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PRINCIPLES OF ACCOUNTABILITY OF THE BOARD OF DIRECTORS COMPANY OF REGIONAL OWNED ENTERPRISES

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Abstract- The purpose of this research is to know the principle of financial accountability of regionally owned enterprises. This research belongs to the type of normative legal research (legal research) or also called doctrinal research. Sources of Legal Materials are primary legal material, Secondary legal material, tertiary legal material. Legal material collection techniques are carried out by conducting tracing, collection and documentation studies of primary, secondary and tertiary legal materials. The method of analysis of legal materials used in this study is a normative method in prescrrutive optics with deductive-inductive reasoning. The results of the study showed that the company's corporation as a legal entity and as a subject of law can only be criminally accounted for, if the administrators commit an act, and the act there is an element of error or human being in the form of intentionality or error, with no reason for forgiveness and the criminal act is carried out for the benefit of the corporation/company and the action is carried out still within the scope of its authority. The responsibility of the company's board in a civil manner if it takes legal action/legal actions that exceed the power and authority specified in the company's articles of association/corporations so as to cause losses to the corporation/company, then the company's board is collegial responsible for rent. There are problems and conflicts normatively in the accountability of the board of directors, this problem arises on the one hand the company must be held accountable to the state because all capital submitted is the property of the state which refers to the provisions of the law governing the state's interest, while on the other hand the directors are bound by the provisions of the Limited Liability Company and responsible.

Index Terms- Principles of Accountability, Finance, RegionalLy Owned Enterprises

I. INTRODUCTION

One of the objectives of the Republic of Indonesia as stated in the Opening of the Constitution of the Republic of Indonesia in 1945, especially in the fourth paragraph, is to promote the general welfare and educate the life of the nation. Based on this, the basis and economic system of Indonesia are set in a basic provision, namely in the provisions of Article 33 of the Constitution of the Republic of Indonesia in 1945.

The existence of provisions of indonesia's economic system in our constitution that gives legitimacy to the state that the branches of production that are important to the state and control the lives of the people must be controlled by the state, does not mean giving a clear signal that our economic system only recognizes the existence of mastery by the state alone, but also recognizes economic control by cooperatives and private businesses. In this regard, the control of the state in these branches of production is what is important is how the form of state control can ensure the welfare of the community.

In addition, it is not closed the possibility of the right to control the country only in the form of regulatory actions and supervision of branches of production that are important to the state and those who control the lives of many people only, what needs to be considered is that self-help efforts are trying under the construction and supervision of the state, especially in terms of determining business fields and conditions that must be met not only in order to ensure the implementation of public welfare but the interests of the country itself. State control is a climate or economic wisdom that allows the state to participate in the effort and/or determine in the production process (Ilmar, 2012).

The authority of the state in regulating the indonesian economic system is inseparable from the objectives and functions of the state(Djadjuli, 2018). To further clarify the concept of the right to control of the state, the important discussion related to it is the discussion of the purpose and function of the state. In the literature of political science often the understanding of the purpose and function is not so clearly outlined, so it often occurs in discussions that express the purpose of the state without heeding the function of the state. Experts have drawn a sharp distinction between the direction and function of the state. The goal indicates the goal to be achieved that has been set first (Ilmar, 2012). Goals reflect the world of ideals (ideas), which is the ideal atmosphere that must be created or incarnated (Ilmar, 2012). In other words, when it has been established will be a static and abstract idea (idiil). On the contrary, the function of the existence of a dynamic state of motion or activity and included in the atmosphere of reality. The function of feed an implementation, namely the implementation of the goals that have been set and to be achieved, so that the function is rill and concrete.

The purpose of the country is none other than to allow its people to develop freely including creativity ("the freest possible development and creative self-expression of its members") (Sukmana, 2016). Harold J. Laski proposed the goal of creating a state in which his people could achieve their maximum desires ("creation of those conditions under which the members of the state may

attain the maximum satisfaction of their desires") (Nachrawi, 2021). From both views it is clearly seen that the purpose of the country is none other than, to provide the maximum possible welfare for its citizens (Ilmar, 2012).

Meanwhile, Plato in his The Republic argues that the state arose because of the needs of mankind. To meet that need, the state was formed. Similarly, aristotle argued that the purpose of the state is none other than to live a better life for all its citizens. John Locke argued that the purpose of the state is none other than for the good of mankind ("the end of government is the good of mankind") (Ilmar, 2012).

From various views on the purpose of the state as stated in advance, it can be concluded that the purpose of the state is at least to provide welfare for its people, so that theoretically it can be argued that all countries in principle have the same goal, namely, providing welfare for their citizens although with different emphasis both in the past, present, and the future.

Every country other than having a general purpose there are also certain goals. The purpose of the country is generally contained in each country's constitution. The objectives of the Republic of Indonesia as stated in the Opening Of The 1945 Law are stated as follows:

> To form a government of the State of Indonesia that protects the entire Indonesian nation and all Indonesian blood and to promote the general welfare, educate the life of the nation and participate in implementing world order based on the independence of lasting peace and social justice.....

From the above statement it also appears that the existence of the Republic of Indonesia cannot be interpreted solely as a goal, but also as a tool to achieve the state goals that were revealed in the Opening of the 1945 Constitution. Only by looking at the state as a tool to achieve the goal, can it be understood the nature of the actual state. Therefore, the existence of the Republic of Indonesia should be a tool to achieve the goals as stated above, and not the other way around.

In addition to the objectives of the state as stated above, many experts also place more emphasis on the duties or roles of the state. As Moss argues, the main task of the state is to create a legitimate monopoly of power and ensure the implementation of law throughout its territory (Korim, 1997). This is in line with Weber's view that it emphasizes the state as a monopoly on the use of legitimate power within a given territory. Even Rockman proposed three conceptions of the duties or roles of the state, namely (Korim, 1997):

1. An authoritative policy-making system commonly also called decision making state;
2. Collective and distribution of goods or often referred to as production state;
3. Deposition, creator, and intermediary of community interests or called intermediary state

Adam Smith one of the conceptors of the pure capitalist economic system argues, that the scope of state activities c.q. government is very limited, namely only carrying out activities that are generally not carried out by the private sector and only cover three areas, namely (Friedman, 1996):

1. Carrying out the judiciary;
2. Carry out defense and security; and
3. Carry out public works.

Based on the description mentioned above, it turns out that the duties and roles of the state are not only limited to ensuring order based on the powers that exist in it, but also act as one of the actors of eco¬nomi by playing the role of "production state", this will be more clearly seen in the description of the function of the state by W. Friedmann. Friedmann's view of the function of the state is divided into four functions, namely (Friedman, 1996):

1. As an organizer or guarantor of welfare, or the state as provider;
2. As a regulator, or as a regulator;
3. As an entrepreneur, or as an entrepreneur; and
4. As a referee, or the state as umpire.

The same is stated by Sachs, that the functions of the state are covered in three categories, namely the entrepreneurial function, building function, and regulatory function (Nachrawi, 2021). Furthermore, Miriam Budiarjo stated pula, that the state organizes some minimum functions that are absolutely necessary, namely (Ilmar, 2012):

a. Implement law and order, where this function is carried out to achieve common goals and prevent clashes in society. This function is also referred to as the "stabilizer" function;
b. Seek the prosperity and well-being of their people. Today the function of welfare is considered very important, especially for new countries;
c. Defense, where necessary to maintain the impossion of outside attacks; and
d. Uphold justice carried out through judicial bodies."

In addition, Charles E. Miriam also proposed the functions of the state in five categories, namely the external security function, the function of internal order, the function of justice, the function of general welfare, and the function of freedom (Hadjon, 1987). The entire function of the state described above is carried out by the government based on the existence of state power. Without state power, the implementation of state functions as well as the fulfillment of state objectives will experience obstacles, even most likely not achieved. Therefore, state power is inherently for the achievement of state objectives.

Based on the power and authority owned by the state, the state has the right to establish a business entity that aims to prosper its people. Demikin also with the region has the right to establish a business entity both in the form of Regional General Companies and Regional Company Companies. To realize this purpose was born Law No. 5 of 1962 concerning Regional Companies. In Article 2 of Law No. 5 of 1962 it is determined that what is meant by Regional Companies is all companies established under this Law whose capital is for wholly or for part is the wealth of the separated Area, unless otherwise specified by or under the Law. According to Article 5 paragraph (1) of Law No. 5 of 1962 concerning Regional Companies the nature of Regional Companies is a unit of production that;

a. providing services.
b. o provide general benefit,

c. fostering income.

The purpose of The Derah Company is to participate in implementing regional development in particular and guided economic development to meet the needs of the people by prioritizing industrialization and peace and pleasure in work in the company, towards a just and prosperous society (Article 5 paragraph (2)).

Establishment of Regional Companies is stipulated in Article 4 which determines;

1) Regional Companies are established by Regional Regulations or the power of this Law.
2) The Regional Company named in paragraph (1) is a legal entity whose position as a legal entity is obtained by the enactment of the Regional Regulation.
3) The Regional Regulations contained in paragraph (1) come into force after the approval of superior agencies.

According to the Regulation of the Minister of Home Affairs No. 3 of 1998 concerning the Legal Form of RegionalLy Owned Enterprises, Article 2 determines; The legal form of regionally owned enterprises can be regional companies (PD) or limited liability companies. Article 3 determines;(1) Regional Owned Enterprises whose legal form is a Regional Company, subject to applicable Laws and Regulations governing Regional Companies. (2). Regional Owned Enterprises whose legal form is a Limited Liability Company is subject to Law No. 1 of 1995 concerning limited liability Companies and their implementation regulations. While according to Article 339 paragraph (2) of law number 23 of 2014 concerning Local Government determines that; Regional company company after being established with The Regulation as referred to Article 331 paragraph (2), the establishment of its legal entity is carried out based on the laws and regulations regarding Limited Liability Companies.

Now with the promulgation of uupt, in Article 97 paragraph (2) of the Uupt, the Board of Directors is obliged to carry out management in good faith and full responsibility. Paragraph 3 states that each member of the Board of Directors is personally responsible for the Company's losses if the person concerned is guilty or negligent in carrying out his duties. The doctrine of Piercing the Corporate Vell applies also to the Board of Directors under these circumstances. In addition, in paragraph (3) mentioned that in the case of members of the Board of Directors more than 1 (one) person, the responsibility of the Board of Directors as referred to paragraph (3) applies on a rent basis to each member of the Board of Directors. Responsibility is often referred to as collective cologial (Collectief Collegiaal; Netherlands) which means joint responsibility as a Board of Directors which is an organ of PT. If the implementation of the responsibility has been carried out by one of the members of the Board of Directors, then collectively kologial in internal relations they can make calculations or settlement of the sharing of shared responsibility earlier. But externally in relation to an honest third party as a member of the Board of Directors representing PT, although perhaps one of the members of the Board of Directors does not have a direct legal relationship with a third party, then if the third party comes to hold the legal accountability in the legal relationship, the member of the Board of Directors should not refuse with the proposition because it does not have a direct legal relationship with him. Externally as part of the board of directors in collegial collective responsibility, third parties shall still be served in such a way and internally can then make calculations or settlements in the division of collegial collective responsibility (Pramono, 2013).

Rudhi Prasetya stated that when it comes to accountability, it can be seen in terms of external relations and internal relations. External responsibility is the responsibility of the external as an impact in relationships with outsiders. While the internal responsibility is the impact of the relationship of the board as an organ to other organs, namely the institution of commissioners and/or general meeting of shareholders (Shubhan, 2008).

Meanwhile, when viewed from the subtansinya, the responsibility of the directors of limited liability companies is distinguished by at least four categories, namely (Shubhan, 2008):

1. Responsibility based on the principle of fiduciary duties and duty to skil and care;
2. Responsibility based on the doctrine of in-house management (indoor management rule);
3. Responsibility based on the principle of Ultra vires; and
4. Responsibility based on the principle of piercieng the corporate veil.

The fiduciary duties of a director in this case are the duties that are issued legally (by the operation of law) of a fiduciary relationship between the directors and the company he leads, so that a director must have concern and ability (duty of care and skill), good faith, loyalty and honesty to his company with a high degree . Because of its fiduciary position, the responsibility of the board of directors becomes very high (high degree). Not only is he responsible for dishonest dishonesty, but he is also legally responsible for mismanagement, negligence or failure or not doing anything important to the company.

If we pay attention to the laws and regulations governing the status of regional companies there is a conflict of norms, namely Law No. 5 of 1962 determining that the status of regional companies obtains legal entity status after the enactment of local regulations, while Law No. 23 of 2014 determines that it is subject to limited liability company law, then the status of the Regional Company company obtains legal entity status after obtaining approval from Minister of Law and Human Rights.

If it is associated with the responsibility of the board of directors if the company suffers losses or the company is insolvent Law No. 5 of 1962, combine the responsibilities of the company's employees and the directors so that it is not clear the limit of responsibility between employees and directors. Regarding the responsibilities of employees with the board of directors stipulated in Article 20 paragraph (1) which determines; All employees of Regional Companies, including members of the Board of Directors in such positions, who are not burdened with the task of storing money, securities and inventory goods, which due to unlawful acts or because of neglect of obligations and duties imposed on them directly or indirectly have caused losses for regional companies are required to indemnify, while the Limited Liability Company Act (Law No. 40 of 2007) Article 104 verses (2) determine; In the event that insolvency occurs due to the fault or other of the Board of Directors and bankruptcy property is not enough to pay all the Company's obligations in the bankruptcy, each member of the Board of Directors is liable for all obligations that are not repaid from the bankruptcy.

The principle of accountability of the Board of Directors is the principle of responsibility of the board of directors in general. In that sense it is the responsibility of the Board of Directors in running the company in general and has not been related to the company's bankruptcy controlled by the Board of Directors. The problem that is his responsibility both as the Board of Directors and personal responsibility causes a company to go bankrupt and eventually insolvent.

In the event that the company is insolvent, it is not personally responsible for the company's condition, but not as much as that the Board of Directors must be free from responsibility for the insolvency of the limited liability company. This is where it is necessary to comprehensively assess which are the responsibility of the company and which are the personal responsibility of the directors.

In principle, the responsibility of limited liability company directors whose companies experience intelligence is the same as the responsibility of directors whose companies are not experiencing quality. There are several conditions that are further arrangements of the institution of directors related to the bankruptcy of this limited liability company. In principle, the board of directors is not personally responsible for actions committed for and on behalf of the company based on its authority. This is because the actions of the board of directors are seen as the actions of limited liability companies that are independent subjects so that the company is responsible for the actions of the company itself which in this case is represented by the board of directors. However, in some ways the board of directors may also be held personally liable in the bankruptcy of this limited liability company.

The management responsibility of PT for the interests and efforts of PT is entrusted and charged to each member of the board of directors without exception, then both negligence and the fault of one or more members of the board of directors result that all directors, i.e. each member of the board of directors must bear the consequences. Collegial responsibility (collegiale aansprakelijkheid) is intended in Article 90 paragraph (2) of the Uupt. Furthermore, who must prove that insolvency has occurred due to the error or negligence of the directors of PT is the party who postulated it. If the party in question succeeds in proving this, then in accordance with the provisions referred to in Article 90 paragraph (2) of the Uupt every member of the board of directors because the law is liable for losses due to pt bankruptcy that cannot be closed by the wealth of PT, unless the board of directors who feels he is not one of the negligent can prove that the bankruptcy of PT is not due to his fault or negligence. In accordance with the provisions referred to Article 90 paragraph (3) of the UUPT the burden of proof is on the members of the board of directors.

Confusion also occurs if it is associated with the capital position of regional companies whose capital is all or partly the wealth of separated regions. The confusion of the concept of state or regional finance in Law No. 17 of 2003 on State Finance, which annexes public finances and private finance and the conflict of related legislation, namely Law No. 19 of 2003 on State-Owned Enterprises, Law No. 37 of 2004 on Bankruptcy and Delay of Debt Payment Obligations, Law No. 40 of 2007 on Limited Liability Companies, With Law No. 17 of 2003 on State Finance, and Law No. 1 of 2004 on State Treasury, raises legal issues whether BUMD is in the form of a Company.

Article 1 of the State Finance Law affirms that what is meant by State Finance is all the rights and obligations of the state that can be assessed by money, as well as everything either in the form of money or in the form of goods that can be used as state property in connection with the implementation of these rights and obligations. Furthermore, the state financial linkup space based on Article 2 letter (g) of the State Finance Act covers state wealth / regional wealth managed by itself or by other parties in the form of money, securities, receivables, goods and other rights that can be assessed with money, including wealth separated from state companies / regional companies.

The vast scope of the State Budget raises confusion from juridical asceter when it is associated with Article 2 of Law No. 5 of 1962 concerning Regional Companies.Article 2 of the law specifies that the referred to as a Regional Company is all companies established under this Law whose capital is wholly or partially the wealth of the separated area, unless otherwise specified or under the Law. Furthermore Article 7 paragraph (1) determines the regional capital consists for all or for a portion of the wealth of the separated area.

With the occurrence of consistent norms that regulate the financial status in the company will cause confusion in the management of the company with the responsibility of the Regional Company's Board of Directors. The problem will be even more complex if the financial status of regional companies is associated with Article 50 of the State Treasury Act, which determines the prohibition of confiscation of state/regional property or controlled by the state / region, due to the declared bankruptcy of the debtor, all the property of the bankruptcy debtor is in general property. The management and distribution of the bankruptcy debtor's property is further carried out by curators under the supervision of the Supervisory Judge.

Disharmony with regional companies and even conflicting provisions of related laws cause legal uncertainty among business actors, and will be feared will cause losses for regionally owned enterprises and the government.

Regional Owned Enterprises in the form of Limited Liability companies that have financial difficulties so that they cannot meet all or part of their obligations to pay their debts to creditors, due to being managed poorly which resulted in low productivity and continued loss, so they are unable to compete in business competition in the domistic market or global market. The company's poor management and loss resulted in contributions to the development of the national economy in general and the region in particular and regional acceptance and the implementation of general benefits and fulfillment of the lives of many people will not be achieved, even become a burden on the region.

This problem arises because of the confusion of arrangements about capital staus from regionally Owned Enterprises. Theoretically according to Van der Heijden, basically the legal act (rechtshandeling) to establish the PT has 2 (two) elements that must be distinguished but binding with each other. The first element is the establishment or establishment of the PT itself and about the rules, while the second element is the participation of the founders or promoters as shareholders (Pramana, 2013). Conceptually, the company's legal regulatory framework aims to regulate the legal relationship between the company and its shareholders (Pramana, 2013).

II. METHOD

Type of research

This research belongs to a type of normative legal research (legal research) or also called doctrinal research, which is research that examines the law as a separate system that is separate from various other systems in society so as to give a boundary between the legal system and other systems.

Research Approach

As a legal research that is normative, then in order to provide an understanding of legal issues (legal issues) more holistically will be used several approaches, namely (Hartono, 1994).

1. The statute approach is an approach that examines and examines laws and regulations related to Ferseroan Limited serfs other related laws and regulations. For this reason, researchers see the law as a closed system that has comprehensive properties meaning legal norms that are related to each other logically and systematically that in addition to interlocking with each other, the legal norms are also hierarchically arranged. The statutory approach will be used in research to explore and reveal the substance of legal norms about the characteristics of shareholders, directors and commissioners under Law No. 2 of 1962 on Regional Companies.
2. Conceptual approach is an approach by understanding abstract elements in the mind. According to Ayn Rand, philosophically the concept is the mental integration of two or more units isolated according to khan traits and which are united by a distinctive definition (Suhariningsih, 2007). The conceptual approach in this research is intended to examine concepts related to the principle of limited liability, unlimited responsibility in the Limited Liability Company Act.

Source Legal Materials

Based on its binding powers, legal materials can be qualified into primary, secondary and tertiary legal materials (BUMNkanto, 1984).

1. Primary legal resourse is binding legal material obtained from laws and regulations relating to the development of the principle of personal responsibility of Shareholders, Board of Commissioners and Board of Directors in limited liability company law in Indonesia. In addition to legislation, the primary legal materials used are court decisions and court decisions in question include:
   a. The Constitution of the Republic of Indonesia in 1945 and all its changes.
   b. Law No. 5 of 1962 concerning Regional Companies.
   c. Law No. 17 of 2003 on State Finance.
   d. Law No. 19 of 2003 concerning State-Owned Enterprises.
   e. Law No. 23 of 2014 on Local Government.
   f. Regulation of the Minister of Home Affairs No. 3 of 1990 on The Management of Regional Property.
   g. Domestic Regulation No. 3 of 1998 on BUMD Form.
   h. Peraturn Minister of Home Affairs No. 4 of 1990 on Cooperation between Regions.
   i. Government Regulation No. 50 of 1999 on BUMD Management.
2. Secondary legal resourse is legal material that provides explanations of primary legal materials such as books, research results, scientific journals, articles and the like. For secondary legal materials in the form of books, scientific journals and other articles the author gets in the library of the University of Indonesia, the library of Universitas Brawijaya and the library of Mataram University. In addition, the author conducts searches through magazines and newspapers and through internet media.
3. Tertiary legal resources are legal materials that can provide advice and explanation of primary and secondary legal materials such as legal dictionaries, encyclopedias and Black's Law Dictionary and others.

Legal Materials Collection Techniques

Legal material collection techniques are carried out by tracing, collecting and documenting studies of primary, secondary and tertiary legal materials conducted conventionally or through information technology (Internet, CD-Rom). The tools used in the collection of conventional legal materials are card systems consisting of overview cards, quote cards, and analysis cards. In the overview card summarized the outline of thought in substance to the opinion of the author who is referenced authentically. The overview card contains the author's name, book title, year of publication, publisher's name, and the page where the citation is. The quote card contains a note of the opinion or thought quoted. Review card (analysis) as a special note containing responses to the views cited. Responses can be in the form of additions or explanations by criticizing or interpreting views or comments (Surakhmad, 1994).

Processing and Analysis of Legal Materials

After the legal material is collected, it is processed through the stages of structuring, describing and analyzing legal materials and then analyzed as usual legal research, namely through a logical, systemic and legal reasoning process by abstracting laws and regulations related to the regulation of personal responsibility of Shareholders, Board of Commissioners and Board of Directors before and after the enactment of Uupt No. 40 of 2007 in Indonesia.

The method of analysis of legal materials used in this study is a normative method in prescrceptive optics with deductive-inductive reasoning to produce propositions or concepts in response to problems or research findings

III. RESULT AND DISCUSSION

Financial Status of Regionally Owned Enterprises

While the definition of State Finance can be seen in Article 1 number 1 of Law No. 17 of 2003 on State Finance which states that State Finance is all rights and obligations of the state that can be assessed with money, and everything in the form of money or goods that can be made into state property related to the exercise of these rights and obligations..

Article 1 of Law No. 17 of 2003 on State Finance: "State Finance is all rights and obligations of the state that can be assessed with money. And everything, both in the form of money and in the form of goods that can be made into the property of the

state in connection with the exercise of these rights and obligations."

The provisions regarding BUMD are also contained in Article 38 of Law No. 1 of 2004 on State Treasury which states that stated that state debts or grants and domestic or foreign affairs held by the Minister of Finance with officials who are authorized in his name can be loaned to the Regional Government or BUMD.

In contrast to BUMN whose definition has been established by Law No. 19 of 2003 on BUMN, the term BIJMD barn is known as the Minister of Home Affairs Regulation No. 3 of 1998 on the Form of BUMD Law and contained in Law No. 22 of 1999 which was changed to Law No. 32 of 2004 on Local Government which has been repealed and replaced by Law No. 23 of 2014 on Regional Regulation.

Law No. 5 of 1962 concerning Regional Companies is a law whose drafting was inspired by the issuance of Perpu No. 17 of 1960 concerning state companies. Based on Law No. 5 of 1962 on Regional Companies, Regional Companies are companies whose entire or most of the capital comes from the wealth of separated regions. Given that the construction of local governments is under the responsibility of the Minister of Home Affairs, the implementing regulation of Law No. 5 of 1962 on Regional Companies is issued by the Minister of Home Affairs in the form of Regulation of the Minister of Home Affairs such as Regulation of the Minister of Home Affairs No. 1 of 1984 on Procedures for Construction and Supervision of Regional Companies, Regulation of the Minister of Home Affairs No. 3 of 1990 on The Management of Property of Regional Companies. In addition, since the issuance of Law No. 1 of 1995 on Limited Liability Companies and Regulation of the Minister of Home Affairs No. 3 of 1998 on the Legal Form of BUMD, BUMD is also possible to form a Limited Liability Company.

Currently, the arrangement regarding BUMD is contained in the law on Local Government, namely Law No. 23 of 2014 on Local Government. The arrangement regarding BUMD in this Law is contained in B ab XII regarding BUMD consisting and thirteen articles, namely Article 331-343.In contrast to Law No. 32 of 2004 on Local Government, the consideration of Law No. 23 of 2014 was not found the existence of Law No. 17 of 2003 on State Finance, Law No. 1 of 2004 eiitaiig Pcrbendaharaan State, and Law No. 15 of 2004 on Examination of State Financial Management and Responsibility as a consideration in the making of the Law.

Law No. 23 of 2014 on Local Government provides arrangements regarding BUMD in 13 articles, and contains provisions on the basis of establishment, capital sources, BUMD legal forms, and a glimpse of the elements of BUMD management.

There are three important things related to the transitional provisions regarding BUMD mentioned in Law No.23 of 2014 on Local Government. First, Article 405 which states that as long as it does not conflict with the provisions in Law No.23 of 2014, all provisions of yarg peerundang-invitation regulations are implementation regulations and Law No. 5 of 1962 concerning Regional Companies is declared still valid. Second, it is also mentioned in Law No. 23 of 2014 on Local Government that BUMD that has existed before Law No. 23 of 2014 on Regional Regulation shall adjust to the provisions in the Act within a period of at least three years from the time the Shrimp Act takes effect. However, it is unfortunate that there is no BUMD adjustment mechanism so that it becomes in accordance with the provisions of Law No. 23 of 2014 on Local Government. Third, it should be noted that the arrangement regarding BUMD in Law No. 23 of 2014 on Local Government still requires some implementing regulations in order to be implemented. Some of these provisions are regarding the establishment of BUMD, Regional public company organs, Regional public company profits, dissolution of Regional public companies, Regional corporate organs, dissolution of Regional corporate companies, and BUMD management).

Based on the above explanation, it can be known that until now there has been no clear and firm definition of BUMD, and there is no one law that specifically regulates BUMD. This causes several problems, among others, regarding the legal status of ownership, responsibility for the management and supervision of BUMD. The practice that occurs is the treatment of BUMD incorporated limited liability companies sometimes does not reflect the composition of regional ownership in the company.

BUMD Capital and Wealth

Article 332 paragraphs (1) and (2) of Law No. 23 Tahur 2014 on Local Government states that the source of BUMD capital is the inclusion of regional capital, grant loans, and other sources of capital consisting of reserve capitalization, asset revaluation gains, and share agio. Regional capital participation in BUMD must be stipulated by Regional Regulation, both for the formation and addition of BUMD) Regional capital participation can be in the form of money and regional property. where if the participation of Regional capital carried out is in the form of regional property, then the Regional Property must be assessed according to the real value when regional property will be used as capital participation. Real value here is obtained by afafing the price of regional property in accordance with the provisions of the laws and regulations.

Authority of the Financial and Development Supervision Agency (BPKP)

The Financial and Development Supervision Agency (BPKP) is a non-departmental government agency (LPND). It was established through Presidential Decree No. 31 of 1983 concerning the Financial and Development Supervision Agency. BPKP was formed with the myth that development carried out by the Government requires supervision carried out by supervisors who are not attached to each unit of government organizations. Supervision by the disengaged parties and the implementing units is not only financial supervision and adherence to the pre-legislation, but also supervision of cohorts, use, and outcomes for government and development programs and activities. In addition, BPKP was also formed to assist the Directorate General of State Financial Supervision (DJPKN), The Department of Finance, as an internal government supervision unit in order to carry out supervision of all financial and regional activities, both in the Center and throughout Indonesia and abroad. With the issuance of Presidential Decree No. 31 of 1983, DJPKN was transformed into BPKP, a non-departmental government agency that is under and directly responsible to the President. Based on the Presidential Decree, BPKP has the main task of preparing the formulation of financial supervision and development supervision, organizing

general supervision of financial mastery and management, and organizing development supervision.

Bpkp's task is not much different from the task of BPKP contained in Article 2 of Presidential Regulation No. 192 tuhun 2014 which states that BPKP has the task of organizing government affairs in the field of state financial supervision / daeraj and national development. Presidential Regulation No. 192 of 2014 on BPKP aims to improve the organization of the Financial and Development Supervision Agency (BPKP). This president stated that the BPKP is an internal government apparatus, which is under and responsible to the President.

Based on Article 3 of Presidential Regulation No. 192 of 2014, BPKP has the following functions: formulation of national policy of internal supervision of state financial accountability and national development including activities that are cross-sectoral, state general treasury activities; the implementation of audits, reviu, evaluation, monitoring, and other supervisory activities on the planning, implementation and accountability of state / regional revenue accountability and accountability of state financial expenditures, as well as national development and other activities financed by state regulations and / or subsidies, including business entities and other entities in which there are financial or other interests of the Central Government and / or Local Government, as well as accountability of state/regional financial costs.

Presidential Regulation No. 192 of 2014 does not regulate BUMD, only regulates regional finances, which is different from the provisions contained in Presidential Decree No. 31 of 1983 which specifically regulates the authority of BPKP related to BUMN / BUMD and provides provisions more specifically the main task of BPKP, namely conducting special examination of cases of uneven development and cases that are estimated to be the elements of development. Wishful thinking that harms the Central Government, Local Government, State-Owned Enterprises, and RegionalLy Owned Enterprises and conducts accounting checks and to provide statements of opinion of accountants against State-Owned Enterprises, RegionalLy Owned Enterprises, and other entities deemed necessary.

BPKP organization based on Presidential Regulation No. 192 of 2014 has a new structure, consisting of: a. Head; b. The Main Secretariat; c. Deputy for Supervision of Government Agencies for Economic and Maritime Affairs; d. Deputy for Supervision of Government Agencies for Political, Legal, Security, Human Development, and Culture; e. Deputy for Supervision of Regional Financial Implementation; f. Deputy for State Accountants; g. Deputy for Investigation; and h. Inspektorat. Based on the new structure of mi, the Deputy for Supervision of Accountability that previously existed as regulated by Presidential Regulation No. 3 of 2013 was merged with other decrees.

BPKP currently has a Deputy for Investigation who has the task of carrying out policy formulation in the field of investigation. Deputy for Investigation is a coordination, implementation, and investigative assistance in cases of irregularities that indicate harm to the state and against obstacles to the smooth development of central and regional government agencies, state-owned enterprises, other entities in which there are interests, and regionally owned business entities, monitoring of follow-up results of investigations, analysis, evaluation, and preparation of reports of activities and investigation results.

Currently, many BUMD in Indonesia use BPKP in their financial audit affairs. For example, BPKP was asked by the Deputy Governor of DKI Jakarta to conduct a review of the performance and financial conditions of several BUMDs in Jakarta that had not long provided dividends to the DKI Jakarta Provincial Government's coffers due to losses.

State Finance in Relation to BUMD

Provisions requiring that the welfare of the people be a priority over any interest are enshrined in most modern state constitutions, regardless and their system of insanity, whether capitalist, liberal, or socialist. This happens because it is in essence the existence of the state is to advance the welfare of the people (Suhardi, 2007).

On an international scale, the obligation of the state or government to provide welfare to its people is also contained in the United Nations Declaration of Human Rights of 1948 in paragraph 25 number (1). The obligations provided are not only static welfare, but also dynamic welfare which means the people are more prosperous with an increasing measure of welfare. In the beginning, the welfare given is only kedar at subsistence level, which is an effort just to make a living or a minimum level of life only. Then, the limit of improving welfare increased to the extent of the availability of resources in a country with the formulation set by the United Nations (UN) in 1966 through the International Covenant on Economic, Social, and Cultural Right, which reads, ……to the maximum of its available *resources*.

Indonesia as a democratic country accommodated this in the 4th paragraph of the Opening of the 1945 Constitution which reads, ".... Then instead of that, to form a government of the State of Indonesia. To promote the general welfare..." When combined with the Fifth Precept in Pancasila, the formula will be, ". . . . promote the general welfare of social justice for all Indonesians.. ." (Suhardi, 2007).

Guarantees to provide the welfare of the people are also contained in the Opening of the Constitution of the Republic of Indonesia 1945, Article 33, especially paragraphs (2) and (3) of law1) of the Republic of Indonesia 1945 which states that the branches of production are important for the State and that control the lives of many people controlled by the State.

This provision may be interpreted that the State, in addition to not ceding the branches of production which are essential to the State and which control the lives of the people to the private or foreign, also provide assurances to the people that the State has an obligation to take care of them. Mastery by the state means that the State actively conducts management in the interests of the welfare or life of many people.

The provision which states that "the Earth and water and natural wealth contained therein are controlled by the State and used for the greatest prosperity of the people" also means that the dalain takes care of the welfare of the people, the State is given capital that is the right to manage natural resources in Indonesia. In addition, the only purpose of the management of natural resources is for the sake of the growing prosperity of the people, indicated by the word "as much as possible".

The state is trying to provide welfare to its people, has three roles, namely as a regulator, provider (provider) and entrepreneur (entrepreneur). As a regulator, the state makes administrative regulations that provide planning and licensing that can regulate

economic life towards the welfare of the people; As a provider, the Government provides money and goods that can be consumed directly. As entrepreneurs, the state acts actively by processing natural resources into consumer goods or acting as public servants who do not attract high profits from the people, where this is done through business institutions, namely state companies (Suhardi, 2007).

A state is an entity formed through the process of giving mandates and people to a group of people to run the government. For this reason, it can be said that the government or state is not formed unless it is only intended to serve the interests of the community. This substance is also observed by Abraham Lincoln in examining the basic principles of the United States by saying "government of the people, by the people,for the people, shall not perish from the earth." "Government and the people, by the people, for the people, will not perish from the earth" (Ravitch & Thernstrorn, 1992).

And some functions of the state, the role of the state in the economic field is seen in the form of control and management of public ownership of production capital. This ownership of akhimya requires the state to create professionally managed organs and business entities (state owned enterprises). In addition, several functions of the state related to the economy can also be seen and some authority and discretion include: guaranteeing property rights, economic liberalization, business cycle regulation, economic planning, granting labor inputs, land, capital, technology, economic infrastructure and manufacturing inputs, social census interference and managing economic systems (Korim, 1997).

The opening of the Constitution of the Republic of Indonesia (Uud Republik Indonesia) 1945 states clearly about the role of the Indonesian state in the fourth paragraph, which reads:

> "... Protecting the entire Indonesian nation and all Indonesian blood and to promote the general welfare, educate the life of the nation, and participate in implementing world order based on independence, lasting peace and social justice."

The substance of welfare stale is directed at a form of democratic government in which the state is responsible for the welfare of the people and all government policies and arrangements, including regulating the wealth of the country, are concentrated on actions aimed at free people and hunger, suffering, hardship and the like. The concept of welfare state emphasizes the importance of the role of government which is very important in the affairs of community disasters.

The concept of the welfare state is often perceived differently, depending on the point of view and perception and emphasis of the focus of the discussion to be addressed, but in essence the Welfare State is a concept of government in which the state plays an important role in the protection and welfare of the economic and social welfare of its citizens, which is based on the principles of equality of opportunity, equalization of wealth, and piblik responsibility for those who cannot afford the good life.

Tavip said that all of them contain basic elements that can combine the idea of multi-perception, to form an initial understanding of the introduction of the concept of a welfare state whose elements consist of: the state of government), markets and society. Tavip also tried to elaborate and construct the basic elements so as to form the basis for getting to know the concept of the welfare state, which is a concept that positions the role of government in order and is committed to social equality and justice by referring to the following three principles (Tavip, 2013):

a. Improvement and prevention of adverse effects of the functioning of the market economy, especially those detrimental to the welfare of those who are economically and socially considered less able;
b. The distribution of wealth and opportunity to all in a fair and equitable manner; and
c. The wildest promotion of social welfare and a guarantee system for the less in order to be able to get greater benefits.

Operating on the basis of the above principles, the concept of a welfare state has six basic objectives: economic growth, sufficient employment, price stability, development and expansion of the social security system and improved working conditions, the widest possible distribution of capital and welfare, and promotion of different social and economic interests and groups (Tavip, 2013).

From this idea, the state has a series of obligations that must be implemented to create prosperity and prosperity for community life, one of which is by managing the national economic system and establishing state business centers as reflected in the existence of state business entities / local centers. In carrying out the mandate of the welfare state, the state exercises its authority and fiangsi that has been set macro in accordance with the applicable constitution.

At the regional level, this is seen from the principle of decentralization in government as mandated by the Basic Law (UUD) which requires that the region can take care of its own households. To be able to carry out this purpose, it is necessary to have financial resources that provide sufficient ability and strength to the Swatantra Region.Regional autonomy to develop its economy is realized by the issuance of Law No. 52 of 1962 on Regional Companies which states that in the framework of granting real and broad autonomy to the Regions with the ability of their respective regions, it is considered necessary to apply the basics to Establishing a Regional Company.

BUMD Finance is Regional Finance

Based on the theory of Economic and Legal Analysis, there is a discourse between postpragmatism and neo-conservatism on the status of regional financial law in BUMD. The Postpragmatism school argues that the state's finances are money used for the benefit of the State as a public body. The money is public money that must be accounted for by the government as a user of the budget reflected in the state budget usage plan. This flow distinguishes state money based on the submission of its legal field, i.e. private law or public law. Neoconservatisrne, on the other hand, argues that state finances are the entirety of money owned and in the control of the state, regardless of public money or private money (Puji & Simatupang, 2008).

The expansion of the notion of state finance in Neoconservatism shows a crisis of rationality in identifying state money as public money. Based on this understanding, state finance is present in all aspects of state life, because state finance is sourced and developed and the country. This view reduces the view that law is the subject of independent law, where the state

here has two different positions and authorities, namely as a public legal entity and a private legal entity.

In Indonesia,49 neo-conservatism received justification through Article 2 of Law No. 17 of 2003 on State Finance, as well as Law No. 15 Tabun 2006 concerning the Audit Board (BPK). In this Law, state money has a broad business, where the state's finances include BUMD wealth and the wealth of other parties who use BUMD facilities. According to the flow of neo-conservatism, this can be interpreted as that if a person or a legal entity uses the originating banking credit facility and Bank BUMD, whose shares are owned by the region, then the loan must be declared as a loan to the state, even though the implementation of credit is done through an agreement subject to the provisions of private law. The expansion of the country's financial scope created a policy shock for private finance, including BUMD. The recognition that wealth already separated in BUMD, and all related sectors in it, remains part of state finance is essentially an attempt to overcome the scarcity of resources in state finance and regional finance. This recognition led to an increase in the ability of the State and the region to control the financial resources of BUMN / BUMD (Puji & Simatupang, 2008).

The condition of mi is in line with freddy harris research basil in his dissertation entitled "The Position of the State as Capital Participation in PT Persero: Amendment of Provisions That Are Not In Accordance with the Principles of Corporate Law" which states that Article 2 letter G of Law No. 17 of 2003 on State Finance needs to be revoked because this provision causes the interpretation of the definition of state finance to be too broad (Harris, 2007).

Theoretically, the mastery of BUMN / BUMD as the financial source of the Regional State means that the state must also be responsible for the burden of the risks faced by the BUMN / BUMD. BUMD finance included in the financial scope of the State tends to experience the paradox of interest (interesting paradox) and paradox of rationality (rationale paradox). As a BUMD stock trade, the region is only domiciled as a civil law entity, so it cannot use BUMD to fulfill the obligations of local governments to serve the public interest. Local governments can only carry out local interests and missions as public legal entities through public mechanisms, not through civil mechanisms. Therefore, the State as a public legal entity and the State as a civil law entity must be able to determine the boundary line of itss (limitative domain). This is done so that the State has awareness and legal ability to limit whether the legal status of money including state money or not (Harris, 2007).

Constitutional Court Decision No. 48 and 62/PUU-X1/2013 which states that rejecting the petitioner's application for the entirety, especially on Article 2 letter g and letter I of Law No. 17 of 2003 on State Finance means that bumd wealth is part of state finance.

Mahkarnah Constitution, in its ruling, argues that the separation of state wealth is seen from the perspective of transactions is not a transaction that transfers a right, so that the legal consequences do not result in the transfer of rights from the state to BUMN, BUMD, or other similar names. Thus, the wealth of the separated country still remains the wealth of the country. Related to the authority of the CPC to examine the Constitutional Amendment argues, that the CPC is authorized to inspect BUMN or BUMDs because BUMN or BUMDs are actually state-owned.

The judicial review requested was originally intended to provide certainty over Article 2 letter g and letter of Law No. 17 of 2003 on State Finance, but it turns out that the Constitutional Court's decision on this matter does not end the debate over the financial legal status of BUMN but begins the formalism of state-owned finance (Puji & Simatupang, 2008), which also applies to BUMD.

Paradoxically, which was previously a discourse on the application of norms, became formalized by the Constitutional Court's decision, so that the problem in BUMN as a sokoguru of the state economy will not be reduced, but increases towards problems that are impossible to structure (ill-structred problems). Paradoxically the norm of the financial legal status of BUMN as state finances is a paradox on the authority of BUMN managers. If the finances of BUMN are state finances, then based on the State Treasury Law, state financial managers are civil servants, treasurers, and state officials, but this provision cannot be applied in the management of BUMN, because as we know, BUMN employees are not civil servants, but employees of BUMN concerned.

In addition to the paradox of management authority, there is also a paradox related to state / government actions in the field of state governance. Here, if the finances of BUMN are considered as state finances, then the corporate action carried out by bUMN in carrying out its business is an action within the scope of state governance, so that if a dispute can be filed in front of the State Administrative Business Court, where juridically formal, the decision of the act of incorporation, in the case of BUMN, is not included in the judicial object of state governance (Harris, 2007).

The consideration of the Constitutional Court Law as the Basis of the Decision (Constitutional Court Decision No. 48 and 62 / PUU- XI / 2O13) is as follows:

1. In essence, BUMN or other similar names that are as small or most of their shares are state-owned are an extension of the state, in this case the Central Government or Local Government.
2. The function of BUMN is the derivation and control of the state over the branches of production that are important to the state and control the lives of many people and natural resources of Indonesia as part of the function and purpose of the state in the welfare state (welfare stale).
3. The separation of state wealth cannot be interpreted as a break-up of state relations with BUMN or other similar names. The separation of state wealth in BUMN or other names of the like is only in order to facilitate business management in the framework of business so that it can follow the development and competition of the business world and make capital accumulation, which requires immediate decision-taking but can still be accounted for.BUMN, fungsinya menjalankan usaha sebagai derivasi dan penguasnan negara atas cabang-cabang produksi yang penting bagi Negara dan menguasai hajat hidup orang banyak serta suniber daya alam Indonesia, sebagian besar atau seluruh modal uaha berasal dan keuangan Negara yang dipisahkan, dan dittijukan untuk rnencapai sebesar-besamya kemakmuran rakyat.
4. BUMN are different from Private Legal Entities that also hold businesses on one side and differently and State

Organizing Organs that do not organize businesses, such as state institutions, ministries, or entities.

5. DPR and CPC have a constitutional function to oversee BUMN that actually do the management of state finances.
6. Viewed from the perspective of transactions, the separation of State wealth is not a transaction that transfers a right so that as a result of the law there is no transfer of rights and the State to BUMN. That way, the wealth of the separated country still remains the wealth of the state.
7. Because it is still included in the state finances, the EUMN is actually state-owned and is an extension of the state hand, so the CPC is still authorized to examine it. However, internal supervision (other than the Board of Commissioners or Board of Trustees) is still considered relevant so that BUMD can run in accordance with the principles of Good Corporate Governance.
8. here are other problems that hams considered, namely regarding the paradigm of the function of BUMN as an extension of the hand and the State, which is implemented based on a very different business paradigm (Business judgment rule) and implementation based on the paradigm of intification (go vernment judgment rule).

BHMN, PT, BUMD, or any other name, or contained in Articles 31, 32, and 33 of ULTD 1945 is as an extension of the hand of the State in carrying out some functions and the State to stamp the purpose of the State so that it becomes capital for legal entities that carry out some functions

IV. CONCLUSION

The company's corporation as a legal entity and as a subject of law can only be criminally accounted for, if the administrators commit an act, and the act there is an element of error or human being in the form of intentionality or error, with no reason for forgiveness and the criminal act is carried out for the benefit of the corporation/company and the action is carried out still within the scope of its authority. This is in line with the identification theory that states that the retribution of corporate/corporate misconduct for a criminal act that requires an element of error is by means of mergers. A human being who commits a criminal act in a corporation/company into the corporation/company concerned. The responsibility of the company's board of civil if it takes legal action/legal actions that exceed the power and authority specified in the company's articles of association/corporations so as to cause losses to the corporation/company, then the company's board is collegial responsible on a rent basis. There are problems and conflicts normatively in the accountability of the board of directors, this problem arises on the one hand the company must be accountable to the state because all capital submitted is the property of the state which refers to the provisions of the law governing the management of the state, while on the other hand the directors are bound by the provisions of the limited liability company and are responsible on a rent basis.

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