

Legal Problems Regarding State Financial Losses Due to Corruption in State-Owned Enterprises (Research Study at the Bogor Regency District Attorney's Office)

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Abstract. *The element of corruption in BUMN Persero is state losses. Based on the definition of state finances contained in Article 2 letter g of Law No. 17 of 2003 concerning State Finances. However, this provision differs in the substance of the BUMN Law which states that BUMN Persero is a private legal entity that has its own independence. There is an overlap of several rules which on the one hand state that the money has been transferred to the BUMN's own finances and on the one hand state that the money is absolutely state finances. The aim of this research is to find out and analyze (1) the existence of BUMN in the Indonesian state administration system from a state financial perspective, (2) the pattern of law enforcement for criminal acts of corruption in BUMN which cause losses to state finances, (3) the solution concept in overcoming legal problems regarding the element of state losses due to criminal acts of corruption in BUMN. The approach method used in this study is sociological juridical. The specifications of this study are descriptive analytical. The data sources used are primary data and secondary data. Based on the of the research and discussion, it can be concluded: (1) In relation to the management of state finances separated in BUMN, the Law on State Finances confirms that state assets separated in BUMN are legally normatively included in state finances as regulated in Article 2 letter g which states that state assets/regional assets managed independently or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated in state companies/regional companies; (2) If legally normatively in describing the pattern of law enforcement against corruption in BUMN without considering the problematic ambiguity of the latest BUMN Law with the Corruption Law, the patterns revealed by the Prosecutor in law enforcement against corruption in BUMN include proof in calculating state financial losses; (3) There is a major indication of the creation of hidden resistance for BUMN officials if legal provisions are not accompanied by strict accountability tools. This concern is justified considering that not all business policy-making is within the framework of public interest; There are times when a wrong business decision can be disguised as a strategic policy when in fact there is a conflict of interest involved.*

Keywords: *Corruption; State Losses; State-Owned Enterprises.*

1. Introduction

From these several state goals, these are then manifested in the constitution (Articles of the 1945 Constitution), some of which are contained in Article 33 of the 1945 Constitution of the Republic of Indonesia concerning the National Economy. Furthermore, Article 33 Paragraph (1) of the 1945 Constitution states that "the economy is structured as a joint effort based on the principle of family; Paragraph (2) Branches of production that are important for the state that control the livelihoods of many people are controlled by the State; Paragraph (3) The land and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people; Paragraph (4) The national economy is organized based on the principles of economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental awareness, independence, and maintaining the balance of progress and unity of the national economy; Paragraph (5) further provisions regarding this Article are regulated by law. If we look back, the presence of BUMN has long existed since the Dutch era, but at that time it was still known as a state-owned company, not a business entity. At the beginning of independence, precisely in the 1950s, there were many forms of state-owned companies that had different characteristics and traits, so in response to this, the government took a policy by issuing Perpu No. 19 of 1960 which was later stipulated as Law Number 19/Prp/1960 concerning "State-owned Companies" with the aim of standardizing the forms of state businesses. So that the impact on all state-owned companies at that time, in any form whose capital was entirely state assets, unless otherwise specified by law.¹

BUMN or State-Owned Enterprises have a very important role in the Indonesian economy. BUMN has an important role in the national economy. In supporting the development of Indonesia, BUMN plays a role in the development of infrastructure such as toll roads, airports, ports, railways, and others. This will increase national economic growth and open up regional access so as to facilitate the distribution of goods and services. In the economic system, the role of BUMN is as a pioneer and also as a pioneer in business sectors that have not been of interest to the private sector. In addition, BUMN also has a social contribution in the form of providing goods and/or services in meeting the needs of many people at relatively affordable prices. After the reformation, Law No. 19/Prp/1960 was amended and declared invalid by Law No. 19 of 2003 concerning BUMN, which in essence places BUMN in the national economic system as an extension of the state (representative state) to carry out social functions, namely providing services in the form of goods and/or services for the greatest welfare of the people and at the same time carrying out profit or commercial functions, namely seeking or pursuing the greatest possible profit. The latest BUMN Law is Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning BUMN. This law was passed on February 24, 2025 and is the third revision of the previous BUMN Law.

However, the journey of BUMN in this state administration is not so smooth because there are still many challenges and dynamics, including problems regarding ownership of shares or BUMN assets. Problems regarding the confusion of BUMN assets position occur in the state

¹Tuti Rastuti, 2015, *The Ins and Outs of Corporate Law*, Bandung, Refika Aditama, p. 59

financial status against BUMN capital in the form of a limited liability company because of differences in interpretation of the meaning of state finances and state losses which raise questions whether BUMN in the form of a limited liability company is a subject of public law or a subject of private law and whether the management of BUMN assets in the form of a limited liability company is subject to public law, in this context state financial law and state treasury law or is it fully subject to private law (company law). For law enforcement institutions such as the Prosecutor's Office as an institution authorized to carry out investigations and prosecutions of corruption crimes, they are faced with legal problems in the trial process for corruption crimes in BUMN. Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, which states that the elements that must be met in proving the existence of corruption crimes are that it can harm the state economy. The element of State Financial Loss is related to Article 2 Paragraph (1) and Article 3 of Law Number 31 of 1999 as amended and supplemented by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, which states that one of the elements that must be met in proving the occurrence of corruption crimes is that it can harm state finances or the state economy.²

In Article 1 number 1 of Law Number 17 of 2003 concerning State Finance defines state finance as all state rights and obligations that can be valued in money, as well as everything in the form of money or goods that can be owned by the state in connection with the implementation of these rights and obligations. Regarding state finance, it is more specifically stated in Article 2 letter g, which states that state finance includes state assets/regional assets managed independently or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated in state companies/regional companies. This problem becomes complicated when the Prosecutor's Office interprets that losses in BUMN Persero are state losses. Based on the definition of state finance contained in Article 2 letter (g) of Law No. 17 of 2003 concerning State Finance, which explains that one definition of state finance is state/regional wealth managed by itself/other parties in the form of money, securities, receivables, goods, and other rights, including wealth separated in state/regional companies. This interpretation ignores the provisions in the BUMN Law which states that BUMN Persero is a private legal entity that has its own independence.³ There is an overlap of several rules which on the one hand state that the money has been transferred to the finances of the BUMN itself and on the other hand state that the money is absolutely state finances. This then raises questions about the law governing the wealth of BUMN Persero.

2. Research Methods

In the research conducted, the writing uses a Sociological Juridical approach, namely research that uses an approach method to problems by looking at the norms or laws that apply as positive

²Lapriesta Dwi and Martana Nyoman, 2016, Analysis of Government Policy in Eradicating Corruption as an Effort to Create Clean Governance, *Kertha Negara*, 04 (2) February, p. 2

³Muhammad Teguh Pangestu, 2017, Legal Review of the Decision of the Supreme Court of the Republic of Indonesia Number 417K/PidSus/2014 Reviewed from a Civil Law Perspective (Case Study: PT Merpati Nusantara Airlines), *Business Law Review*, 1 (2) January, p. 29

provisions, the following are theories that are relevant to this paper by linking its implementation to the facts in the field.

3. and Discussion

3.1. The Existence of BUMN in the Indonesian State Administration System from a State Financial Perspective

Philosophically, the government's legal policy in the economic sector is to increase the welfare and prosperity of the people in accordance with national ideals.⁴The fundamental ideals of the Indonesian nation are stated in the Preamble to the 1945 Constitution, paragraph IV. Explicitly, the ideals of the Indonesian nation can be explained as follows:

"... Then, to form a Government of the State of Indonesia that protects all the Indonesian people and all of Indonesia's territory and to advance public welfare, to improve the life of the nation, and to participate in implementing world order based on freedom, eternal peace and social justice,..." (Preamble to the 1945 Constitution, Paragraph 4).

This ideal is derived from Article 33 of the 1945 Constitution which outlines the meaning of prosperity as prosperity evenly distributed, meaning that every individual of the Indonesian nation has the right to enjoy a prosperous life. "...Article 33:

- 1) The economy is structured as a joint venture based on the principle of family.
- 2) Branches of production that are important for the country and that affect the livelihood of many people are controlled by the state.
- 3) The earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."⁵

In addition to continuing the BUMN as a legacy of the Dutch East Indies government, the Indonesian government established BUMN based on the provisions of Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The article states that "Production branches that are important to the state and control the livelihoods of many people are controlled by the state". On this basis, the government formed a business entity that played a strategic role in national economic development. As time went by, the role of BUMN itself became increasingly important at a time when private businesses and cooperatives that were expected to work together with BUMN were not optimal or did not play a significant role.

Without ignoring the phenomenon of direct government involvement in the economic sector, the understanding of BUMN itself has experienced conceptual changes over time, this can be explained as follows:

1. In Law Number 9 of 1969 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 1969 concerning Forms of State Enterprises into Law, it is stated that

⁴M Solly Lubis, 2002, National System, Mandar Maju, Bandung, p. 117

⁵Ibid, p. 19

"BUMN is all forms of state enterprises whose capital is wholly or partly owned by the State/Government and is separated from state assets".

2. In Presidential Instruction Number 5 of 1988 concerning Guidelines for the Restructuring and Management of State-Owned Enterprises, it is stated that what is meant by a BUMN is;

- a. A business entity that is fully owned by the state;
- b. Business entities that are not entirely owned by the state, but whose status is the same as state-owned enterprises, namely:
 - a) BUMN which is a joint venture between the Government and Regional Government;
 - b) BUMN which is a joint venture between the Government and other BUMN;
 - c) BUMN which is a joint venture between the Government and national/foreign private companies, where the state owns the majority shares (minimum 51 percent). While BUMN subsidiaries will become part of BUMN assets if the majority of its shares (minimum 51 percent) or all of them are owned by BUMN.

3. In Law Number 19 of 2003 concerning State-Owned Enterprises, it is stated that a BUMN is a business entity whose capital is wholly or partly owned by the state through direct participation originating from separated state assets.

Several fundamental differences in the tasks, functions and nature of the business of the three forms of BUMN above, when compared with the role of BUMN in Indonesia based on Government Regulation Number 3 of 1983 as amended by Government Regulation Number 28 of 1983, then the role of BUMN (Perjan, Perum and Persero) is as follows:

- 1) contribute to developing the country's economy as well as adding to the country's economy;
- 2) carry out profit/income generation;
- 3) provide general benefits in the form of goods and services to the general public;
- 4) become a pioneer in business activities that cannot yet be undertaken by the private sector and cooperatives;
- 5) complementing private and cooperative activities in terms of providing goods and services needed by the wider community;
- 6) provide guidance to the private sector, especially small-capital entrepreneurs and the cooperative sector;
- 7) implementing and supporting the implementation of government programs in the economic and development sectors in general. Meanwhile, compare it with the duties of BUMN as stated in Presidential Instruction Number 5 of 1988, namely:
 - a. procure goods which for security and confidentiality reasons must be controlled by the state;
 - b. established based on considerations to implement certain and/or strategic government policies;
 - c. established for the purpose of protecting the safety and welfare of the community;
 - d. established based on applicable laws and regulations must be owned and managed by the government;
 - e. commercial efforts such as those carried out by the private sector.

Based on Law Number 19 of 2003 concerning State-Owned Enterprises (Law on BUMN), there are three types of State-Owned Enterprises that are the pioneers of companies directly owned by the state. First, a Limited Liability Company, hereinafter referred to as Persero, is a BUMN in the form of a limited liability company whose capital is divided into shares of which all or at least 51% (fifty-one percent) are owned by the Republic of Indonesia whose main purpose is to pursue profit.⁶Second, a Public Limited Company, hereinafter referred to as a Public Limited Company, is a Limited Company whose capital and number of shareholders meet certain criteria or a Limited Company that makes a public offering in accordance with laws and regulations in the capital market sector.⁷Third, Public Companies, hereinafter referred to as Perum, are BUMN whose entire capital is owned by the state and is not divided into shares, which aims for public benefit in the form of providing high quality goods and/or services and at the same time pursuing profits based on the principles of company management.⁸

Along the way, the number of BUMN has grown, both from nationalization and those established by the Government. The role of BUMN in Indonesia's economic development is felt to be increasingly important and strategic, because it carries out the role of a pioneer or pioneer in business sectors where the private sector and cooperatives have not yet been involved, becoming managers of strategic business fields and at the same time as implementing public services, balancing the power of large private companies. Judging from the number, until the end of 2019, Indonesia had 114 BUMN.⁹The existence of 114 BUMNs in almost all business lines and business sectors in Indonesia, such as the processing industry, warehousing and transportation, financial services and insurance, professional, scientific and technical services, construction, and other sectors.

In addition to the supervision problem, the problem that occurs is the paradigm of the function of BUMN as an extension of the state implemented based on BJR is truly different from the implementation of government implemented based on the government paradigm (government judgment rules/GJR). This has been confirmed based on the Constitutional Court Decision Number 62/PUU-XI/2013 which states that:

"State assets have been transformed into BUMN capital as business capital whose management is subject to BJR, but the separation of state assets does not result in the transfer of BUMN assets that are separate from state assets, because from the perspective of the transactions that occur, it is clear that only the separation cannot be constructed as a transfer of ownership, therefore it remains as state assets and thus the state's authority in the field of supervision remains valid. However, the paradigm of state supervision is no longer based on GJR, but rather on BJR."

⁶Ahmad Purwono, *Excellent people, Excellent Business: Strategic Thinking for Indonesian Human Capital*. Jakarta: Gramedia Pustaka Utama, 2007, p. 18

⁷Article 1 Number 3 of Law Number 19 of 2003 concerning State-Owned Enterprises

⁸Article 1 Number 4 of Law Number 19 of 2003 concerning State-Owned Enterprises

⁹<https://bumn.go.id/portfolio/overview>, Accessed on May 9, 2025

The emergence of different expert opinions regarding the concept of separated state wealth ownership in BUMN. That when the state establishes a public legal entity, there has been a legal transformation of public money into private money. In the case of the state as the owner of private property, the Government as a representative of the state, carries out actions or deeds that are also private (civil). In its position as a private legal entity, the Government establishes legal relations (*rechtsbetrekking*) with other legal subjects based on private law. Separated state wealth must be emphasized not as state wealth (concept of *inbreng*), the state only administers it, not makes it its property.¹⁰

The table below shows that the legal status of finance in public finance in BUMN is "separated assets" with management by the corporation as the legal status of finance in public finance.¹¹

Financial Sector	Regulation	Governance	Risk
Regional Finance	Handed over	Regional Budget	Condition Risk
State-Owned Enterprises Finance	Separated	Corporate	Condition Risk
Bank Indonesia Finance	Separated	Legal entity	Condition Risk

The implications of the Law on State Finance with the Law on State-Owned Enterprises can be seen in the allocation of state financial utilization. The Law on State Finance explicitly states that the implementation of state governance to realize state goals gives rise to state rights and obligations that can be valued in money. One form of rights and obligations that can be valued in money is the allocation of state assets that are separated as capital from state-owned enterprises. The capital used by state-owned enterprises in their establishment and operational activities comes from the State Budget so that every form of allocation and receipt from the utilization of state finances must be recorded, accounted for, and reported

The 10 (ten) aspects of the changes to the BUMN Law include:

- 1) Adjustment of the definition of BUMN to accommodate BUMN to be able to carry out its duties optimally and in accordance with the provisions of related laws and regulations.
- 2) The establishment of the Daya Anagata Nusantara investment management body or BPI Danantara in order to improve the governance of BUMN to be more optimal in carrying out its duties and functions to support national economic growth.
- 3) Separation of the functions of BUMN regulator and operator to improve BUMN management to be more professional and transparent.
- 4) Regulations related to the Business Judgement Rule which can provide benefits for the implementation of BUMN corporate actions in order to improve BUMN performance.
- 5) Affirmation regarding the management of BUMN assets in accordance with the principles of good corporate governance, namely being carried out in an accountable manner and based on legislation.

¹⁰<https://law.ui.ac.id/diskursus-anak-perusahaan-bumn-oleh-dr-dian-puji-n-simatupang>, Accessed on May 9, 2025

¹¹Dian Puji Nugraha Simatupang, 2021. Determination of State Finances to Realize Social Justice (Social Equity) for all Indonesian People, *Journal of Law & Development*, 51 (2), p. 487

- 6) Regulations related to human resources where BUMN provides opportunities for people with disabilities and local communities in accordance with statutory provisions. In addition, female employees are given the opportunity to occupy positions on the Board of Commissioners and other positions in BUMN.
- 7) More detailed regulations regarding the establishment of BUMN subsidiaries include the requirements and mechanisms for their establishment in order to ensure that BUMN subsidiaries provide maximum contribution to BUMN and the state.
- 8) Fundamental regulations related to the privatization of BUMN include the criteria for BUMNs that can be privatized and the mechanisms to ensure that BUMN privatization provides benefits for BUMN performance, society, and the state.
- 9) BUMN employees, as referred to in paragraph (2), are not state administrators.
- 10) Regulations regarding the obligation of BUMN to carry out coaching, training, empowerment, and cooperation with micro, small, medium enterprises, and cooperatives as well as communities throughout the territory of the Republic of Indonesia by prioritizing communities around the BUMN as a form of social responsibility in the BUMN environment.¹²

Changes also occurred in the definition of the type of State-Owned Enterprise, namely Limited Liability Company, hereinafter referred to as Persero, which is a BUMN in the form of a limited liability company whose main objective is to make a profit.¹³ A Public Limited Company, hereinafter referred to as a Public Limited Company, is a Limited Company whose capital and number of shareholders meet certain criteria or a Limited Company that makes a public offering in accordance with the provisions of laws and regulations in the capital market sector.¹⁴ Public Company, hereinafter referred to as Perum, is a BUMN whose entire capital is owned by the Republic of Indonesia and is not divided into shares, whose main purpose is to provide and guarantee the availability of goods and/or services for the public benefit in order to fulfill the needs of the people or for strategic needs based on the principles of company management.¹⁵

3.2. Law Enforcement Patterns for Corruption Crimes in BUMNs that Cause State Finance Losses

BUMN is a business entity that is common if at certain times it gets big, medium, or less profit, even at some time it suffers a loss. From the aspect of its capital, the capital of BUMN companies is mostly owned by the Republic of Indonesia through direct participation or there are special rights owned by the Republic of Indonesia.¹⁶ Based on Article 4 of Law No. 1 of

¹²<https://jdih.dpr.go.id/berita/detail/id/53917/t/UU+BUMN+Disahkan%3A+Tantangan+dan+Hopes+Bagi+Mas+a+Depan+Perekonomian+Nasional>, Accessed On May 9, 2025

¹³Article 1 Number 3 of Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises

¹⁴Article 1 Number 4 of Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises

¹⁵Article 1 Number 5 of Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises

¹⁶Article 4 Number 1 of Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises

2025, BUMN capital comes from the APBN and non-APBN. BUMN capital is part of BUMN finances whose management is carried out in accordance with the principles of good corporate governance.¹⁷

A number of other laws and regulations, such as Law No. 17 of 2003 concerning State Finance, determine the scope of State Finance, which includes: "State/regional assets managed independently or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including state assets separated in state/regional companies".¹⁸

According to H. Bohari, the concept of state finance has different meanings depending on which perspective we look at it. The provisions in the State Gazette Supplement (TLN 1996) state: state finance is not only meant as state money, but all state wealth, including all parts of the assets owned by the wealth and all rights and obligations arising from it, whether the wealth is under the management of officials or institutions that are part of the general government or under the control and management of government banks, government foundations, with public or civil legal status, state companies and companies where the government has a special interest in the control and management of other parties or based on agreements and government participation or appointment from the government. From the definition above, we can see the breadth of the meaning of state finance; namely, it includes state property rights or state wealth, which consists of state property rights or state wealth, which consists of rights and obligations that can be valued in money if the rights and obligations are implemented.¹⁹

Thus, state assets as BUMN capital are considered as State Finances with legal consequences if losses occur to State Finances.²⁰, which in Law no. 17 of 2003 is determined in Article 35 as follows:

- 1) Every state official and civil servant who is not a treasurer who violates the law or neglects his/her duties, either directly or indirectly, which causes loss to state finances, is required to compensate for the loss in question;
- 2) Every person who is tasked with receiving, storing, paying, and/or handing over money or securities or state goods is a treasurer who is required to submit an accountability report to the Audit Board.
- 3) Every treasurer as referred to in paragraph (2) is personally responsible for any state financial losses under his/her management.

¹⁷Article 4 Paragraphs 1 and 2 of Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises

¹⁸Article 2 Letter g of Law Number 17 of 2003 concerning State Finances

¹⁹Gunawan Widjaja, 2002, Op.Cit, p. 9

²⁰Emmanuel Kevin & Martika Dini Syahputri, 2024. Study of State-Owned Enterprise Finances and Their Losses and Legal Consequences, *Responsive Law*, 15 (1) February, p. 226

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- 4) Provisions regarding the settlement of state losses are regulated in the law regarding the state treasury.²¹

The matter of state financial losses will be closely related to the provisions of Law No. 1 of 2004 concerning State Treasury and provisions related to the position, duties and functions of the Audit Board of Indonesia (BPK). According to Law No. 1 of 2004 concerning State Treasury, it is stipulated that "Any state loss caused by an unlawful act or negligence of a person must be immediately resolved in accordance with the provisions of applicable laws and regulations".²²

Discussion on the scope of unlawful acts by state officials/state administrators according to Law No. 17 of 2003, Law No. 1 of 2004, Law No. 5 of 2006, and Law No. 15 of 2004 above, can still be distinguished for state financial losses which are demanded to be fulfilled with a Claim for Compensation (TGR), and if clearly proven guilty of committing an unlawful act, prosecuted based on the provisions of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

In this case, to be able to know whether someone can be said to have committed a criminal act of corruption is to look at the material in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. At least, the crime of eradicating corruption consists of 30 types of criminal acts (delicts) with 7 types, namely (1) State finances; (2) Bribery; (3) Embezzlement in office; (4) Extortion; (5) Fraudulent Acts; (6) Procurement of Goods; (7) Gratification.²³

Corruption is one of the cases that is still found in Indonesia to this day. This corruption problem is closely related to state financial losses. This is as regulated in Article 2 paragraph (1) and Article 3 of the Corruption Law that one of the elements that must be fulfilled in proving the occurrence of corruption is harming state finances or the state economy.

In reality, many major corruption cases occur within BUMN which are handled by the Attorney General's Office, including:

1. Alleged corruption of PT Angkasa Pura (AP) II, Kuala Namu International Airport Branch Office. Related to the Procurement / Work of Trolley Management System, Smart Airport, Smart Parking Airport PT AP II Kualanamu International Airport Branch Office in 2017 which is suspected of being fictitious and mark-up, which case is handled by the Special Crime Investigation Team (Tim Pidsus) of the North Sumatra High Prosecutor's Office.²⁴The work took place in 2017 by PT AP II with a budget of Rp34,301,538,000 (34 billion Rupiah) which was carried out by PT Angkasa Pura Solusi and subcontracted to 6

²¹Article 35 of Law Number 17 of 2003 concerning State Finances

²²Article 59 paragraph 1 Law no. 1 of 2004 concerning State Treasury

²³M. Luhut MP Pangaribuan, 2016, Op.Cit, p. 118

²⁴Interview with Ate Quesyini Ilyas, as Head of the Special Crimes Section of the Bogor District Prosecutor's Office, Held on May 2, 2025

companies to carry out 12 jobs. However, over time the work was not carried out on time and received a warning from PT AP II until finally the work was not completed on time and did not comply with the specifications (breach of contract). In the case in question, the state financial loss amounted to Rp7,112,454,271 (7.1 billion Rupiah) based on the Independent Accountant's Report.²⁵After undergoing a health check, the four suspects were detained for 20 days starting from September 26, 2024 to October 15, 2024 at the Class I Tanjung Gusta State Detention Center in Medan.

2. The Attorney General's Office (Kejagung) has uncovered alleged corruption in the trade of tin commodities in the IUP area of PT Timah Tbk for the 2015-2022 period, with 23 suspects, including Harvey Moeis and Helena Lim. Based on the BPKP audit, state losses reached IDR 300 trillion, with details of IDR 2.28 trillion due to improper equipment rental, IDR 26.6 trillion from illegal tin ore purchases, and IDR 271 trillion from ecological damage.²⁶Prosecutors revealed that high-quality tin ore was actually sold to collectors and private smelters, causing PT Timah's production to fall short of its target. Harvey Moeis, as a representative of PT Refined Bangka Tin, played a role in the illegal sale of tin ore to PT Timah. He was charged with enriching himself up to Rp 420 billion and was charged with corruption and TPU.²⁷
3. In February 2025, Attorney General's Office investigators uncovered a conspiracy between Pertamina officials and brokers in alleged corruption in the management of crude oil and refinery products for the 2018-2023 period. This case cost the state Rp193.7 trillion, consisting of crude oil exports, oil imports through brokers, and fuel compensation and subsidy burdens.²⁸The corruption mode includes manipulation of refinery production to open up import loopholes, price mark-ups, and transactions of low-quality oil that are changed through blending. This practice makes fuel prices more expensive, increasing the burden on the state budget through subsidies and compensation.²⁹
4. The Attorney General's Office (AGO) has named eight suspects in the alleged corruption case of PT Asuransi Sosial Angkatan Bersenjata Republik Indonesia (Asabri) related to the management of investment funds in February 2021. The case, which caused the state a loss of Rp23.7 trillion, implicated a number of high-ranking officials of the state-owned company, who are also retired TNI officers. Two of the suspects are the former President Director of PT Asabri, Major General (Ret.) Adam R Damiri; and Lieutenant General (Ret.) Sonny Widjaja. This case began with the management of the Board of Directors for the 2012 period.³⁰At that time, the President Director, Director of Investment and Finance, and Head of Investment Division of PT Asabri jointly made an agreement with a party outside the company to conduct a stock portfolio transaction between companies. For their actions, the suspects were charged with two alternative articles, namely Article 2

²⁵<https://rmol.id/foto/2024/09/26/638532/kejati-sumut-tahan-5-tersangka-dugaan-korupsi-pt-angkasa-pura-ii-kuala-namu>, Accessed on May 11, 2025

²⁶<https://www.tempo.co/hukum/5-bumn-dengan-kasus-korupsi-terbesar-121520>, Accessed on May 11, 2025

²⁷Interview with Ate Quesyini Ilyas, as Head of the Special Crimes Section of the Bogor District Prosecutor's Office, Held on May 2, 2025

²⁸ <https://www.bbc.com/indonesia/articles/czxn8l00w9do>, Accessed On May 11, 2025

²⁹Interview with Ate Quesyini Ilyas, as Head of the Special Crimes Section of the Bogor District Prosecutor's Office, Held on May 2, 2025

³⁰Interview with Ate Quesyini Ilyas, as Head of the Special Crimes Section of the Bogor District Prosecutor's Office, Held on May 2, 2025

paragraph 1 in conjunction with Article 18 of Law 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by Law 20 of 2001 concerning amendments to Law number 31 of 1999 concerning the Eradication of Corruption in conjunction with Article 55 paragraph 1 to 1 of the Criminal Code or subsidiary charges in Article 3 in conjunction with Article 18 of Law 31 of 1999 concerning the Eradication of Corruption as amended and supplemented by Law 20 of 2001 concerning amendments to Law number 31 of 1999 concerning the Eradication of Corruption in conjunction with Article 55 paragraph 1 to 1 of the Criminal Code.³¹

5. Six defendants in the alleged corruption case of the management and use of investment funds at PT Asuransi Jiwasraya in the period 2008-2019 were charged with causing state losses of Rp16.8 trillion. The figure is based on the BPK investigative audit report released on March 9, 2020. The corruption case at the oldest life insurance company in Indonesia was revealed after experiencing liquidity pressure, which caused its equity to be recorded at minus Rp27.24 trillion in November 2019. In response to this, the Ministry of State-Owned Enterprises (BUMN) under the leadership of Erick Thohir reported the alleged fraud at Jiwasraya to the Attorney General's Office.³²
6. The Attorney General's Office has named former President Director of PT Garuda Emirsyah Satar and President Director of PT Mugi Rekso Abadi (MAR) Soetikno Soedarjo as suspects in the Garuda corruption case. The state losses incurred from this case reached Rp 8.8 trillion. Emirsyah and Soetikno are suspected of violating Article 2 paragraph 1 Juncto Article 3 juncto Article 18 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption juncto Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption juncto Article 55 paragraph 1 Ke-1 of the Criminal Code.³³
7. The Cibinong District Attorney's Office, Bogor Regency, detained an employee of Bank Nasional Indonesia (BNI) Cakra Iskandar. Cakra is a suspect in a corruption case at the state-owned bank worth Rp 725 million.³⁴Cakra committed a criminal act of corruption by disbursing fictitious credit from a company. The suspect Cakra manipulated, where PT FBI, which did not apply for a loan, suddenly had a disbursement on March 24, 2023 with a credit amount of IDR 725 million. The Cibinong District Attorney's Office also charged Cakra Iskandar with Article 2 paragraph (1) in conjunction with Article 18 paragraph (1) letter b or Article 3 in conjunction with Article 18 (1) letter b of the Corruption Eradication Law (Tipikor). Currently, the prosecutor is detaining Cakra at the Pondok Raheg Cibinong Penitentiary. The Cibinong District Attorney's Office is imposing an article on recovery of state losses and later the assets owned by the suspect Cakra Iskandar will be confiscated.³⁵

³¹<https://www.cnnindonesia.com/nasional/20210202070726-12-601124/duduk-perkara-kasus-korupsi-dana-investasi-asabri>, Accessed on May 11, 2025

³²<https://www.tempo.co/hukum/5-bumn-dengan-kasus-korupsi-terbesar-121520>, Accessed on May 11, 2025

³³ <https://news.detik.com/berita/d-6148966/jaksa-agung-kasus-pengadaan-pesawat-garuda-rusakikan-negara-rp-8-8-t>, Accessed May 11, 2025

³⁴<https://www.tempo.co/hukum/kejari-cibinong-tahan-pegawai-bni-yang-cairkan-kredit-fiktif-senilai-rp-725-juta-1173992>

³⁵Interview with Ate Quesyini Ilyas, as Head of the Special Crimes Section of the Bogor District Prosecutor's Office, Held on May 2, 2025

2. Implementation of Asset Recovery for State-Owned Enterprises as Recovery of State Financial Losses

Asset Recovery has an important meaning in the effort to recover state financial losses. So far, Asset Recovery as an effort to recover state finances has been hampered by judges' decisions that attempt to impose additional penalties in the form of compensation payments, but often the additional penalty of compensation payments is hampered by the economic condition of the convict who is considered by the judge to be unable to replace all the losses incurred. Furthermore, if the defendant is considered economically unable to replace all losses, the Asset Recovery effort is subsidiary by the judge to imprisonment.

The provisions for payment of criminal compensation as a form of Asset Recovery are actually stated in Article 18 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, where additional criminal penalties as a form of recovery of state financial losses are regulated as follows:

- 1) In addition to the additional penalties as referred to in the Criminal Code, the additional penalties are:
 - a. Confiscation of tangible or intangible movable property or immovable property used for or obtained from the crime of corruption, including the company owned by the convict where the crime of corruption was committed, as well as the price of the goods replacing said goods;
 - b. Payment of compensation in an amount equal to the amount of property obtained from the crime of corruption.
 - c. Closure of all or part of the company for a maximum period of one year;
 - d. Revocation of all or part of certain rights or the elimination of all or part of certain benefits that have been or may be granted by the government to the convict.
- 2) If the convict does not pay the replacement money as referred to in paragraph (1) letter b within a maximum of one month after the court decision has obtained permanent legal force, then his property can be confiscated by the prosecutor and auctioned to cover the replacement money.
- 3) If the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, then he shall be punished with a prison sentence of a term not exceeding the maximum threat of the principal sentence according to the provisions of this law and the length of the sentence shall be determined in the court decision.³⁶

Based on the above regulations, it shows that asset recovery efforts for state financial losses through payment of replacement money in Indonesia have been regulated. However, in the manifestation of justice in the field according to Ate Quesyini Ilyas that when the judge issues a decision to pay replacement money in accordance with the state financial losses incurred as a result of the Corruption Crime and when the convict is about to be executed by the prosecutor, the convict generally admits that he is unable to pay the state financial losses due to the defendant's economic condition which is unable to pay all state financial losses. So

³⁶Zul Afiatul Kharisma, et al. 2021, Responsibility Model for Criminal Acts of Corruption by BUMN as a Corporation: Between Corporate Responsibility and Management, Rewang Rencang: Jurnal Hukum Lex Generalis. 2 (12) December, p. 1336

instead, Asset Recovery efforts are then replaced with imprisonment for a period not exceeding the principal sentence imposed.³⁷ If such practices occur, efforts to recover state losses are not in line with the essence of the asset return theory which is based on the principle of "give the state what is its right".³⁸

The Attorney General's Office has a central position in legal justification in efforts to recover assets resulting from crime, both in confiscating and freezing assets, especially those suspected of originating from corruption and money laundering, and recovering assets lost due to crime. The Attorney General's Office of the Republic of Indonesia also took policy steps in creating a support system by establishing an Asset Recovery Center called PA, as a work unit under the structure of the Attorney General's Office of the Republic of Indonesia that specifically handles Asset Recovery from criminal acts based on PERJA Number PER 006/A/JA/3/2014 and has been enacted in the State Gazette of 2014 no. 453.³⁹

3.3. Solution Concept in Overcoming Legal Problems in the Element of State Losses Due to Criminal Acts of Corruption in BUMN

In analyzing the legal problems of the element of state losses due to criminal acts of corruption in BUMN companies, researchers try to explore objectively in viewing the polemics of the latest BUMN Law. Legal reconstruction with a legislative policy to revise the BUMN Law into Law Number 1 of 2025 is a strategic step in overcoming the legal uncertainty that has so far shrouded the practice of financial management and business policies in the State-Owned Enterprises (BUMN) environment.⁴⁰ Before the revision, many cases involving directors or officials of state-owned enterprises were rooted in corporate policies that did not directly cause state losses, but were criminalized as corruption. This has raised concerns among state-owned enterprise officials, because there is ambiguity between administrative errors and criminal acts, thus creating a deterrent effect on strategic business decision-making.⁴¹

The revision of Law No. 1 of 2025 changes this condition by clarifying the difference between business risks and acts containing malicious intent or mens rea, as well as strengthening the principle of the business judgment rule as a legal protector for officials who act in good faith for the interests of the company.

Legal certainty is a fundamental principle in law enforcement, especially in the criminal context concerning individual freedom. In the BUMN sector, weak legal certainty can lead to stagnation in decision-making and reduce the performance of state corporations. Law No. 1

³⁷Interview with Ate Quesyini Ilyas, as Head of the Special Crimes Section of the Bogor District Prosecutor's Office, Held on May 2, 2025

³⁸Ade Mahmud, 2018. Problems of Asset Recovery in Returning State Losses Due to Corruption, Judicial Journal, 11 (3), p. 360-361

³⁹Interview with Ate Quesyini Ilyas, as Head of the Special Crimes Section of the Bogor District Prosecutor's Office, Held on May 2, 2025

⁴⁰S. Amalia, 2024. Overlapping Regulations in Handling Corruption in BUMN: The Urgency of Harmonizing Law Enforcement Institutions. Journal of Legislation, 20 (4), p. 188–202

⁴¹James Simanjuntak, et al. 2023, Corporate Governance in Indonesia: Theory, Principles, and Practice, Salemba Publisher

of 2025 provides a stronger legal basis for criminal liability, by emphasizing that state losses arising from a business policy cannot necessarily be used as a basis for criminal prosecution if there is no evidence of abuse of authority or malicious intent. This is in line with the principle of *ultimum remedium*, where criminal law should be the last resort after administrative and civil efforts have failed.⁴²

From a justice perspective, Law No. 1 of 2025 also accommodates the principles of proportionality and accountability, two important elements in a modern criminal justice system. Justice in this context does not only mean punishing perpetrators of crimes, but also ensuring that every legal process takes place fairly, transparently, and based on objective evidence. Before the revision, many defendants from BUMN felt they were treated unfairly because they were charged with corruption articles that did not consider the context of the business being run. With the revision, perpetrators of corruption who truly harm the state due to collusion, nepotism, or embezzlement can still be prosecuted firmly, while parties who only make administrative errors are not immediately faced with criminal sanctions. This approach creates a balance between prosecution and legal protection, which ultimately increases the legitimacy of the criminal justice system as a whole.

The integration of the principle of due process of law in the revision of Law No. 1 of 2025 is also a manifestation of a more democratic criminal law reform. The legal process now requires an independent investigative audit before a case of alleged corruption in a BUMN is processed criminally. This aims to prevent the criminalization of discretionary corporate policies. Audits conducted by the Audit Board of Indonesia (BPK) or independent auditors will be an objective basis for law enforcement officers to determine whether an action is worthy of being processed criminally. This mechanism contributes to procedural and substantive justice which is at the heart of the modern legal system.

On the other hand, the effectiveness of the implementation of Law No. 1 of 2025 in creating legal certainty and justice still depends heavily on the understanding of law enforcement officers, such as investigators, prosecutors, and judges regarding the substance and spirit of the legal reform. Without increasing the capacity and integrity of the apparatus, normative reform will not be sufficient to bring about changes at the practical level. In some cases, law enforcement officers still interpret acts of corruption broadly without considering the latest legal developments, so that the potential for injustice continues to arise. Therefore, intensive training, harmonization of technical regulations, and strict supervision of the law enforcement process are needed so that the ideals of this revision are truly realized in legal reality.

One of the most crucial and controversial articles in the revision of Law No. 1 of 2025 is Article 9G, which states that members of the Board of Directors, Board of Commissioners, and Board of Supervisors of BUMN are not state administrators. This provision has significant legal implications, especially in the context of eradicating criminal acts of corruption.

⁴²B. Kurniawan, 2024. Measuring the Effectiveness of the Revision of the Corruption Law in BUMN Governance. Indonesian Legislation Journal, 21(1), p. 79–94

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Legally, this provision could open up space for impunity for directors and commissioners involved in abuse of authority and state losses. In fact, in practice, major corruption cases handled by the Attorney General's Office such as Jiwasraya, Asabri, Garuda Indonesia, and Pertamina almost all involve BUMN officials in their capacity as state financial managers. Therefore, the elimination of status as state administrators is not in line with the spirit of preventing corruption and actually weakens the principle of accountability of public officials.

According to Ate Quesyini Ilyas that BUMN officials can still be processed if they commit corruption, this depends on the interpretation and legal approach applied by law enforcement. The ambiguity of this norm creates legal uncertainty and opens up the potential for differences in handling similar cases in the future.

This also caused a civil society reaction to this provision to be quite strong. NGOs such as the Indonesian Anti-Corruption Society (MAKI) openly conveyed plans to challenge Article 9G to the Constitutional Court, arguing that SOEs are funded by the state and should be subject to the principle of public supervision like other state institutions.⁴³

Therefore, the renewal of Law No. 1 of 2025 which removes the status of state administrators from BUMN officials is a policy that is contrary to the principles of transparency, accountability, and the rule of law. This renewal is indeed intended to encourage flexibility and courage in business decision-making, but without a clear and firm supervision and criminalization mechanism, this policy could actually become a new shield for corrupt practices.

As for other problematic aspects, one of the principles known in corporate law is the principle of business judgment rule. Basically, this principle is a form of protection for directors in managing a company.⁴⁴ This principle is found in the new BUMN Law, which states that ministers, organs, and employees of the agency cannot be held legally responsible for losses if they can prove that the loss was not due to their fault or negligence; carried out management in good faith and with caution; did not have a conflict of interest in managing investments; and did not obtain personal benefits illegally.⁴⁵

4. Conclusion

Related to the management of state finances separated in BUMN, the Law on State Finances emphasizes that state assets separated in BUMN are legally normatively included in state finances as regulated in Article 2 letter g which states that state assets/regional assets managed independently or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated in state

⁴³<https://news.detik.com/berita/d7903212/maki-akan-gugat-uu-bumn-jika-direksi-bukan-penyelenggara-negaratak-diubah>, Accessed on May 13, 2025

⁴⁴Sartika Nanda Lestari, 2015, Business Judgment Rule as Immunity Doctrine for Directors of State-Owned Enterprises in Indonesia, *Notarius*, 8 (2), p. 305.

⁴⁵Interview with Ate Quesyini Ilyas, as Head of the Special Crimes Section of the Bogor District Prosecutor's Office, Held on May 2, 2025

companies/regional companies. This article emphasizes that the financial status of BUMN is state finances. After the House of Representatives (DPR) took a strategic step by ratifying the Revised Law on State-Owned Enterprises (UU BUMN). Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN) is present amidst increasingly urgent demands for change, especially considering the rapid development of the global economy which requires rapid adaptation and high flexibility from state business entities. Substantially in Law Number 1 of 2025 on State-Owned Enterprises, there are changes in Article 1, including State-Owned Enterprises, hereinafter abbreviated as BUMN, are business entities that meet at least one of the provisions, namely first, all or most of their capital is owned by the Republic of Indonesia through direct participation; second, there are special rights owned by the Republic of Indonesia. If legally normative in describing the pattern of law enforcement against corruption crimes in BUMN without considering the problematic ambiguity of the latest BUMN Law with the Corruption Law, the patterns revealed by the Prosecutor in enforcing the law on corruption crimes in BUMN include: (1) Proof in Calculating State Financial Losses, Implementation of the Prosecutor's function in calculating State losses in corruption crimes, namely the of investigations and the of investigations. A public prosecutor stated that in practice, the determination of state losses is not required to be carried out by auditors but can be carried out by the prosecutor himself as long as the losses are clear, real and not complicated with easy proof. The prosecutor's office for determining state losses, then it is necessary to look at the case first, if in practice the corruption case is simple, then sometimes the state losses can be calculated and determined directly by the prosecutor, but if the case is complex then the prosecutor can coordinate with the BPK, BPKP, Inspectorate/Work Unit. (2) Implementation of Asset Recovery for State-Owned Enterprises as Recovery of State Financial Losses, the Prosecutor's Office has a central position in terms of legal justification in efforts to recover assets resulting from crimes, both in confiscating and freezing assets, especially those suspected of originating from corruption and money laundering, and recovering assets lost due to crime. The Indonesian Attorney General's Office also took policy steps in creating a suport system by establishing an Asset Recovery Center called PA, as a work unit under the structure of the Indonesian Attorney General's Office that specifically handles Asset Recovery for criminal acts based on PERJA Number PER 006/A/JA/3/2014 and has been enacted in the State Gazette of 2014 no. 453.

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