

## **Aspect of Public Law and Private Law of State Finances In Indonesia State-Owned Enterprises**

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**Abstract:** This research describes the concept of state financial management and management of SOEs so as to know the boundary between SOE losses caused by business risk and corrupt acts of the SOEs Directors. This research is a normative legal research that using legislation approach and conceptual approach. The data are secondary data. Data analysis using analytical descriptive method. The directors of SOEs use the principle of Business Judgment Rule doctrines which stipulates that the Board of Directors is not responsible for any loss caused by a business decision making action, if the action by the Board of Directors is based on the good and caution.

**Keywords** - board of director, business judgement rule, limited company, state ownership enterprise

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### **I. INTRODUCTION**

The provisions of Indonesia Constitution Chapter VIII formulates the financial matters, the realization of the implementation of the mandate of Article 23 of the 1945 Constitution is the promulgation of Indonesia Law No. 17 of 2003 on State Finances, Indonesia Law No. 1 of 2003 on State Treasury, Law No. 15 of 2004 on Audit of State Financial Management and Accountability and Law No. 15 Year of 2006 on the State Audit Board.

The provisions of the State Finance Law formulate the meaning of state finances are all rights and obligations of the state that can be assessed with money, as well as everything in the form of money or in the form of goods that can be made state property due to the implementation of these rights and obligations, which include the right of the state to levy tax, issuing and circulating money, and making loans; the state's obligation to carry out the public service task of the state government and to pay the third party's invoices, state revenues, state expenditures, regional revenue, regional expenditures, state property / regional wealth managed solely or by others in the form of money, securities, accounts receivable, other rights which may be valued by money, including property which is separated from a state / regional company, the wealth of other parties controlled by the government in the context of the administration of governmental and / or public affairs, the wealth of other parties obtained by using the facilities provided by the government.<sup>[1]</sup>

The provisions of the State Treasury Law to define the meaning of the state treasury are the management and accountability of state finances, including separated investment and wealth, set out in the state revenue and expenditure budget (APBN) and regional revenue and expenditure budgets (APBD).<sup>[2]</sup> The audits of state financial management and responsibility carried out by Audit Board of the Republic of Indonesia (BPK) cover all elements of state finance.<sup>[3]</sup>

The State Audit Board is charged with auditing state financial management and accountability by the Central Government, Regional Government, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Bodies, Regional Government Enterprises, and other agencies or bodies managing state finances.<sup>[4]</sup> The effort of saving the state finances through the broad definition of state finance arrangements, ideally would be very promising for the efforts to save the state finances from deviations, but becomes a problem, when correlated with other laws and regulations. Establishment and ratification of Law Number 19 of 2003 on State-Owned Enterprises has created a contradictory climate and raises a polemic of state financial status within the State-Owned Enterprise both in terms of ownership and management and supervision.

Separation of state assets from the State Revenue and Expenditure Budget to be used as state equity participation in SOEs, for subsequent development and management is no longer based on the State Budget

system, but on the principles of a healthy company by following the governance and provisions in the Act Number 40 Year 2007 regarding Limited Liability Company. Thus, the State Revenue and Expenditure Budget (APBN) also includes State Budget projects managed by state-owned enterprises and / or state receivables to state-owned enterprises which are used as state equity participation.

The regulation of state finance status within State-Owned Enterprises (SOEs) in the package of the State Finance Law and the Law on State-Owned Enterprises and Limited Liability Company Law shows significant differences regarding ownership claims, management and financial audits in state-owned enterprises. The State, on the one hand, wants to save the state's finances in the state-owned corporation of corruption and misuse in its management, but on the other hand SOEs (Persero) are faced with efforts to further promote SOEs through a sound SOE mechanism, according to the principles of Good Corporate Governance (GCG). SOE mechanisms with various policies and breakthroughs contain two possibilities of extraordinary progress or loss of transactions made on a business judgment. This is a problem because the directors of SOEs will be afraid to take decisions so that SOE management can not run properly. Therefore, parameters are needed to distinguish between management of state-owned enterprises and business judgment so that the directors of SOEs can make good decisions in the management of SOEs

## **II. LITERATURE REVIEW**

The Law on State-Owned Enterprises explicitly affirms the enactment of all the provisions and principles of the company as stipulated in the Company Law for the Institutional of State-Owned Enterprises. However, when the provisions of the SOE Law are juxtaposed with the provisions of the State Finance Law that categorize the 'wealth of state enterprises as part of the state finances'. This provision seems to provide legitimacy for the state to intervene on the management of state-owned company which is actually an independent legal entity. SOEs capital comes from state assets separated from State Revenue and Expenditure Budget (APBN), so the management of SOEs is not bound to the state budget system or state financial system. With his position as a state-owned company can perform their duties independently and professionally. State assets that are deposited as state-owned capital belong to SOEs, because as a legal entity SOEs own property own. The wealth of SOEs is separated from the founders' wealth as well as the wealth of the SOEs management.<sup>[5]</sup>

Article 1 Law No. 40 of 2007 on Limited Liability Companies explains the definition of Limited Liability Company is a Business Entity in the form of legal entity which is a partnership of capital, established under the agreement, conduct business activities with the authorized capital wholly divided into shares and meet the established requirements in this law and the rules of the Executor. This business activity is a legal entity, so this type of business has separate powers with its shareholders. Limited Liability Company is a legal entity. In accordance with the characteristics of legal entities is the separation of wealth meaning that a legal entity has its own wealth. Legal Entity is a human or artificial person, that is, human form a body having same status, position, and authority as human being.<sup>[6]</sup>

Separation of wealth of Limited Liability Company is a legal entity that has its own wealth and wealth of the company has been separated with the wealth of its shareholders.<sup>[7]</sup> Separation of wealth gives impact to its shareholders in the case of limited liability if a time of loss occurs. Shareholders are responsible only to the shares they own. In principle, which is responsible for the activities undertaken by the company as a legal entity.<sup>[8]</sup> SOEs as Limited Liability Company, related to the implementation of national development priority in infrastructure, Government Regulation on Investment has set about it. SOEs play a very important role in the economy of the Indonesian nation. SOE establishment is a manifestation of the role of the State as one of the economic actors in Indonesia and has an important role in the implementation of the national economy in order to realize the welfare of society.

The formation of SOE is also an act of civil law of Indonesia as a public legal entity, so that at the same time the State of Indonesia as a public legal entity shall be subject to and apply to it civil law norms or private legal functions, which the State did. The state is required to be equal to ordinary members of society and can be sued and sued in public court. It indicates that SOE is a legal entity formed by State public legal entity, by fulfilling one of the important requirement a legal entity, which has a separate wealth, in which is meant separated is the separation of state assets from SOEs for subsequent coaching and management is no longer based on the state budget system, but its guidance and management is based on sound corporate principles. States can become shareholders in a Limited Liability Company through SOEs as regulated in Article 1 number 1 of the SOE Law explaining the meaning of SOEs ie business entities in whole or in part capital is owned by the state through direct inclusion derived from separated state assets. Thus SOE is a company whose majority shareholder is the State. The purpose of SOEs is generally the same as the companies in general, that is to achieve a profit. The profits derived by SOEs themselves will be included in State property, as revenue from the State.

### **III. RESULTS AND DISCUSSION**

The establishment of laws and regulations, especially the Law in Indonesia, has so far been determined by the rules of formal law and the political will of legislators rather than the considerations that favor the community. In Article 22A of the 1945 Constitution, it is stated that further provisions concerning the procedure for the establishment of laws are regulated by law. From the sound of Article 22A of the 1945 Constitution, then in the process of establishing the law it is required to regulate it with law. In connection with that, to carry out the mandate of Article 22A, in June 2004 Act No. 10 of 2004 concerning the Establishment of Legislation.

Based on the theory of the hierarchy of norms from Hans Kelsen, an understanding of the meaning of hierarchy of legal norms is obtained, that a legal norm obtains validity if its formation is determined by higher legal norms, and the establishment of legal norms includes the way of establishing and filling legal norms. Thus, when a legal norm is derived from higher legal norms, basically the lower legal norms implement higher legal norms. A legislation aimed at people's welfare based on a basic value such as legal certainty, fairness and usefulness, and validity of its application based on philosophical validity, which is a policy made based on the value of a nation's view of life. While the sociological validity that the legislation can be accepted and recognized by the public because it provides the maximum benefit for the prosperity of the people. For the value of legal certainty that is legally a legal basis in accordance with the hierarchy of legislation and made by the authorized institution.

The hierarchy of laws and regulations in the formation of legislation in the Republic of Indonesia must refer to the principles of general law, stated "Pancasila, the state based on law, and government based on the constitutional system."<sup>[9]</sup>

Pancasila and the 1945 Constitution become the highest philosophical foundation in the formation of legislation in Indonesia, this is due to Pancasila being the legal ideal which controls the written and unwritten basic laws. As a legal ideal, the values contained in the five precepts of Pancasila serve as a reference for construction to think of institutions that form legislation at the central and regional levels that direct or guide the formation of good legislative content material that contains truth, justice and certainty. law for the realization of a civil society and a legal Indonesian state.

#### **3.1. Inventory of State Finance Laws and Regulations**

The law that regulates state finances today is Law Number 17 of 2003 concerning State Finance, entered into force on April 28, 2003. The legislation cannot accommodate various developments that occur in the state institutional system and the management of state government finances Republic of Indonesia. Therefore, even though these various provisions are formally still valid, materially some of the provisions in the statutory regulations are no longer implemented. The weakness of legislation in the field of state finance is one of the causes of several forms of irregularities in the management of state finances. In an effort to eliminate these irregularities and realize a sustainable fiscal management system in accordance with the main rules stipulated in the Basic Law and general principles that apply universally in the administration of state government, a law is needed which regulates the management of state finances .

In the Inventory process of legislation related to the management of State finances, this study refers to the hierarchy of the Laws and Regulations stipulated in the TAP MPR / III / 2000, which consists of: 1. The 1945 Constitution; 2. MPR Provision; 3. Law; 4. Government Regulation to Observe the Law; 5. Government Regulation; 6. Presidential Decree; 7. Regional Regulation. Based on the results of the inventory of the prevailing laws and regulations, which are related to the management of state finances, they are: 1) Indonesische Bedrijvenwet (Stbl. 1927 Number 419) as amended several times and added, most recently by Law Number 12 of 1955; 2) Law Number 19 Prp of 1960 concerning State Enterprises; 3) Law Number 31 of 1999 concerning Eradication of Corruption Crimes in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes; 4) Law Number 17 of 2003 concerning State Finance; 5) Law Number 19 of 2003 concerning State-Owned Enterprises; 6) Law Number 1 of 2004 concerning State Treasury; 7) Law Number 15 of 2004 concerning Inspection of Management and Responsibility of State Finance; 8) Law Number 40 of 2007 concerning Limited Liability Companies.

#### **1.2. Harmonization of State Finance in Legislation**

##### **1.2.1. State Finances Law**

Law Number 17 of 2003 concerning State Finance began to be enacted on April 5, 2003.<sup>25</sup> This law revoked several previous provisions insofar as they were regulated, namely the Indische Comptabiliteitswet (ICW) Stbl. 1925 No. 448 as amended several times, most recently with Law Number 9 of 1968 concerning State Treasury, Indische Bedrijvenswet (IBW) Stbl. 1927 Number 419 jo. Stbl.1993 Number 381. The enactment of Law Number 17 of 2003 concerning State Finance is mandated by Article 23 C of Chapter VIII 1945 which states that other matters concerning State finances are regulated by law.

The definition of State finances as referred to in Article 1 number 1 of Law Number 17 Year 2003 concerning State Treasury (State Finance Law) is: "... All state rights and obligations that can be assessed with money, as well as everything whether in the form of money or goods that can be used as State property are related to the implementation of these rights and obligations".

Elucidation of Article 2 of the Law on State Finance is emphasized on letter I which reads: The other party's assets as referred to in letter I include wealth managed by another person or entity based on government policy, foundations in the environment of State ministries / institutions, or State / regional companies.

The definition and scope of State finances in Law Number 17 of 2003 concerning State Finance is emphasized in the general explanation section which says "The approach used in formulating State Finance is in terms of objects, subjects, processes, and objectives. From the point of view of the object referred to as State Finance covers all State rights and obligations that can be assessed with money, including policies and activities in the fields of fiscal, monetary and management of State assets that are separated, as well as everything in the form of money and goods that can be used as State property relating to the implementation of these rights and obligations. From the subject side, the meaning of State Finance covers all objects as mentioned above that are owned by the State, and / or controlled by the Central Government, Regional Government, State / Regional Companies, and other entities that are related to State finances.

### **1.2.2. State owned Enterprises Law**

Law Number 19 Year 2003 concerning SOE which regulates state finances which regulates state capital participation in SOE in several articles, such as: Article 1 number 1 and number 10 which say: "(1) A State-Owned Enterprise, hereinafter referred to as BUMN, is a business entity that all or most of its capital is owned by the state through direct participation derived from separated state assets. (10) State assets which are separated are state assets originating from the State Budget (APBN) to be used as state capital participation in Persero and / or Public Corporation and other limited companies.

Article 4 of Law Number 19 Year 2003 SOE's states as follows: (1) SOE's capital is and originates from separated state assets; (2) The inclusion of state capital in the framework of establishment or participation in SOEs is sourced from: State Revenue and Expenditure Budget, reserve capitalization and other sources; (3) Every state capital participation in the framework of the establishment of SOE or limited liability company whose funds are derived from the State Budget of Revenue and Expenditure shall be stipulated by a Government Regulation; (4) Any changes in state capital participation as referred to in paragraph (2), either in the form of additions or reductions, including changes in the structure of state ownership of Persero or limited liability shares, are determined by Government Regulation; (5) Exempted from the provisions referred to in paragraph (4) for the addition of state capital participation derived from the capitalization of reserves and other sources; (6) Further provisions concerning the procedure for the participation and administration of state capital in the framework of establishment or participation in SOEs and / or limited companies whose shares are partly owned by the state, are regulated by Government Regulation.

Article 76 Paragraph (2) with the formulation as follows "Some assets or activities of a Persero that carry out public service obligations and / or those based on the law of its business activities must be carried out by SOEs, can be separated to be made into participation in the establishment of the company if necessary privatized.

### **1.2.3. Limited Company Law**

Law Number 40 of 2007 concerning Limited Liability Companies which regulates state finances, with several rules, namely: The Limited Liability Company Law which regulates the participation of State capital is not specifically regulated, but participation is said to be regulated through a Government Regulation, which means that the PT Law recognizes the existence of such participation, with the formulation in the Elucidation of Article 8 Paragraph (2) letter a, as follows: In establishing the Company, clarity is needed regarding the founding citizenship. Basically an Indonesian legal entity in the form of a Company is established by an Indonesian citizen or an Indonesian legal entity. However, to foreign citizens or foreign legal entities are given the opportunity to establish an Indonesian legal entity in the form of a Company as long as the law governing the Company's business fields allows, or the establishment of the Company is regulated by a separate law. In the event that the founder is a foreign legal entity, the number and date of ratification of the founding legal entity are documents similar to that, including a certificate of incorporation. In the event that the founder is a state or regional legal entity, a Government Regulation concerning participation in the Company or Regional Regulation concerning regional participation in the Company is required.

### **3.3. Government Obligations in Realizing Any Inclusion of State Capital Both Directly and Indirectly Originating from APBN and Non-APBN Determined by Government Regulation**

Horizontal synchronization of the provisions governing the obligations of the Government in realizing any direct or indirect state capital participation originating from the APBN and non-APBN stipulated by Government Regulation, which is closely related to the State Finances Law, the SOE Law, the State Treasury Law, the PT. Any direct or indirect participation in state capital originating from the APBN and non-APBN stipulated by Government Regulation is a form of the government to implement the objectives of the State against its people in order to act as contained in the mandate of the Preamble of the 1945 Constitution at the 4th century.

The realization of the State Finances Law on the rationale of the 5th century states that the weakness of the legislation in the field of state finance is one of the causes of several forms of irregularities in the management of state finances. In an effort to eliminate these irregularities and realize a sustainable fiscal management system in accordance with the main rules stipulated in the Basic Law and general principles that apply universally in the administration of state government, a law is needed which regulates the management of state finances.

In order to support the realization of good governance in the administration of the state, the management of state finances needs to be carried out professionally, openly and responsibly in accordance with the basic rules stipulated in the Constitution. In accordance with the mandate of Article 23C of the 1945 Constitution, the Law on State Finance needs to describe the main rules set forth in the Constitution into general principles which include both principles that have long been recognized in the management of state finances, such as annual principles, principles of universality, principles of unity, and principles of specialization and new principles as a reflection of best practices (application of good principles) in the management of state finances, including: a. results-oriented accountability; b. professionalism; c. proportionality; d. openness in the management of state finances; e. financial checks by independent and independent auditing bodies.

In relation to capital investment, of course it must have in common as the legal basis for the management of state finances into the general principles of state financial management. In accordance with the provisions of Article 29 of the State Finances Law, in the framework of the management and accountability of State Finance stipulated in the APBN and APBD, it is necessary to stipulate the rules of the state financial administration law. General scope and principle in the Company Law, including the authority of state treasury officials, implementation of state / regional revenues and expenditures, management of state / regional money, management of state / regional accounts receivable and debt, management of investments and state / regional property, administration and accountability of APBN / APBD, government internal control, settlement of state / regional losses, and financial management of public service agencies.

In accordance with good principles in the management of state finances, the Company Law adheres to the principles of unity, principles of universality, annual principles, and principles of specialization. The principle of unity requires that all State / Regional Revenues and Expenditures be presented in one budget document. Likewise, the Law also contains provisions that encourage professionalism, and ensure transparency and accountability in budget execution.

Article 24 State Finances Law is associated with Article 41 PB, it is seen that there is horizontal synchronization in determining the principles and objectives which are the basis for the management of State finances for the inclusion of State capital for the realization of people's welfare. Article 1 paragraph (10) SOE LAW related to state capital participation states "State assets that are separated are state assets derived from the State Budget (APBN) to be used as state capital participation in the Persero and / or Public Corporation and other limited companies".

The provisions of Article 4 paragraph (1) SOE Law states "SOE capital is and originates from separated state assets", thus the explanation referred to as separated is the separation of state assets from the State Budget of Revenue and Expenditures to be used as state capital participation in SOE for further development and its management is no longer based on the State Budget and Expenditures system, but its development and management are based on the principles of a healthy company.

This SOE Law is designed to create a management and supervision system based on efficiency and productivity principles to improve the performance and value of SOE, as well as avoiding BUMNs from exploitation actions outside the principles of good corporate governance. This SOE Law is also designed to organize and reinforce the role of institutions and the position of government representatives as shareholders / owners of SOE capital, as well as to clarify and clarify the relationship of SOEs as business operators with government institutions as regulators. Strictly explained in the Explanation of Article 4 paragraph (2) letter c states "Included in the State Revenue and Expenditure Budget which includes also projects of State Budget Revenues and Expenditures managed by SOEs and / or state receivables to SOEs that are used as state capital participation "

The above provisions, if associated with the principles of good corporate governance, are actually also regulated in the Company Law contained in the Articles of Association of the Company, and other provisions of legislation, do not reduce the obligation of each Company to adhere to the principle of good faith, principle of appropriateness, propriety and principles of good corporate governance in running the Company.

Thus, paying attention to the provisions of the law as a unit that is related to each other, so that the provisions of the law which one is seen as implementing, complementing or deviating from the provisions of other laws, and every law and regulation must be reviewed and given meaning in relation to other statutory regulations, the provisions governing State capital participation in State Finances Law, SOE Law, Limited Liability Law, horizontally have been synchronized horizontally with each other.

Vertical synchronization of State capital participation as in the Elucidation of Article 4 paragraph (3) SOE Law states that the separation of state assets to be made into state capital into SOE capital can only be done by direct state participation in the SOE capital, so that each investment need to be stipulated by Government Regulation, following the implementation rules.

In line with the wider and more complex state financial management activities, it is necessary to regulate the provisions concerning financial relations between the government and infra / supranational institutions. These provisions include financial relations between the central government and the central bank, local governments, foreign governments, foreign agencies / institutions, as well as financial relations between the government and state companies, regional companies, private companies and public fund management bodies.

In the relationship between the government and state companies, regional companies, private companies, and community fund management bodies, it is determined that the government can provide loans / grants / equity participation to and receive loans / grants from state / regional companies after obtaining approval from the DPR / DPRD.

The provisions of Article 24 paragraph (5) of the State Finances Law include stating that the Central Government can sell and / or privatize state enterprises after obtaining approval from the House of Representatives, so that they can be given meaning to all capital investments that are included in state assets. must go through DPR approval. And the provisions of Article 45 paragraph (2) of the Company Law state that the transfer of state / regional property is carried out by means of being sold, exchanged, granted, or included as Government capital after obtaining approval from the DPR / DPRD.

The year of 2017 has only been going on for two weeks, but various policies issued by the government have received criticism. The two policies that are in the public spotlight today are in the Energy and Mineral Resources (ESDM) sector and State-Owned Enterprises (BUMN).

The provisions of Article 1 paragraph (10) of the SOE Law state that the separated State Assets are state assets originating from the State Budget (APBN) to be used as state capital investments in Persero and / or Public Corporation and other limited companies. With this, State-Owned Enterprises (BUMN) which all or most of their capital comes from separated state assets, is one of the economic actors in the national economic system, in addition to private businesses and cooperatives. In order to carry out its business activities, BUMN, private sector and cooperatives carry out a role of mutual support based on economic democracy. In the case of separation of state assets from the State Budget of Revenue and Expenditures to be used as state capital participation in SOEs, then the development and management are no longer based on the State Budget and Expenditures system, but its development and management are based on sound company principles.

The power over the management of state finances is carried out by the President as the Head of Government holding the power of managing state finances as part of the governmental powers authorized to the Minister of Finance, as the fiscal manager and Deputy Government in the ownership of separated state assets. The Minister / institution leader as the Budget User / Property User of the state ministry / institution he leads has the task of managing the state property / wealth which is the responsibility of the state ministry / institution he leads. The Minister of Finance as an assistant to the President in the field of finance is essentially the Chief Financial Officer (CFO) of the Government of the Republic of Indonesia, while each minister / agency leader is essentially the Chief Operational Officer (COO) for a particular area of government. This principle needs to be carried out consistently so that there is clarity in the distribution of authority and responsibility, the implementation of checks and balances mechanisms and to encourage efforts to increase professionalism in the administration of government duties.

The provisions of Article 1 paragraph (1) SOE LAW include stating that the State Owned Enterprise, hereinafter referred to as BUMN, is a business entity that all or most of its capital is owned by the state through direct participation derived from separated state assets. The purpose of the separated State assets is the state wealth originating from the State Budget (APBN) to be used as a state capital investment in Persero and / or Public Corporation and other limited companies. Thus SOE capital is and originates from separated state assets.

Provisions of Article 5 paragraph (1) of Government Regulation Number 45 of 2005 concerning Establishment, Management, Supervision and Dissolution of State-Owned Enterprises states that the

establishment of SOEs is stipulated based on government regulations, while the inclusion of state capital in SOEs and PT is stipulated in Article 2A paragraph (1) PP 72/2016 declare State Equity Participation originating from state assets in the form of state-owned shares in SOE or Limited Liability Company as referred to in Article 2 paragraph (2) letter d to SOE or other Limited Company, carried out by the Central Government without going through the mechanism of State Budget.

SOE as a Company in running its business is currently receiving special treatment from the provisions of Government Regulation No. 72 of 2016 specifically regarding privileges to SOE compared to other PTs, except the appointment of directors and board of commissioners, which was first appointed by the Minister of Finance as the founder after obtaining approval from the president. The appointment is then carried out by the GMS nominated by the Minister of Finance as the shareholder after obtaining approval from the President.

SOE and PT are the same legal form, namely limited liability companies which are private legal entities, as well as principles, functions and objectives and business activities. The difference between SOE and PT is only about shareholders, SOE shareholders in whole or most are state, while PT private legal entities, shareholders are individuals or private legal entities. The State / Government of the Republic of Indonesia as a shareholder of BUMN, is not domiciled as a public authority / legal entity, but the same as the position of the shareholder of PT legal entity as a private legal entity. Thus, the SOE has the same legal status as PT other private legal entities.

### **3.4 Wealth of SOE in State Finance**

The most important mechanism in the PT Law is the obligation of the board of directors to hold an annual GMS or it is also deemed necessary for an extraordinary GMS, as well as the fairness of the board of directors to carry out their duties in good faith and must comply with the GMS results unless permitted under the PT. However, in practice, there is a violation of the issue of the obligations of the board of directors which has harmed the interests of other members of the board of directors or shareholders, thus causing criminal events such as the case of PT GAIN.

Based on the agreement of wealth theory put forward by Brinz and Van der Heijden, that humans can become legal subjects. Therefore legal entities are not legal subjects and the rights given to a legal entity are essentially rights with no legal subject. The wealth of the legal entity does not consist of the rights as usual (there are those who support these rights, humans), but the wealth of the legal entity is seen as irrespective of who holds it. Here what is important is not who the legal body is, but the wealth is taken care of and used with a specific purpose and a legal entity is an object protected by law. Because the legal entity is a legal subject as a supporter of rights and obligations, it can therefore have a legal relationship, including business relations with other parties represented by its directors. Therefore according to this purposeful wealth theory no matter whether humans or not, no matter that wealth is a normal or not right, the most important is the purpose of that wealth. In short, what is called the rights of legal entities, actually rights without a legal subject, therefore as a substitute is wealth bound by a purpose.

Based on the transformation theory developed by Arifin P. Soeria Atmadja, that money separated from the APBN as a share in Persero, the position of the state is no longer a public legal entity, but as an ordinary shareholder, and the separated money is no longer state money. This means that there is a separation of state assets from the shareholders' wealth. The criteria for determining the existence of something as a legal entity is the existence of separate assets, having a specific purpose, having their own interests and the existence of an organized organization.

Referring to wealth theory by looking at Article 3 paragraph (1) of the Company Law, which also applies to Persero, stated that the company's shareholders are not personally liable for the commitments made on behalf of the company and are not responsible for the loss of the company in excess of its shares. with the provisions in Article 39 of the SOE Law, it is clear that the wealth (liabilities and assets) of SOE is separate from the wealth of its founder, namely the State. The provisions in Article 7 paragraph (5), paragraph (6) and paragraph (7) of the PT Law, are provisions which state that the state as a shareholder of the company is not responsible for losses suffered by the company. Whereas in the provisions of Article 2 of the KN Law as the authorized capital of a company originating from BUMN, including the definition of State finance. Thus the definition of State Finance is different from the definition of State Money / State Property or in other words the State Finance is not synchronized with State Money.

Seeing the definition of state finances in the UUPTPK covers all state assets including money and something of value, the connection is about the loss of state finances must be proven to have a causal relationship with the actions of the defendant as well as the theory of causal relations from cause to effect such as the actions of directors, commissioners who use wealth or money for personal gain, resulting in state financial losses. The relationship due to causes, for example, bad loans of state-owned enterprises to state-owned banks, some of the loans sourced from the state budget as state finances for personal gain. The relationship due to the consequences for example with the amount of state money that was corrupted also resulted in the number of

subsidiaries unable to continue their business because the business costs were very large. From these provisions, associated with several expert theories and opinions, the authors argue that the notion of state finance is not synchronized with state money, but the understanding of state finances is broader than the understanding of state money because state money is included as state finances, but state finance is not only state money only, there is another party's wealth that can be classified as state finances, if the other party's wealth is controlled by the state in the context of the administration of government duties or for the public interest including using the facilities provided by the government.

### **3.5. Principles and Concepts of State Finance Policies in SOEs**

Principle or principle is something that can be used as a basis, basis, foundation, place to rely on something, return something to be explained State Financial Management is the overall activities of state financial management officials in accordance with their position and authority, which includes planning, implementation, supervision and also accountability. Financial examination from the state is a process of problem identification, analysis, and evaluation carried out independently, objectively, and professionally based on inspection standards, to assess the truth, accuracy, credibility, as well as reliability of information covering management aspects and responsibilities of state finances.

Furthermore, the scope of the examination of state finances includes: Examination of state finances which includes examining the management of state finances and also examining responsibility for state finances. The Supreme Audit Agency (hereinafter referred to as BPK) conducts checks on the management and responsibility of the state finances.

Power over the management of state finances is in the hands of the President as the Head of Government holds the power of managing state finances as part of the power of government. Furthermore, the power is authorized to the Minister of Finance, as the fiscal manager and Deputy Government in the ownership of the separated state assets; Minister / institution leader as Budget User / Property User of the state ministry / institution he leads; Governors / Regents / Mayors as heads of regional administrations to manage regional finances and represent local governments in the ownership of separated regional assets; Not including authority in the monetary field, which includes, among others, issuing and circulating money, which is regulated by law. Accountability for the implementation of the APBN and also the APBD, the President submits the APBN Implementation Accountability Bill to the DPR after being examined by the BPK no later than 6 (six) months after the fiscal year ends. Then the governor / regent / mayor then prepares draft regional budget regulations for the Regional People's Advisory Council (hereinafter referred to as the DPRD). With the acceptance of the accountability in the DPR or DPRD forum, it is considered legally and politically fulfilled or has been responsible.

## **IV. CONCLUSION**

The principles contained in the management of state finances are based on the general principles of good governance (the concept of good governance) in SOE's. Understanding governance and good governance is a problem that is not only within the scope of the state, but also related to other sectors (private and public), besides good governance governs the problem of implementation or activities of government administrators.

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