



Limitation of Public Service Special Assignment Charges Bond in the Form of a BUMN Persero (State-Owned Enterprises)

Batasan Pembebanan Penugasan Khusus Public Service Obligation Pada Bentuk Persero BUMN (Badan Usaha Milik Negara)

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Abstract

Penelitian ini menganalisis batasan pembebanan biaya Public Service Obligation (PSO) pada Badan Usaha Milik Negara (BUMN) berbentuk Persero di Indonesia, yang hingga kini belum diatur secara spesifik dalam undang-undang. PSO hanya disebutkan dalam klausul "mempertimbangkan maksud dan tujuan BUMN," yang memicu tantangan dalam implementasinya tanpa mengorbankan efisiensi dan profitabilitas Persero. Penelitian ini menggunakan metode yuridis normatif, berfokus pada kajian peraturan perundang-undangan dan asas-asas hukum yang mengatur pengelolaan BUMN dan perannya dalam mendukung kebijakan publik, dengan hasil menunjukkan bahwa pembebanan PSO pada Persero BUMN didasari dua rasio legis: yuridis-filosofis dan sosiologis. Alasan yuridis-filosofis berasal dari amanat Pasal 34 ayat (3) UUD 1945, yang menekankan peran negara dalam menyejahterakan masyarakat melalui layanan publik. Alasan sosiologis mencerminkan peran BUMN sebagai alat pemerintah untuk membantu negara mencapai tujuannya. mewujudkan kesejahteraan melalui layanan dasar, di mana Persero dapat berperan fleksibel sebagai agen kebijakan publik. Penelitian ini merekomendasikan pembentukan kerangka hukum yang lebih terperinci untuk mengatur batasan biaya PSO bagi BUMN Persero, sehingga PSO dapat diterapkan secara proporsional, mendukung keseimbangan ekonomi BUMN, dan memberikan manfaat bagi masyarakat luas.

Keywords: *Public Service Obligation; BUMN (Badan Usaha Milik Negara); Persero.*

Abstract

This study analyzes the limitations of charging Public Service Obligation (PSO) fees on State-Owned Enterprises (BUMN) in the form of Persero in Indonesia, which until now has not been specifically regulated in the law. PSO is only mentioned in the clause "considering the intent and purpose of BUMN," which triggers challenges in its implementation without sacrificing the efficiency and profitability of Persero. This study

uses a normative legal method, focusing on the study of laws and regulations and legal principles governing the management of BUMN and its role in supporting public policy, with the results showing that the imposition of PSO on BUMN Persero is based on two legal ratios: legal-philosophical and sociological. The legal-philosophical reason comes from the mandate of Article 34 paragraph (3) of the 1945 Constitution, which emphasizes the role of the state in improving the welfare of the community through public services. The sociological reason reflects the role of BUMN as a government tool to help the state achieve its goals. realizing welfare through basic services, where Persero can play a flexible role as an agent of public policy. This study recommends the establishment of a more detailed legal framework to regulate PSO cost limits for BUMN Persero, so that PSO can be implemented proportionally, support the economic balance of BUMN, and provide benefits to the wider community.

Keywords: *Public Service Obligations; State-Owned Enterprise; Persero.*

Introduction

In Indonesia, State-Owned Enterprises (SOEs) in the form of Persero play an important role in providing essential public services while operating as profit-oriented business entities. However, the imposition of Public Service Obligation (PSO) costs on Persero SOEs often faces obstacles related to the lack of clear regulations regarding PSO cost limits. PSO in Indonesia is only mentioned in general terms with the clause "considering the aims and objectives of SOEs," without any concrete limitations.¹ This creates ambiguity in the application of PSO, resulting in financial pressure for SOEs that are required to carry out public services without specific guidance on cost containment. These problems not only impact the effectiveness of the public services provided, but also the financial stability and operational sustainability of SOEs as business entities.² This issue has prompted a critical review of the legal framework governing PSO costs in SOEs, highlighting the need for comprehensive research to effectively address these regulatory gaps.

A review of the existing literature reveals a lack of research specifically addressing PSO cost limitations in SOEs in the context of Indonesian law. While some studies have explored broader aspects of SOE regulation and public service provision, there is a notable gap in understanding the specific challenges and legal complexities surrounding PSO cost containment. One study that has been conducted is limited to PSO studies,

¹ Ika Apri Handayani, Suartini Suartini, dan Fokky Fuad, "Konsep Materialitas Dalam Aksi Korporasi Anak Cucu BUMN Berdasarkan Undang-Undang Perseroan Terbatas," *Binamulia Hukum* 12, no. 2 (2023): 397, <https://doi.org/10.37893/jbh.v12i2.618>.

² Mirna Nurwenda dan Dedi Junaedi, "The Analysis of Financial Reporting in Ministries/State Institutions and Supervision of BUMN for Transparency & Accountability," *Jurnal Sistem Informasi, Akuntansi dan Manajemen* 4, no. 1 (31 Januari 2024): 95, <https://doi.org/10.54951/sintama.v4i1.684>.

one of which is by Muhammad Insa Ansari entitled *Government Assignment to State-Owned Enterprises in the Electricity Sector in the Perspective of Corporate Law*.³ The novelty of this research is that it focuses on studying the PSO limitations for BUMN Persero.

The significance/urgency of this study lies in its potential to address a critical regulatory gap with far-reaching implications for the fiscal sustainability and operational viability of SOEs especially for Persero entities that must perform social functions without undermining their profitability.⁴ The lack of clarity in PSO charging guidelines creates a risk of financial instability and threatens the continued provision of public services that support the interests of the wider community.⁵ In addition, the lack of clear guidelines regarding PSO cost caps not only jeopardizes the financial health of these companies, but also undermines the effective provision of public services. By clarifying the legal principles and proposing an appropriate regulatory framework, within the context of the *ius constituendum*, it is important for Indonesia to formulate strict regulations to support the role of SOEs as public policy tools capable of achieving public welfare without harming its economic stability.⁶ The importance of this regulation aims to contribute to the improvement of governance and accountability in the SOE sector in Indonesia.

The role of SOEs to support the success of national development is increasingly important and strategic, because they play a pioneering role in business sectors where the private sector and cooperatives have not yet worked on it, become managers of strategic business fields and at the same time as implementing public services to balance

³ Muhammad Insa Ansari, "Government Assignment to State-Owned Enterprises in the Electricity Sector in the Perspective of Corporate Law," *Padjadjaran Journal of Law* 4, no. 3 (2017): 552, <http://jurnal.unpad.ac.id/pjih/article/view/13927>.

⁴ M. Iqbal Asnawi dkk., "Review of the Legal Certainty of Management of the Company's Bumh by the Board of Directors in State Financial Mechanisms," *Journal of Legal, Ethical and Regulatory Issues* 27, no. 4 (2024 2023): 7, <https://heinonline.org/HOL/Page?handle=hein.journals/jnlolletl27&id=436&div=&collection=>.

⁵ Adeyemi Adebayo dan Barry Ackers, "Comparing corporate governance practices of state-owned enterprises (SOEs) in South Africa and Singapore," *Journal of Accounting and Investment* 23, no. 1 (31 Januari 2022): 171, <https://doi.org/10.18196/jai.v23i1.13830>.

⁶ Rosita Candra Kirana, "Studi Perbandingan Pengaturan Tentang Corporate Social Responsibility Di Beberapa Negara Dalam Upaya Perwujudan Prinsip Good Corporate Governance" (Thesis, UNS (Sebelas Maret University), 2009), 44, <https://digilib.uns.ac.id/dokumen/15832/Studi-Perbandingan-Pengaturan-Tentang-Corporate-Social-Responsibility-Di-Beberapa-Negara-Dalam-Upaya-Perwujudan-Prinsip-Good-Corporate-Governance>.

large private forces. In terms of numbers, by the end of 2019, Indonesia had 114 SOEs.⁷ The core of this research is several interrelated legal questions regarding the regulation of PSO costs for Persero SOEs. What is the *Ratio Legis* of PSO Charges in the form of Persero BUMN? And what is the importance of limiting PSO charging in the form of Persero BUMN?

The main objective of this research is to provide a comprehensive legal analysis of the PSO cost cap for state-owned enterprises in Indonesia. Specifically, it aims to identify the legal rationale underlying PSO costs, assess the effectiveness of the current regulatory approach, and propose a viable model to improve governance and accountability in PSO management. By achieving these objectives, this research is expected to provide inputs to policymakers, regulators and stakeholders to address the regulatory challenges surrounding PSO costs in SOEs.

Method

The type of legal research conducted is normative juridical where the law is conceptualized as what is written in the legislation (law in books) or law is conceptualized as rules or norms that are a benchmark for human behavior that is considered appropriate.⁸ In normative studies, the law in question is not only in the form of laws, but is related to the theoretical order, philosophy, comparison with other countries, structure, and composition of the explanation of each Article of the law.

Thus, normative legal research is no longer identified with legislation alone. But more than that, it includes various things related to the norm system as the object of study, such as ideal legal values, legal theories, legal principles, legal principles, legal teachings, court decisions, and legal policies.⁹

The researcher's study will focus on the study of the formation of norm standards for changes in the status of BUMN legal entities, describing the ratio legis of the reasons for not regulating norm standards in the Law and related government regulations, all of which issues are studied based on normative juridical studies with a certain approach model as a basis for compiling precise, logical and accurate legal arguments.

⁷ Ahmad Ahmad dkk., "Tafsir Konstitusi: Studi Putusan Mahkamah Konstitusi tentang Hak Menguasai Negara atas Sumber Daya Alam dalam Prespektif Demokrasi Ekonomi" (PhD Thesis, Surakarta, Universitas Muhammadiyah Surakarta, 2020), 61, <https://eprints.ums.ac.id/id/eprint/88056>.

⁸ Amirudin dan Zainal Asikin, *Pengantar metode penelitian hukum* (Jakarta: PT Raja Grafindo Persada, 2016), 12.

⁹ Irwansyah Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2021), 33.

There are three types of library materials used by the author in the research, including: Primary Legal Materials The 1945 Constitution of the Republic of Indonesia, Law Number 11 of 2020 concerning Job Creation, State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to State Gazette of the Republic of Indonesia Number 6573, Law Number 19 of 2003 concerning State-Owned Enterprises, State Gazette of the Republic of Indonesia Number 4297, Law Number 40 of 2007 concerning Limited Liability Companies, State Gazette of the Republic of Indonesia of 2007 Number 4756, Government Regulation of the Republic of Indonesia Number 43 of 2005 concerning Merger, Consolidation, Acquisition, and Change of Legal Form of State-Owned Enterprises, State Gazette of the Republic of Indonesia of 2005 Number 115. Government Regulation of the Republic of Indonesia Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Procedures for Participation and Administration of State Capital of State-Owned Enterprises and Limited Liability Companies.

Secondary Legal Materials, scientific work products that are in accordance with the research topic in the form of books, you and journals that have been published and tertiary legal materials, namely the Big Indonesian Dictionary. The legal material analysis technique used is *content* analysis (content analysis technique) analysis is any systematic procedure that is encouraged to examine the content of the information obtained.

Result and Discussion

A. Ratio Legis of PSO Charges on Persero SOEs

Conceptually, a business entity in the form of a Persero in the ownership of the State represented by BUMN, has a different way of working with Persero in general. Because Persero in general is sufficient to guide the corporate entity as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies and other business principles, this does not apply to BUMN Persero, because of its direct attachment to the state, compliance with regulations and roles and responsibilities as a public service provider cannot be denied. Perum entities have been formed specifically to serve the public interest as well as to foster profits. The business is carried out by upholding the requirements of efficiency, effectiveness and economy, cost accounting principles and management effectiveness, as well as a form of good service to the community or its customers. While in terms of its meaning, Perum

was formed to serve the public interest but must also pay attention to the principles of clear and bright bookkeeping.¹⁰ In contrast to Persero which in carrying out its business activities aims to foster maximum profit, although in certain cases it is to perform public services.¹¹

In this context, it can be clearly illustrated that the burden of SOEs, especially Persero SOEs, is not only obliged to comply with the Principles of GCG (Good Corporate Governance) GCG¹² As a form of extension of the state in controlling production branches, it is also obliged to provide public services (Public Service Obligation)¹³ When viewed from the point of view of constitutional law, the PSO assignment is a direct order of the constitution which mandates the state to be responsible for the provision of proper health care facilities and public service facilities. Therefore, no matter what, PSO must be implemented in the public interest. This is where the dilemma of BUMN Persero as a business entity is also required to be able to compete with other business actors, in accordance with the purpose of establishing BUMN, namely to contribute to national development in general and state revenue in particular and pursue profits.

Not a few SOEs that carry out PSO missions have suffered losses, for example at PT Pertamina, as of the beginning of 2018, PT Pertamina experienced a loss of up to 3.9 trillion due to the assignment of the price of fuel oil (BBM). This is because PT Pertamina must bear the difference between the economic price and the price set at that time. On the other hand, in 2017 PT Pertamina was the largest contributor to the government's share of BUMN profits, which amounted to Rp. 11.60 trillion or 26.43 percent of the total Rp. 43.90 trillion. If this continues to be ignored, it is possible that PT Pertamina's contribution will decrease. Similar to PT Pos, the estimated profit in 2018 is far from the target, which is around Rp. 130 billion from the target set at Rp. 400 billion, the profit is also far from the 2017 profit achievement

¹⁰ R. T. Sutantya Raharja Hadhikusuma dan Sumantoro Sumantoro, *Pengertian pokok hukum perusahaan: bentuk-bentuk perusahaan yang berlaku di Indonesia* (Jakarta: Raja Grafindo Persada, 1996), 97.

¹¹ Abdulkadir Muhammad, *Hukum perusahaan indonesia*, Cetakan ke 4 (Bandung: Citra Aditya Bakti, 2010), 124.

¹² Imam Sjahputra Tunggal and Amin Widjaja Tunggal, *Building Good Corporate Governance* (Jakarta: Harvarindo, 2002).

¹³ Imam Sjahputra Tunggal dan Amin Widjaja Tunggal, *Membangun Good Corporate Governance (GCG)* (Jakarta: Harvarindo, 2002), 67.

of Rp. 335 billion.¹⁴ The decline in profit is due to PT Pos serving the Universal Post program which is a PSO mission to ensure the implementation of certain types of postal services from one place to another in the world.

Actually, the PSO burden as stated in Article 66 of the BUMN Law implicitly implies that the PSO burden on BUMN Persero can be realized if the implementing institution is in good health, with the intention of maintaining a balance of the two interests, namely the achievement of PSO targets and on the other hand the sustainability of BUMN business. In other words, the PSO burden is imposed on rational considerations and considers the capabilities and capacity of BUMN Persero, even though this has been guaranteed by the Government with the need for Margin issued in the form of compensation, but the norm is not understood as a form of norm that shows balance, because there are still many other technical obstacles that hamper the performance of BUMN Persero in pursuit of profit (*profit oriented*). This problem is also one of the indicators discussed in the proposed draft BUMN Law as written in the Academic Paper in May 2021 that the balance study is inseparable from the plan to reformulate the PSO charging model for BUMN Persero.¹⁵

The term Limited Liability Company (PT) was formerly known as Naamloze Vennootschap (NV), in addition to other terms such as Corporate Limited (CO.Ltd), Sendiri Dagang Bendhard (Sdn BHD). Limited Liability Company itself is divided into two words namely "Company" and "Limited". Company refers to sero-sero or shares, then the word "Limited" refers to shareholders whose extent is only limited to the nominal value of all the shares they own.¹⁶ The Company itself used to be more famous under the name "Naamloze Vennootschap", which is a form of business often used by traders, entrepreneurs and so on to achieve their aims and objectives in seeking profits in the industrial field. As a legal entity, the Company is no different from a human being (*natuurlijke persoon*) in conducting legal activities.

¹⁴ Iranisa Dwi Resti Pratiwi, "Mendorong Peningkatan Penerimaan Bagian Pemerintah Atas Laba BUMN," *Pusat Analisis Anggaran dan Akuntabilitas Keuangan Negara DPR RAPBN APBN IV*, no. 1 (2019): 12, <https://pa3kn.dpr.go.id/produk/index-buletin-apbn/page/21>.

¹⁵ Badan Keahlian DPR RI, "Draft Naskah Akademik Rancangan Undang-Undang Tentang Badan Usaha Milik Negara" (DPR RI, 2021), <https://berkas.dpr.go.id/puuekkukesra/na/file/na-106.pdf>.

¹⁶ Abidin Zainal Amiruddin, "Pengantar Metode Penelitian Hukum Jakarta: Raja Grafindo Persada," *Cet. Ke-1*, 2006, 21.

Historically, the Company was initially regulated through the Commercial Code. The Commercial Code contains only 20 articles that specifically regulate Limited Liability Companies. Due to the lack and simplicity of the regulation, rules on Limited Liability Companies were made through the Civil Code. The Civil Code defines a Company in the basic form of an association.¹⁷The association referred to here is an association in a broad sense, which does not have a separate personality and which has the elements of Common Interest; Common Will; Common Purpose; and Cooperation.

The purpose of forming a Company is to seek profit and then distribute it to each shareholder with a predetermined amount. In Article 1 paragraph 1 of Law no. 40 of 2007 states that a Limited Liability Company, hereinafter referred to as a Company, is a legal entity which is a capital alliance, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and fulfills the requirements set forth in this Law and its implementing regulations. Based on the definition contained in the Law, a Company is a legal entity (*rechtsperson, legal person, legal entity*).

Public Service Obligation first appeared through a statement by the Government as an interpretation of the purpose and objectives of the establishment of BUMN, namely in Article 2 paragraph (1) letter C, which states that the Government can provide special assignments to BUMN (Persero and Perum) to carry out public benefit functions, both for existing BUMN and by forming new ones. Government assignments must be accompanied by financing (compensation) based on business calculations (commercial basis). Meanwhile, the general views of the relevant factions do not mention at all the reasons why Persero BUMNs are also charged with public service obligations, even though these things have contradicted the entity of Persero companies in general, which are more focused on profit-seeking as much as possible and carried out continuously.¹⁸ Meanwhile, Public Service Obligation is a form of subsidy charged to Persero BUMN to carry out public benefits. So actually, the Persero BUMN entity is in a dilemmatic position,

¹⁷ Hadhikusuma dan Sumantoro, *Pengertian pokok hukum perusahaan*, 86.

¹⁸ Cindawati Cindawati, *Hukum Dagang dan Perkembangannya* (Palembang: CV. Putra Penuntun, 2015), 56.

between the demands to become a leading company by maximizing profits, but on the other hand it is given an assignment to carry out public benefits.

PSO (*Public Service Obligation*) nomenclature has not actually been found in Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN), but only other phrases are found, namely "public benefit" in Article 66 of Law Number 19 of 2003 concerning State-Owned Enterprises, which is regulated in a separate Chapter using the phrase "public service obligations". After the periodization of Law Number 19 of 2003 concerning State-Owned Enterprises has been running for 2 (two) years, the PSO (*Public Service Obligation*) nomenclature is found in Government Regulation No. 45 of 2005 concerning Establishment, Management, Supervision and Dissolution of State-Owned Enterprises, in the Explanation of Article 65 paragraph (1) which states that PSO (*Public Service Obligation*) is a public service obligation through special assignments with guaranteed compensation for all costs incurred by State-Owned Enterprises.

The 1945 Constitution of the Republic of Indonesia has a strong Indonesian nuance, with no regard for communist or capitalist-based economic management systems. The socialist/communist economic system is an understanding that arises as a result of capitalism that exploits humans, so that the state intervenes quite deeply with a very dominant role. The result is that there is no freedom in carrying out economic activities for individuals, but everything is for the common good, so private ownership is not recognized. Whereas the capitalist economic system is a system that contradicts the socialist/communist system, where the state does not have a major or limited role in the economy. This system strongly adheres to the market mechanism system.¹⁹

The purpose of the above elaboration of the Constitution of the 1945 NRI Constitution leads to a populist economic style, where economic actors (Government, private and cooperatives) will carry out economic activities in a populist economic system. Apart from that, Article 34 paragraph (3) is a compromise form of the consequences of the adoption of a populist economy, where the constitution requires natural resources to be controlled by the state but managed based on the greatest prosperity of the people as well as equitable distribution of

¹⁹ Badan Keahlian DPR RI, "Draft Naskah Akademik Rancangan Undang-Undang Tentang Badan Usaha Milik Negara."

public facilities and benefits obtained by the wider community. Then in Article 33 of the 1945 Constitution which essentially guarantees the availability of economic needs that are not produced by many people but the results concern the lives of many people.²⁰

So, based on this description, it is clear that the formation of BUMNs was initiated by the government with the intention of creating state entities (tools) that are tasked with two things, namely pursuing profits while organizing public benefits, so that BUMNs can be classified as actors of economic activity in the national economy whose wealth is distinguished by state ownership, based on economic democracy in order to realize public welfare as mandated by the 1945 Constitution.

The search for the Ratio Legis of the PSO (Public Service Obligation) regulation imposed on BUMN Persero is carried out by looking at the process of forming Legislation, including Law Number 19 of 2003 concerning BUMN, based on the Archives of the House of Representatives of the Republic of Indonesia regarding the formation of Law 19 of 2003. While the factor that is also a discussion that is directly related to answering the Ratio Legis is about the PSO (Public Service Obligation) Procedure, where this description will discuss who plays a role including the provision of public benefits. The procedure for channeling PSO and subsidy funds is certainly inseparable from the development of the budget cycle which is increasingly leading to performance-based budgeting which should be fully implemented in accordance with Article 14 of Law Number 1 of 2004 concerning State Treasury. This is because the law clarifies budget allocations based on the classification of budgeting needs, one of which is the PSO contained in the Work Plan (Renja).

Based on the description above, conclusions can be drawn regarding the imposition of Ratio Legis on BUMN Persero, even though this is not in accordance with the nature (entity) of the corporation, which is divided into 2 (two) of which are as follows:

- 1) Juridical-philosophical reasons

²⁰ Irit Suseno dkk., "Forms of Ideal Laws of State-Owned Enterprises in Harmony with Article 33 Paragraph IV of the Preamble of the 1945 Constitution of the Republic of Indonesia," *Journal of Law, Policy and Globalization* 85 (2019): 102, <https://doi.org/10.7176/JLPG>.

- a) Giving the state the function and responsibility to ensure the availability of proper health facilities and other public facilities, in other words, the state is fully responsible for providing these facilities without exception / or it is a direct order from the constitution.
- b) BUMN as stipulated in practice so far and referring to the Law on State Finance that BUMN entities are state institutions, not a business entity, so that the state's responsibility in the context of providing, providing proper health facilities and public facilities is a unity of joint responsibility between the Government and BUMN.

2). Sociological Reasons

It is only for one reason, namely, it is limited to SOEs. This reason answers the question, why Persero BUMN is chosen to distribute PSO (Public Service Obligation) funds, for one reason, namely the lack of entities other than Perum and Persero BUMN that can optimize the distribution of certain goods and services to certain groups of society. This is in line with the May 2021 draft of the SOE Law, which is planning a new entity within SOEs that functions specifically to carry out PSO.

B. The Importance of PSO Assignment Limitation Rules on State-Owned Enterprises

The Importance of Regulating the Limitation of PSO Assignments to BUMN Persero, As mandated by the Law that BUMN (State-Owned Enterprises) are business entities whose entire or most of the capital is owned by the state through direct participation originating from separated state assets. SOEs are part of the economic actors in Indonesia, apart from those commonly found, namely the private sector, MSMEs and cooperatives. The vital role of SOEs as a state tool to achieve state goals, because in addition to implementing public services, producing goods and services, balancing the role of the private sector in the market, and helping to encourage the development of small and medium enterprises (MSMEs). Gradually, BUMN transformed into a company that was more dominant in the legal entity of PT (Limited Liability Company) than the Perum model, this means that BUMN Persero will be more significant in carrying out its duties at once compared to Perum which is considered less effective, so that the orientation of BUMN formation from time to time is more likely to be modeled as Persero. This is because

the Persero form is more effective and efficient in carrying out its duties at the same time, between services and seeking profit (profit).

The contradiction in the assignment of PSO special duties has juridical problems that have not yet been resolved, especially regarding the assignment of PSO to subsidiaries of BUMN. There are at least 2 (two) juridical problems and the responsibility of subsidiaries to BUMN Group companies. This problem began with the decision of the Constitutional Court Number 01/PHPU-PRES/XVII/2019 which gave birth to a juridical implication for the limited liability of the parent company to the subsidiaries of the BUMN Group and the subsidiaries of BUMN Companies.

The juridical implications that can occur for BUMN subsidiaries that are no longer BUMNs are that by changing the status of BUMN subsidiaries which were originally BUMNs to no longer BUMNs will result in the status of BUMN subsidiaries being the same as Limited Liability Companies in general so that there is no interference with the state, therefore these subsidiaries will not be subject to the State Finance Law (regulated in Law Number 17 of 2003 concerning State Finance) because what includes state finances in State Companies is directly separated assets, while subsidiaries of BUMNs do not get direct state equity participation. Of course this creates a serious gap in the imposition of PSO assignment obligations where the purpose and objective of PSO is for public services as the margin paid by the government is a margin obtained from the results of the state budget and is recorded for each year as a report by BPK (Supreme Audit Agency), meaning that if the subsidiary entity of BUMN is no longer part of BUMN, PSO is also not required for BUMN subsidiaries because BUMN subsidiaries are not part of BUMN entities but Persero in general.

This legal construction actually results in the emergence of new problems, so that researchers prefer to interpret that BUMN subsidiaries are part of the BUMN entity in accordance with the mandate of the Law. Apart from that, what is no less important is that the same burden is also imposed on PSO special assignments on BUMN subsidiaries without exception, this is what needs to be underlined, the important role of the parent company in implementing Good Corporate Governance. The application of GCG principles is a reflection of a simple assessment for parent companies and subsidiaries that are categorized as healthy companies or not. This means that the function of supervision and guidance from the parent

company to its subsidiaries is supervision in the implementation of GCG. Of course, this is important considering the success of balancing public services with the pursuit of profit starts with the application of GCG principles.

The size of SOE earnings expectations depends on expectations of future company performance as indicated by a healthy balance sheet, income statement and cash flow statement. The principles of *Good Corporate Governance* are intended to be applied thoroughly in the company's activities. The legal basis of GCG can be seen from the Decree of the Minister of State-Owned Enterprises Number: PER-01/MBU/2011 concerning the Implementation of Good Corporate Governance. This principle refers to five values, including: *Transparency, Accountability, Responsibility, Independency, Fairness*.

Transparency is defined as openness in carrying out the decision-making process and openness in disclosing material and relevant information about the company. Meanwhile, accountability is defined as the clarity of functions, implementation and accountability of the Organ so that the management of the company is carried out effectively. The principle of accountability is conformity in the management of the company to laws and regulations and sound corporate principles, and the principle of independence is based on professional corporate governance without any conflict of interest, while the last is the principle of fairness, namely justice and equality in fulfilling the rights of stakeholders arising based on agreements and laws and regulations.

These five principles are a reference for the management of BUMN Persero and Perum, and technically these five principles are used as benchmarks for BPK (Financial Audit Agency) in auditing parent BUMN and BUMN subsidiaries. SOE governance is important to pay attention to these five principles, considering that SOE governance still has weaknesses, including sometimes there are many conflicting interests from the government, making it difficult for SOE management to determine company goals, second, management is given limited authority or too strong a political aroma in the placement of directors, making it difficult to make objective decisions, third, management is given an incentive system that is less attractive so that performance is limited.²¹ sometimes these five principles are

²¹ Toto Pranoto, "Privatisasi, GCG, dan Kinerja BUMN," *Lembaga Management FE UI*, 2010, 21, https://www.academia.edu/download/35255802/Privatisasi_BUMN.pdf.

difficult to apply because there are many factors that influence them, but that is no reason not to guide the five principles. The tendency of corporate governance at the parent company and subsidiary level may occur, depending on the expertise of the company's management to translate these principles into the company's activities.

In its implementation, the PSO burden mandated by the Law after being traced further through Ratio Legis, the PSO burden on BUMN Persero is a meeting point between economic development and welfare improvement. Economic development is valued at macroeconomic interests based on large government works, while welfare improvement can simply be seen from the social aspects of the government, including in the form of PSO charged to Persero BUMN. In detail, the identification of this problem can be explained through the results of the search for the first and second problem formulations, including the following:

- 1) **Institutional issues:** institutional factors are based on a study of the ratio legis of PSO burdening on BUMN Persero which in essence, the law mandates that PSO obligations must be clearly recorded as accountability and transparency, involving elements of government and DPR so that the **option to charge PSO to the private sector is closed**, so it is necessary to find a solution for balancing PSO on BUMN Persero.
- 2) **Regulatory issues:** the need to adjust the balance between GCG principles (Law Order / Decree of the Minister of State-Owned Enterprises Number: PER-01 / MBU / 2011) carried out by BUMN Persero and PSO Principles both need to be carried out together, this difficulty is experienced by BUMN subsidiaries which, according to the BPK assessment, BUMN subsidiaries are still not guided by GCG in their company activities. On the other hand, Government Regulation of the Republic of Indonesia Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Procedures for the Participation and Administration of State Capital of State-Owned Enterprises and Limited **Liability** Companies in Article 2A paragraph 7 **generalizes PSO obligations for SOE subsidiaries.**

In general, the economic approach to answering legal problems is carried out by expressing different definitions and different legal assumptions to get an idea of satisfaction and maximization of happiness. This approach is closely related to justice

in law. To do so, the law is used as economic tools to achieve maximization of happiness.²²

Given that the purpose of the establishment of the state is to create public welfare, of course the law should not be an obstacle to closing welfare opportunities for the community.²³ In relation to this research, it is clear that PP No. 72 of 2016 concerning Amendments to Government Regulation No. 44 of 2005 concerning Procedures for Participation and Administration of State Capital of State-Owned Enterprises and Limited Liability Companies Article 2A paragraph 7 generalizes the responsibility for PSO assignments to subsidiaries. Meanwhile, the stakeholders referred to in this theory also refer to BUMN entities formed by the state as a tool to help achieve goals, one of which is the level of profit revenue for BUMN or Non-Tax State Revenue (PNBP).

The objectives to be achieved by the revision of PP No. 72 of 2016 Amendment to Government Regulation No. 44 of 2005 concerning Procedures for Investing and Administration of State Capital of State-Owned Enterprises and Limited Liability Companies are:

- 1) The heavy burden of PSO carried by BUMN Persero is the main reason for the need to limit the PSO burden on Persero, because none of the laws / other regulations explain the provisions or technically limit the PSO burden.
- 2) The imposition of the PSO Limitation provides an opportunity for Persero BUMN to be able to improve performance through business breakthroughs with the achievement of increased state revenue from BUMN profits, especially for BUMN subsidiaries.
- 3) The positive impacts to be achieved include: increasing state revenue from BUMN profits, improving the performance of BUMN subsidiaries, and subsidiaries can better adjust to the interests of profit activities by guiding GCG principles.

Therefore, it is necessary to make improvements, especially regulations that oversee BUMN and regulations related to BUMN, because BUMN as a legal entity is

²² Richard A. Posner, "Utilitarianism, Economics, and Legal Theory," *The Journal of Legal Studies* 8, no. 1 (Januari 1979): 105, <https://doi.org/10.1086/467603>.

²³ Robert Pinker, *The Idea of Welfare* (London: Routledge, 2019), 255.

a milestone of state / government business as a pioneer / pioneer and agent of national development is one of the important and main elements in the national economy and national development.

Conclusion

Ratio legis about the PSO burden on Persero BUMN found several reasons including philosophical juridical reasons that refer to the direct command of the constitution (Article 34 paragraph 3 of the 1945 Constitution of the Republic of Indonesia), the involvement of the Government and the DPR (Article 14 of Law Number 1 of 2004 concerning State Treasury) and the public service model submitted to the government depending on the decision (open legal policy) Article 2 letter g of the State Finance Law is a manifestation of the constitution, Article 33 of the 1945 Constitution of the Republic of Indonesia, which essentially guarantees the availability of economic needs that are not produced by the masses but the results concern the lives of many people, while on sociological grounds, institutional state entities that can be a tool to help the state achieve its goals are limited to SOEs, including Persero SOEs, so that this discussion appears in the Academic Draft of the BUMN Bill in May 2021 regarding the study of new SOE entities to focus on public services.

For the President and the DPR as the legislators, it is hoped that they can resolve the PSO dilemma by limiting the PSO burden to subsidiaries that have proven capable of implementing GCG and taking into account the capabilities and capacity of the subsidiaries. That way subsidiaries can be better able to focus on improving corporate management governance and increasing contributions to BUMN profits.

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