while the yield advantage of evil deeds are in the downstream. That's a concise description of the crime business and finance which essentially lies in malicious intent as the origin of the advantages that would accrue to the perpetrators of crime.

Corruption in the Sector Private

The private sector is the supply side of corruption, the demand side is the apparatus of Government. If the supply side can discipline then the expected decline in the level of corruption will occur on the demand side. To minimize the Government's apparatus corruption behavior can not only by relying on the role of law, regulation or society pressure. Global business practices Komplekasitas the increasing incidence of corruption opportunities and opening the impossible can be monitored or controlled only by law enforcement. Some corruptor may be detected and then punished. However, the business environment and a clean government will not materialize unless it can empower the role of supply-side that is to develop and implement standards of business ethics or good corporate governance. And it takes a strong commitment from the private sector to implement it.[47]

One of the concepts that were introduced by the United Nations Convention Against Corruption (United Nation Convention Against Corruption) that have been ratified by Indonesia through law No. 2996 Year 7 is preventing and eradicating corruption in the private sector. This concept brings a new paradigm for the eradication of corruption in Indonesia. During this with the

[45] *Ibid, hlm. 46.*

[46] D. Andhi Nirwanto, *Dikotomi Terminologi Keuangan Negara Dalam Persfektif Tindak Pidana Korupsi,* Semarang : Aneka Ilmu, 2013, hlm. 2.

[47] Zulkarnai Sitompul, *Kredit Macet : Apakah Suatu Perbuatan Melawan Hukum (Pidana),* Tulisan yang Disampaikan pada Workshop Kriminalisasi Kredit Bank Sebagai Suatu Tindak Pidana Korupsi, Diselenggarakan oleh PT. Persada Multi Cendekia di Hotel Borobudur Jakarta pada tanggal 23 s/d. 25 November 2009.

ACT of corruption must be linked to the public sector (Government), the losses of the State and involves the Government apparatus. To reduce corruption in the private sector, the Convention stipulates that any mandatory signatories are taking action to prevent corruption involving the private sector, namely by increasing auditing and accounting standards in the private sector as well as apply sanctions administrative or criminal. The inclusion of some of the criminal acts that could be classified as criminal acts of corruption in the 2003 Anti-corruption the UN Convention, such as bribery and embezzlement in the private sector, the UN Anti-corruption Convention proves 2003 has pioneered legal libraries updates in corruption eradication, controlling criminal acts of corruption in the private sector. This update at the same time abolish corruption eradication during initial paradigm which always put the public sector as an object and the target of law enforcement that may determine whether or not there is and corruption in a country. According To Romli Atmasasmita[48], The development of the UN Convention (2003) was the turning point of corruption eradication during this icon, that has determined that, in both the public sector and private are two sides of one currency which cannot be separated from each other. It is not impossible, because the corruption eradication experience almost across the country always involves those who have activities in the private sector collaborate with public officials especially in infrastructure development. The limitations of the State budget to finance national development is an important factor that strengthens the linkages of these two sectors especially in developing countries. The relationship of mutual influence between the two sectors in corruption cannot be denied because of globalism sets the centrality of power to create a welfare State on a greater private sector role in comparison with the public sector (Government).

There are two reasons to criminalize involving private sector as UNCAC formulated in 2003. First, that corruption in the private sector have weakened the values like: confidante, loyalty necessary to maintain and improve the social and economic relations. Therefore, the behavior of the corruptive against the criminalization of involving the private sector is an attempt to restore the trust and loyalty. Second, based on the theory of others Independence holds that the entire sub social system will influence each other in reciprocity includes the values in it. When the behavior of corruptive in economic activity which involves the private sector does not crimes, it will influence and affect other life joints.[49]

Based on the draft law on the eradication of Corruption Criminal who adopted the Tindal the United Nations Convention against Corruption (UNCAC) that have been ratified by virtue of Act No. 7 of 2006. Compare with Act No. 199 31 year old jo Act No. 20 of 2001, seen this Bill not only has formulated efficiently and effective follow-criminal, in an attempt to prove, but it also has expanded the notion of corruption to some sectors among others for private business, i.e.:

Article 7

[48] Romli Atmasasmita, *Hukum Kejahatan Bisnis; Teori & Praktik di Era Globalisasi,* Jakarta : Prenmedia Group, 2014, hlm. 49.

[49] Romli Atmasasmita, *Ratifikasi Konvensi Perserikatan Bangsa-Bangsa Menentang Korupsi dan Implikasinya Terhadap Sistem Hukum Pidana Indonesia,* Paper, Jakarta, 2006, hlm. 6-7. Lihat pula Lilik Mulyadi, *Tindak Pidana Korupsi di Indonesia; Normatif, Teoritis, Praktik dan Masalahnya,* Bandung : Alumni, 2007, hlm. 44.

(1) Any person who in an economic activity, financial, or commercial offers, promises or gives, directly or indirectly, a person who occupies the post of any kind in the private sector an undue advantage for the benefit of himself or another person, that person is doing or not doing something that is contrary to their obligations, are convicted with imprisonment the shortest one (1) year and not more than 5 (five) years.

(2) Public officials who request or accept directly or indirectly from a person who occupied the post of any kind in the private sector an undue advantage for himself or for the benefit of another person with the intention of so doing or not doing that is contrary to their obligations, are convicted with imprisonment the shortest one (1) year and the longest 7 (seven) years and/or a fine of at least Rp RP 50,000,000 (fifty million rupiah) and Rp RP 350.000.000 most (three hundred and fifty million rupiah).

Article 8

Every person in any position in the private sector do the embezzlement of wealth in any form, private funds, securities, or other goods of value entrusted to him by virtue of his Office, are convicted with imprisonment the shortest one (1) year and not more than 5 (five) years and/or a fine of at least RP 50,000,000 (fifty million rupiah) and RP 250.000.000 at most (two hundred and fifty million rupiah).

In the UN Convention (2003) have been revealed in explicit in Chapter 3 Figure 2 as follows: "For the Purpose of implementing this Convention, it shall not be necessary, Except the u.s. otherwise stated herein, for the offenses set forth in it to result in damage or harm to State Property". (Translation: for the purpose of carrying out of this, no need to, unless specified in the Convention, that the criminal offence defined in this Convention results in harm or damage to property damage the wealth of a country).[50]

This Convention proved that sound, UN Convention does not require the existence of harm required for criminal acts of corruption in the country, according to the Convention. This, in contrast to provisions of criminal corruption in Indonesia as contained in Act No. 31 of 1999 jo. Law No. 20 of 2001 about criminal acts of Corruption, which requires the fulfillment of elements "pose a financial loss to the State or the economy of the country" in the proof of a criminal offence of corruption.

According To Romli Atmasasmitapreparation of the mindset, Act No. 3 of 1971 until the drafting of Act No. 20 of 2001, the interest (loss) preferred state of interest (loss) the private sector. UN Convention (2003) was built on the Foundation of the philosophy of liberalism and the global capitalism that have influenced political policies throughout the country especially that have ratified a free trade agreement (WTO-GATT) including Indonesia. The philosophy of liberalism capitalism a global role and has put the interests of the private sector (the owners of capital) is equivalent to the role and interests of the State, global capitalism even aspire to legitimism the role of the State was limited to maintaining public order and security for the activities of each of the

[50] Forum Pemantau Pemberantasan Korupsi (FORUM 2004), *Konvensi Perserikatan Bangsa-Bangsa Menentang Korupsi (United Convention Against Corruption),* Perum Percetakan Negara, 2005, hlm. 7.

owners of capital (the capitalist), the rest of the community life activities into tasks and responsibilities of the owners of capital.

Paradigm changes as outlined above should be recognized and become the soul of the change of Act No. 31 of 1999 amended by law No. 20 of 2001 about the eradication of criminal acts of corruption. On the basis of the paradigm changes, then the provisions of article 2 and article 3 of the ACT the eradication of criminal acts of corruption, it is very important to consider in a review of the law is to eliminate the element of "financial losses of State or the State of the economy" as one of the terms (elements of) criminal acts of corruption.[51]

CONCLUSION

The financial position of State-Owned Enterprises in separated/Owned Companies as the States financial scope as defined in the financial regime of the State (Act No. 17 of 2003) as well as in the conception of the eradication of criminal acts of corruption (Law No. 31 of 1999 that amended by law No. 20 of 2001) was within the framework of the fulfilment of the realization of people's welfare Indonesia. Although the concept may still be debatable in the perspective of theory and argumentation, in fact the countries wealth management are separated should remain in the supervision of the State and must be accounted for with the best.

that separation of wealth of the country in question is viewed from the perspective of transaction is a transaction that is not a right to divert, so as a result of the ruling is not happening inbetween the rights from the State to the State-Owned Enterprises, Local Government, or other similar names. Thus the wealth of a country that still separated into the wealth of the country.

Understanding the finances of the State, bringing on the consequences that the management of the finances of the State separated containing koruptif elements giving rise to losses, remain a range from the eradication of criminal acts of political corruption from both the aspect of prevention as well as in the aspect of law enforcement.

1. The practice of criminal law enforcement corruption against parts State-Owned Enterprises during these adverse SOES (State) is one of the important parts in the form of control in the management of State-Owned Enterprises responsible and has integrity. Though on the other hand, the debate use of criminal instruments in resolving problems that occur in the transaction of State-Owned Enterprises to the detriment of will continue to happen, but for the perpetrators of State-Owned Companies upholding the principle of prudence in running the business, because in some of the judicial practice has expanded the/construct construct became part of law in the criminal offence of corruption.

[51] Banyak penyimpangan dan penyalahgunaan jabatan yang tidak secara langsung merugikan keuangan negara, tetapi merugikan aktivitas ekonomi dan kepentingan masyarakat pada umumnya. Dalam kasus penyuapan misalnya, bukan keuangan negara yang dirugikan secara langsung tetapi dapat menjadikan ekonomi biaya tinggi dan membuat daya saing para pelaku ekonomi menjadi lemah serta harga barang lebih mahal dari yang seharusnya. Biaya yang harud ditanggung oleh perilaku suap itu, pada akhirnya memberatkan masyarakat yang tidak mempunyai akses politik maupun sumber daya ekonomi yang memadai. Lihat D. Andhi Nirwanto, *Dikotomi Terminologi Keuangan Negara Dalam Persfektif Tindak Pidana Korupsi,* Semarang : Aneka Ilmu, 2013, hlm. 11-12

2. The complexity of the global business practice that increases faced by State-Owned Enterprises and the private sector open up opportunities, the incidence of corruption, which is very difficult to be monitored or controlled only by law enforcement. To reduce corruption in the private sector, required action on private sector corruption including by applying sanctions to civil, administrative or criminal.

The eradication of corruption in almost all countries necessarily involves those who have activities in the private sector collaborate with public officials especially in infrastructure development. The limitations of the State budget to finance national development is an important factor that strengthens the linkages of these two sectors especially in developing countries. The relationship of mutual influence between the two sectors in corruption cannot be denied because of globalism sets the centrality of power to create a welfare State on a greater private sector role in comparison with the public sector (Government).

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