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## **EXAMINING THE FACTORS THAT LED TO THE REVOLUTION IN THE COUNTRIES THAT WERE ELIMINATED AT BUMN**

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### **ABSTRACT**

Separated state wealth has been a "sexy" topic for additional research ever since Law No. 17 of 2003 on State Finances was created, specifically article 2 letter g, which declares that separated state wealth is under the purview of State Finance. This article is cited by all parties when discussing issues pertaining to the riches of divided nations. Act No. 17 of 2003, however, does not specify what constitutes the wealth of a divided state, how it functions, how it is supervised, or how it reports on its obligations. This paper will explain that even though the wealth of the separated state is included in the scope of the state's finances does not mean that the entrepreneur and his responsibilities follow the APBN mechanism and also respond to the cause of the occurrence of differences of opinion. This research is carried out using a method of normative jurisprudence, which is to test and study secondary data. Using secondary information such as legislative regulations, court decisions, legal theory and expert opinion to obtain clarity on the problem. The study concluded that the law was not intended to regulate the wealth of the separated state, and differences of opinion were due to a misunderstanding of the scope of the state's finances and attached the status of state organizer to the body of BUMN.

**Keywords :** separated state wealth, BUMN, entrepreneurship, responsibility.

### **INTRODUCTION**

The advancement of the general well-being is listed as one of the state's objectives in paragraph IV of the 1945 UUD. According to the nation's goals, Indonesia is classified as a welfare state or country. As to the Encyclopaedia Britannica (2015), a welfare state is a form of governance wherein the state assumes a pivotal role in maintaining equilibrium between the social and economic well-being of its populace. In order to be a welfare state, the government must choose to get involved in sectors where private enterprise is a more viable option. This allows the government to use mechanisms other than the APBN with greater flexibility in its implementation. The Indonesian nation also stands apart from the Dutch colonial legacy, not from zero. There are foreign assets left when they left Indonesia that were then nationalized into state assets to avoid claims from the foreign country. Initially, the assets were still fully controlled by the government. In view of the development of social economic activities from the time of independence to the present, which were initially simple and are now very complex, these assets must be given a firm form and subject to special regulations beyond those applicable to the APBN. Starting from this thought on the development of the birth of the State-owned enterprise agency with State capital participation as the State's Separate Wealth.

A nation must have a financial management system before entering government. As a result, Indonesia declares that "Other matters relating to state finances are regulated by law," in accordance with Article 23 letter C of Chapter VIII of the Fundamental Law of 1945 on Finance.

The State Financial Law (Act No. 17/2003), the State Treasury Act (Akt No. 1/2004), and the Law on the Inspection of Management and Financial Responsibility of the State (An Act No. 15/2004) comprise the Package of State Financial Laws, which was enacted in 1945, but emerged after fifty-eight years of independence. Before the National Finance Act package was created, the laws that govern how the state's finances are managed in Indonesia were still based on the colonial Dutch government's policies, such as the Indische Comptabiliteitswet, or ICW Stbl. 1925 No. 488. Apart from the ICW, there is also the Reglement voor het Administratief Beheer (RAB) st bl. 1933 No. 381 and the Indische Bedrijvenwet (IBW) stbl. 1927 No. 419 jo. Stbl., 1936 No. 45. Since the country's financial management is dynamic and heavily dependent on rigorous regulations for its development, the current regulation is deemed inadequate to meet these needs. It is important to note that this regulation is a result of State of Indonesia law.

Separated state wealth has emerged as a "sexy" topic that is very intriguing for additional research since the passage of the National Finance Act, specifically Law No. 17 of 2003 on State Finance. Long-lasting arguments and disputes over the Wealth of Separated Nations continue to diverge from the mainstream perspective. Why is the argument going on for so long? It is not excluded from the scope of Separated State Property as defined in article 2 letter g, which includes local wealth and State property managed by the state or by other parties in the form of cash, securities, bonds, and other goods, as well as other rights definable in terms of money, including property that is kept apart from State property company / local company. With the existence of this article all parties seem to make this article a reference in all matters relating to the Wealth of the Separated Nation. However, the Act No. 17 of 2003 does not specify and define what is a Separated State Property, how it is managed and what forms of supervision it has and how it reports its responsibilities. On the other hand, there is the Act No. 19 of 2003 on BUMN which gives an explanation of the State Wealth that is separated from BUMN but is not used as a reference.

In terms of the defence of the state's finances, according to article 1 of Act No. 17 of 2003, state finances are all the rights and obligations of the State that can be measured in money, as well as everything in the form of money or goods that may be made the State's property in connection with the exercise of such right and obligation. In this section there is no mention of Separated State Property. However, there appears Separate State Properties in the section of the Explanation that groups the financial defence of the state with various approaches, namely from the side of object, subject, process and purpose. From the object side of the State Finance includes all the rights and obligations of the country that can be measured by money, including the policies and activities in the fields of fiscal, monetary and management of the wealth of the separated state, as well as everything either in the form of money, or in the kind of goods that can become owned by the state in connection with the exercise of such right and obligation.

In addition to the defence, the researchers will also have the structure of the State Finance Act consisting of 11 Chapters, 39 Articles, so that on the part of the discussion it will be visible that this law is not intensified to regulate the Separated State Wealth. If you look from the chapters and articles that it regulates, there are some chapters that give birth to the new Law and it is the new law that is then made as a guideline and reference not the State Finance Law. This chapter highlights the birth of Act No. 1 of 2004 on the Treasury of the State. As a consequence, if people want to find out about APBN, they will refer to the State treasury Act, not the State Finance Act. Chapter VIII on accountability for the implementation of APBN and APBD consists of 4 chapters. The chapter is highlighted by Law No. 15 of 2004, on the inspection of management and financial responsibility of the state. The big question is then why when there is a problem of Separated State Wealth people do not refer to the BUMN Act. Article 2 letter g should be seen as a highlight of

the birth of the Law Number 19 Year 2003 About BUMN. So if you want to solve the problem of the Separate State Property on BUMN, it would make this BUMM Act as a reference, and not the State Finance Act. On the other hand, the status of the State Finance Act should be viewed as a general law that can be excluded if there is a special law governing it (*lex specialis derogate lex generalis*). And two of them are very powerful and are really used as guidelines and references when problems arise in relation to what is regulated by the Law. Why the BUMN Act seems powerless and hardly used as a reference when the problem of Separated State Property arises and article 2 g is much more powerful and used as reference.

Many law enforcement bodies argue that the wealth of the state is separated as the financial part of the country by assuming that when there is a financial loss to the BUMN then automatically can be said as the state's financial loss. Therefore, this study will clearly clarify the entire scope of State Finance covered in article 2 of Act No. 17 of 2003 and why Separated State Property is included in the scope for State Finance. This study will also comment on section 2 of Law No. 28 of 1999 on the Maintenance of the State Clean and Free from Corruption, Collusion, and Nepotism which states that the State Organizer includes other offices that have strategic functions in relation to state management in accordance with the provisions of the regulations of the applicable laws. And in the explanation of article 2 paragraph 7 it is stated that what is meant by "Other Officers with Strategic Functions" is the official whose duties and authority within the State Administration are vulnerable to practices of corruption, collusion and nepotism, which, among other things, includes the Directorate, Commissioner, and other structural officials in the State Enterprise Agency and the Regional Enterprise Authority; these different officials will be implicated in the conduct of law or in the implementation of law.

## RESEARCH METHOD

This research is normative legal research, which is a method of legal research carried out by researching libraries or secondary data. The data used are secondary data consisting of primary legal material such as the Basic Law of 1945, the Law No. 17 of 2003 on State Finance, the Act No. 19 of 2003 concerning BUMN as well as the Law no. 40 of 2007 on Limited Associations and secondary legal materials such as books and other scientific articles related to this research. Data collection is carried out by means of library research, which is to collect and study various laws, books and scientific articles. Furthermore, the existing data is processed using a qualitative descriptive approach, i.e. the approach used to investigate, find, describe and explain the content or meaning of the rule of law used as a reference in solving the legal problem that is the object of the study. The conduct of research is limited only to the question of why the wealth of the State separated from the State-owned enterprise enters the scope of the state's finances and why there is a different view of the separated state wealth.

## RESULTS AND DISCUSSION

### **The State's wealth that is segregated on the BUMN comes within the purview of state finances**

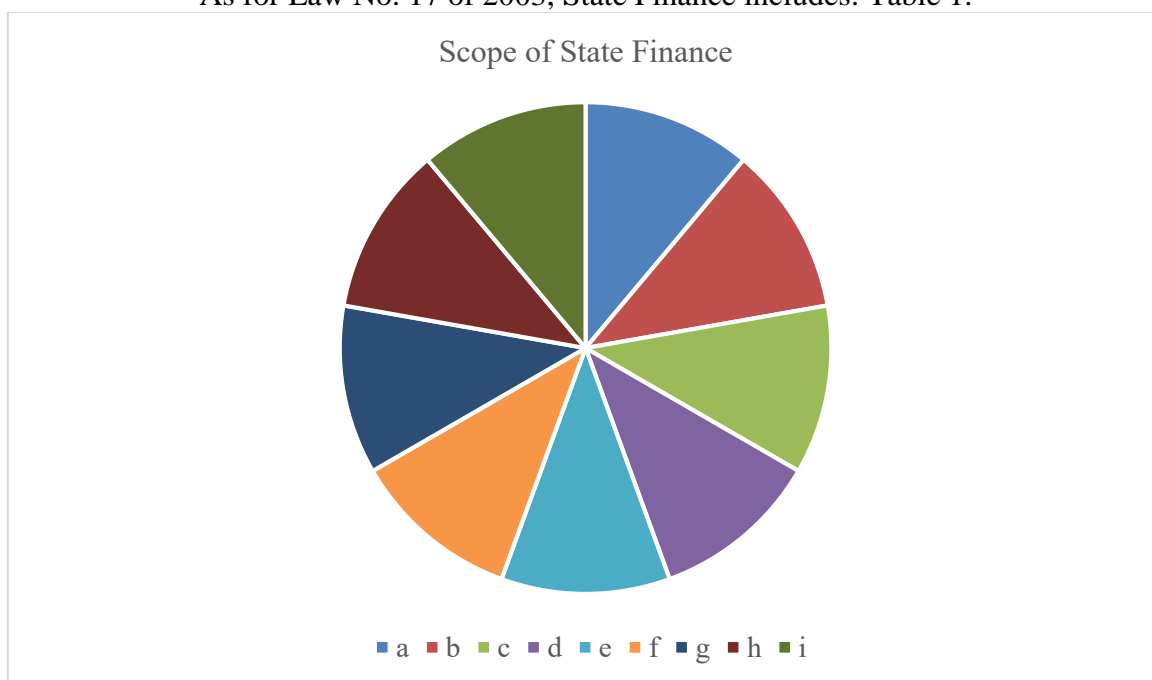
The establishment of the Law No. 17 of 2003 on State Finances is to regulate the state's financial management, both rights, and obligations. Historically, when Indonesia became independent, there were many foreign state assets that had to be nationalized, both foreign private economic assets and Dutch colonial government assets. Because the status of ownership is different, the process of transferring rights for each asset category is different through institutional transition and nationalization. Institutional transitions generally take place in the neighborhood of

government institutions, i.e. from the Dutch Indian Government to the Government of the Republic of Indonesia. While nationalization is aimed at non-governmental assets, both foreign private and Dutch government-owned enterprises. The process of institutional transition took place shortly after Indonesia's independence, followed by the process of nationalization and peaked in 1957. If the assets are taken over by the state but the management is given to the private, then there is a risk of lawsuits from the foreign country of the property owner. The Government of Indonesia in the framework of the transfer of these assets then issued the legal basis for legalizing the implementation of such nationalization namely through the Law No. 86 of 1958 on the Nationalization of Dutch-owned Companies. In the provisions of the Act it states that the companies belonging to the Netherlands that are located in the territory of the Republic of Indonesia, which will be established by the Government Regulations are subject to nationalisation and are declared to be the full ownership of the State of Indonesia. This policy is the next cycle of the establishment of the State Property Enterprise Agency of the Republic of Indonesia. However, the current state of state-owned enterprise agency management is not optimum, with all of its entrepreneurship, management and accountability mechanisms still fully under the control of the state through the Ministry of Finance. Even all the operating costs of the BUMN, starting from the salary of its staff and directors and all the costs incurred in the exercise of its rights and obligations, are fully financed by the APBN. This leads to the fact that it cannot contribute to the state's finances because of the lack of clear purposes and regulations. Even becoming an APBN burden.

After 58 years of independence, Indonesia has a National Finance Act. At the time of drafting the law, the assets of this State-owned enterprise agency were under the management of the Ministry of Finance, so it was necessary to give one clause to 'just' give place to the wealth of the state separated. Next, it is expected that after the forming of the National Finance Act, it will be followed by the creation of the Separated State Property Act so that its coverage is comprehensive. Because it's not possible that the eight words in the second letter of "g" can describe in detail the wealth of a separated country. The philosophy of state finance cannot be applied to the State-owned enterprise even though there is state money in the State's own enterprise. The inclusion of the State's wealth separated from the State corporations as part of the state's finances above is based on the idea that the Government is obliged to organize public service in order to the national objectives as enunciated in the opening of the 1945 UUD. In other words, capital participation in the BUMN is a form of role of the Government in the economy as a player while the role of Government through the Ministry / Authority as a regulator because it is not possible for the ministry / authority to carry out business activities like a regular company.

The path dependence theory can be used to explain this. The path dependence theory is that policy choices made in the past influence current choices. Politics, administration, conventions and procedures govern the relationship between economic actors and the state are heavily dependent on the dependency of the path. In other words, the decisions of the government today depend on the experience even of history made in the past. Path dependency occurs when the characteristics of the BUMN in the past (both from the cause of formation and the rule of law and beyond) are not based on current conditions, but have been formed as a sequence of past history. Similarly with the philosophy why BUMN became the area of the State Finance Act because there was something in the past related to the history of Indonesian independence from foreign states. There are sources of path dependencies of corporate ownership patterns (including BUMN). Because of path dependence, the structure of a company's ownership model in a country is at least dependent on previous patterns.

As for Law No. 17 of 2003, State Finance includes: Table 1.



The indicators in the above tables describe a. the right of the State to collect taxes, issue and distribute money, and make loans; b. the State's obligation to organize public service duties of the Government of the country and pay the bills of third parties; c. State receipts; d. State expenditure; e. Regional receivables; f. Regional expenditures; g. State / regional wealth administered by itself or by others in money, securities, debts, goods, as well as other rights that can be valued with money, including property separated from the State company / local company; h. property of other parties controlled by the Government for the purpose of financing governmental duties and / or public interest; i. other party property acquired by using facilities provided by the government.

According to UUKN, the country's financial scope covers nine of the above. But that doesn't mean nine of those things can be equated with 'national money'. For example, in the paragraphs mentioned loans, third-party bills, wealth of others all fall within the scope of state finance but not 'state money'. When a state lends money to x, y or z, the debt is classified as state finance, but the money given by X, Y or Z is not "state money" because there is an obligation to repay the money to the creditor. In simple logic, the money x, Y, or Z borrowed by the state is still said to be "x, y, or z money" not as "State money" even though the debts fall within the scope of state finance. The same understanding applies to the point g, which is the wealth of the separated country.

An enterprise that has the majority of its capital, or all of it, directly owned by the State through its revenue from the separated State is referred to as state-owned. The provisions concerning BUMN are regulated by the Act No. 19 of 2003 on BOMN, which replaced the previous laws, namely the Indonesische Berdrijvenwet (Stb. No. 149 of 1927) as amended several times and last added by the Law No. 12 of 1955; the Perpu Number 19 of 1960 on State Companies; and the Law Number 9 of 1969 on the Establishment of Government Regulations. Since the BUMN Act was enacted, the three laws have been declared repealed and no longer in force. The BUMN Act came into force on the date of its enactment, 19 June 2003. BUMN capital is and is derived from the wealth of the State that is separated. Next what is meant by separation is the separation of the state wealth from the State Revenue and Purchasing Budget to be made the

participation of state capital in BUMN for further construction and management of it is no longer based on the system of State Revenues and Purchase Budget, but its construction and administration is based on healthy corporate principles. The wealth of the country which is divided into state capital participation to the BUMN has a specific purpose and purpose: a. To contribute to the development of the national economy in general and to the reception of the State in particular; Going After Profit; To provide goods and services of good quality and sufficient for the fulfilment of the desire of the multitude; Become a pioneer of business activities that can not be implemented by the private sector and cooperatives; Also actively providing guidance and assistance to entrepreneurs of weak economic groups, cooperatives, and society.

Based on the BUMN's five goals and purposes, the organization was founded with an eye on both making a profit and maximizing its potential economic impact. The BUMN's foundation is not independent of the national goal of furthering the common welfare, and although while the state's goal is "certain," it uses the BUMN as a vehicle to reach out to isolated areas in order to attain it. It is not the same as the duties carried out by government agencies or entities. BUMN contributes to the national economic system by manufacturing the items and/or services required to achieve the maximum level of community prosperity. The role of BUMN is felt increasingly important as a pioneer and / or pioneers in the business sectors that have not yet been interested in private enterprises. In addition, BUMN also has a strategic role as a public service provider, balancing the powers of large private, and to help the development of small enterprises / cooperatives. BUMN is also a significant source of state revenue in the form of various types of taxes, dividends and privatization income.

According to the BUMN Act, a Public Auditor's Office that is privately owned conducts audits for the BUMN. Nevertheless, in light of UUKN article 2 letter g, which declares that state assets that are isolated from the BUMN are state finances, UUD 1945 article 23 paragraph (5) specifies that the Financial Supervisory Authority is tasked with investigating the State Finances. It should be confirmed that only the Financial Supervisory Authority is authorized to conduct audits at the BUMN in accordance with the Constitution's mandate. In this case, there is a mismatch where, according to the BUMN Act and the Limited Partnership Act, BUMN is audited by the Private Owned Auditor's Office. Later in 2013, the Constitutional Court Decision No. 62/Law-XI/2013 was issued which stated that the Financial Supervisory Authority is constitutionally authorized to inspect the management and financial responsibility of BUMN in the form of Persero. The government through the Ministry of Finance does not record the assets of BUMN as state finances, but the State Capital Participation is recorded in the state finance in the form of the amount of shares. Not a nominal stock because the stock price is fluctuating. (tidak menentu). A misunderstanding occurs when state finances are interpreted as the entire asset of the BUMN/BUMD is a government asset. If so, it means that the entire debt or debt of BUMN/BUMD is also government debt and all debt must be government debts.

Article 34's extent of damages, administrative penalties, and criminal provisions (1) Ministers, mayors, governors, majors, and heads of institutions. (2) Heads of State/Agency/Regional Development Ministries' Organizational Units (3) Public servants and other parties who neglect their responsibilities are subject to administrative penalties from the President. The article's provisions state that there are no goals for the BUMN. Furthermore, what has led to this disagreement about the wealth of this separated state is that the concept of the existing approach to the enforcement of criminal law related to corruption criminal acts is actually inadequate to the business law concept. In the Law No. 31 of 1999 on the Suppression of Criminal Acts of Corruption, state finances are defined as the entire property of the State in any form,

whether separate or not, including all parts of the state property and all rights and obligations arising from : 1) being under the supervision, management, and accountability of state officials in both the local and central levels of government; 2) is under the control, administration, and jurisdiction of regional and state-owned enterprises, foundations, corporations, and legal organizations that incorporate state capital or firms that incorporate third-party capital in accordance with agreements with the state.

The restricted interpretation of the phrase "is in the possession, management, and responsibility of State-owned enterprise agencies/regional-owning enterprises" in relation to state finances leads one to believe that the state will necessarily suffer a loss if the BUMN or BUMD suffers a loss. The State Officer who performs executive, legislative, or judicial functions, as well as other officials whose function and essential duties relate to the maintenance of the State in accordance with the provisions of the regulations of the applicable laws, are designated as the State Organizer under Act No. 28 of 1999 on the Organizer of a Clean and Free State from Corruption, Collusion, and Nepotism. The host country includes: (1) State officers of the Supreme State Institution; (2) State officer of the High State Institutions; (3) Ministers; (4) Governors; (5) Judges; (6) Other State officials in accordance with the provisions of the regulations of the applicable laws; (7) Other officers who have strategic functions in relation to the organizers of State in conformity with the rules of the laws in force. The article's explanation no. 7 in the explanatory section clarifies what is meant by "other officials with strategic functions," which is defined as an official whose responsibility it is to maintain state vulnerability against acts of nepotism, collusion, and corruption. This includes: 1) Directors, Commissioners, and other structural officials of State-owned enterprise agencies and regional owned enterprises agencies; 2) Head of Bank of Indonesia and Head of National Bank Recovery Authority; 3) Head of State College; 4) Eselon 1 officers and other equated officers in the civilian, military, and police districts of the Republic of Indonesia; 5) Attorney; 6) Detective; 7) Panitera of the Court; and 8) Project leader and host.

People are becoming more and more lost to the wealth of the divided state, according to the defense of explanation number 7 of article 2, which claims that the directors, commissioners, and structural officers of BUMN and BUMD are the state's organizers. This article frequently serves as a straightforward resource when discussing reported examples of corruption crimes that took place in BUMD or BUMN. This is because there is a direct reference through the Act No. 20 of 2001 on Amendment of the Law No. 31 of 1999 on the Prevention of Criminal Acts of Corruption (PTPK) in the explanatory section of Article 5 paragraph (2) which gives an understanding of the organizer of the State in accordance with the meaning of the state organizer in Article 2 of the Act no. 28 of 1999 about the Organizer of State that is clean and free from corruption, collusion, and Nepotism. These provisions have resulted in an inadequate understanding by law enforcement about the wealth of the state separated from the BUMN. This mistake results from the way criminal law is taught when interpreting a legal standard or a component of a criminal act. Other laws allow for interpretation as long as it is still applicable and not covered by the relevant legislation. As long as the interpretation is provided in the pertinent laws, it is not allowed to be used under any other laws. For instance, the overall explanation of the Act has a role in authentically interpreting the part of "state finance" inside it. Since it is included in the General Explanation, Article 2 paragraph application of the State's financial element (1) or Article 3 is appropriate to use the authoritative interpretation in the universal expression of the Law itself and does not use the interpretation based on other laws such as the state financial understanding in the UUKN. Although the financial meaning of the state can be sought its similarity but in certain cases can be obtained

a different conclusion. In case of the last mentioned circumstances then the authentic interpretation of the PTPK law should be used. The same also applies to the element of the 'counselor of the state' in the explanatory section of the PTPK Act, which has also regulated the reference to the interpretation of the organizer of the State in Article 2 of the Act No. 28 of 1999. It is therefore logical that the law enforcement agencies do not use the existing approach to business law in dealing with the wealth of the state that is separated from the BUMN.

## CONCLUSION

That Act No. 17 of 2003 was not enacted to regulate the wealth of the separated state. As for the entrance of the wealth of the State separated into the financial sphere of the state is within the framework of the accountability of the entrepreneur management and the financial responsibility of the country. It should be understood that the state's finances are not talking about the state money, but everything related to the rights even the obligations of the state that can be measured by money, enter the scope of the country's finance. And when the state separates its wealth to the BUMN, then its entrepreneurship is released from the APBN mechanism: a. In addition to the state's funds, additional assets that the state uses include the amount of debt it has, bills from other parties, and even other people's commodities. b. The Act No. 28 of 1999 has created legal uncertainty and limited the authority of the Directorate, Commissioner, and other structural officials of the State-owned enterprise agency and the Regional-ownable enterprise organization, making them State organizers.

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