




Legal Arrangements Regarding Soe Management In Increasing Public Welfare

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Article Info	Abstract	
<p>Keywords: SOE; Management; Welfare.</p>	<p>Introduction: Public welfare is the goals of the Indonesian state which has been mandated in the 1945 constitution. SOE has a role in realizing this goal. However, in practice, SOEs face various challenges, one of which is related to governance within the SOEs themselves.</p> <p>Purposes of the Research: The purpose of this study is to analyze governance related to the laws and regulations governing SOE.</p> <p>Methods of the Research: The method in this research is normative juridical. The study used is a literature study. In answering the formulation of the problem in this study used a juridical and theoretical basis. The juridical basis used is the 1945 Constitution, Law Number 19 of 2003. The theoretical foundation used is the theory of legal ideals by Gustavo.</p> <p>Results of the Research: Based on the research results, it was found that the role of SOEs in Indonesia is very important. There are many legal arrangements regarding BUMN. This certainly hinders the achievement of legal ideals, namely justice, certainty and the benefits of law. Therefore, it is necessary to create a legal entity in the form of an omnibus law in regulating SOEs.</p>	

1. INTRODUCTION

Building a welfare state has become the obsession of many new countries, especially in Asia which became independent after World War II. Several countries, such as South Korea, Taiwan and Singapore, have been quite successful in building their welfare states. Likewise, the Unitary State of the Republic of Indonesia, as mandated in the 1945 Constitution, is designed as a welfare state. According to Pierson, the word welfare contains at least three sub-classifications, namely: (1) Social welfare, which refers to the collective acceptance of welfare; (2) Economic welfare, which refers to security guarantees through the formal market or economy; and (3) State welfare, which refers to guarantees of social welfare services through agents from the state. The welfare state is briefly defined as a country where the state government is considered responsible for guaranteeing a minimum standard of living welfare for every citizen.¹

¹ Oman Sukmana, "Konsep Dan Desain Negara Kesejahteraan (Welfare State)," *Jurnal Sospol* 2, no. 1 (2016): 104, <http://eprints.umm.ac.id/id/eprint/63530>.

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Therefore, the founding fathers chose the ideology or concept of a welfare state that was right for the ideological foundation of this nation's economy. By the Investigation Agency for Indonesian Independence Preparation Efforts (BPUPKI) then this ideology or concept was embodied in the 5th precept of Pancasila namely: Social Justice for All Indonesian People. The basic principle of this precept is the creation of Social Justice for all Indonesian people.²

By the founders of the nation, this social justice was then strengthened into the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, namely: "Then instead of that to form a government that protects all of Indonesia and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life and participate in carrying out world order based on peace, independence, eternal peace and social justice." Then, this fourth paragraph is explained more clearly in the articles in the state constitution, namely Article 33 paragraph (2) of the 1945 Constitution: "the branches of production for the state and affect the livelihood of the people at large are controlled by the state. Still in the same article, paragraph (3) says: "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

From this constitutional basis, the Indonesian economic system recognizes three main pillars or actors in the economy. The three pillars are State Owned Enterprises (BUMN), Privately Owned Enterprises (BUMS), and cooperatives. When summarized again, in the national economy there are two main groups of economic actors. The two actors are the private sector and the government (including BUMN). Therefore, Article 33 of the 1945 Constitution is the foundation the existence and role of SOEs mandates the goal to be as large as possible people's prosperity to BUMN in carrying out branch management production which is important for the country and affects the livelihood of many people.³

State Owned Enterprises (BUMN) is the designation for state companies in Indonesia. BUMN is a business entity whose capital is wholly or mostly owned by the state through direct participation originating from separated state assets. The definition of BUMN is based on Article 1 point 1 of Law Number 19 of 2003 concerning State-Owned Enterprises (State Gazette of 2003 Number 70, Supplementary Gazette State Number 4297). Normatively, the aims and objectives of establishing a BUMN are based on Article 2 paragraph (1) Law Number 19 of 2003 concerning State Owned Enterprises is: a). give contribution to the development of the national economy in general and state revenue in specifically; b). pursuit of profit; c). carry out public benefits in the form of supply of goods and/or services of high quality and sufficient to meet the needs of the public; d). become initiating business activities which have not been carried out by the private sector and cooperatives; e). participate actively provide guidance and assistance to entrepreneurs from economically weak groups, cooperatives, and public.⁴

BUMN in Article 1 point 1 Law Number 19 of 2003 concerning Business Entities State-Owned is a business entity that is wholly or most of the capital is owned by the state through

² Refly Harun, *BUMN Dalam Sudut Pandang Tata Negara* (Jakarta: Balai Pustaka, 2019).

³ Yeti Sumiyati, "Peranan BUMN Dalam Pelaksanaan Tanggung Jawab Sosial Perusahaan Untuk Meningkatkan Kesejahteraan Rakyat," *Jurnal Hukum IUS QUIA IUSTUM* 3, no. 20 (2013): 468, <https://doi.org/10.20885/iustum.vol20.iss3.art7>.

⁴ Muhammad Insa Ansari, "BUMN Dan Penguasaan Negara Di Sektor Pos," *Buletin Pos Dan Telekomunikasi* 15, no. 2 (2017): 93, <https://doi.org/10.17933/bpostel.2017.150203>.

direct participation originating from separated state assets.⁵ However, in carrying out the duties and authorities of BUMN, BUMN also face various challenges. For example, from the financial and operational performance of BUMN. There are still many SOEs that have not been efficient in running their business. In the banking sector for example. The performance of state-owned banks, which are members of the Association of State Banks (Himbara), continues to experience significant improvement. In fact, during COVID-19, these banks still showed positive performance.

In 2021, state-owned banks have managed to record a net profit of IDR 72.05 trillion. This figure has increased by 78.06% from the previous year (2020) of IDR 40.34 trillion. In detail, the net profit was contributed by the profits of PT Bank Rakyat Indonesia Tbk (BBRI) Rp. 30.76 trillion, PT Bank Mandiri Tbk (BMRI) Rp. 28.03 trillion, PT Bank Negara Indonesia Tbk (BBNI) Rp. 10.89 trillion, and PT Bank Tabungan Negara Tbk (BBTN) of IDR 2.37 trillion. In terms of Net Interest Margin (NIM), state-owned banking companies show positive performance or are relatively superior to domestic private companies that are their competitors.⁶

In terms of the development of global information technology, the competitiveness of SOEs must face new changes that are very drastic and super fast. As a result of the current industrial revolution 4.0 and 5.0. One more consequence of the 4.0 and 5.0 industrial revolutions is the birth of the digitalization process in all fields. This also makes the paradigm of economics and marketing also change. Production, distribution, and marketing must keep up with the digitalization of the world's economy that continues to grow. Of course, change brings something new that is profitable for economic actors. The economy is moving towards digitization by emphasizing the power of technology and information.⁷

The most basic impact and dive into SOEs is the 'disruption' of the conventional corporate paradigm regarding tangible assets. In SOEs, even the matter of tangible assets is very important and very guarded in such a way, there is even a separate regulation. At the level of assets, it can be divided into the first three levels of tangible assets, namely Human Resources (HR), Material (Natural Resources), Money, Method (Method), Machine (Machine), and Market (Shopping Resources / Natural Resources). The two intangible assets are the quality of BUMN and the quality of BUMN work/products. Third, very intangible assets such as the reputation of SOEs in the national and international markets.⁸

In addition, BUMN also experience challenges in terms of regulation. SOEs are regulated by laws and government regulations. In addition, BUMN is also regulated by regulations or ministerial decisions, both the Minister as a sectoral regulator, and the Minister as an organ of BUMN (Ministry of BUMN). This arrangement is often called the "SOE Legal Regime." The regulation of SOEs in a positive law regime causes SOEs to become "over regulated," which causes SOEs to not be agile in competing or SOEs to not

⁵ Muhammad Insa Ansari, "Badan Usaha Milik Negara Dan Kewajiban Pelayanan Umum Pada Sektor Pos," *Jurnal Penelitian Pos Dan Informatika* 8, no. 1 (2018): 2, <https://doi.org/10.17933/jppi.v8i1.119>.

⁶ Kementerian Badan Usaha Milik Negara Republik Indonesia, "Laba Bank Himbara Melesat 78,06%, Erick Thohir: Buah Transformasi," 2022, <https://bumn.go.id/media/press-conference/laba-bank-himbara-melesat-7806-erick-thohir-buah-transformasi>.

⁷ Decky Hendarsyah, "E-Commerce Di Era Industri 4.0 Dan Society 5.0," *IQTISHADUNA: Jurnal Ilmiah Ekonomi Kita* 8, no. 2 (2018): 172, <https://doi.org/10.46367/iqtishaduna.v8i2.170>.

⁸ Erika Puspita Sari, Dwi Cahyono, and Rendy Mirwan Aspirandi, "Nilai Perusahaan Pada Perusahaan Badan Usaha Milik Negara (BUMN): Kajian Sistematis," *Journal of Management - Small and Medium Enterprises (SME's)* 14, no. 2 (2021): 133, <https://doi.org/10.35508/jom.v14i2.4596>.

have a level playing field.⁹ Based on this background, the purpose of this study is to analyze the implementation of BUMN management/ management based on the applicable the laws in an effort to increase the effectiveness and efficiency of sustainable competitiveness performance in carrying out the economic and social mission of the state.

2. METHOD

The method in this study is to use a normative juridical method. Legal research Normative has a tendency to image law as prescriptive discipline in which only see law from the point of view of norms only the norm, which of course is prescriptive.¹⁰ This research will also use literature study. In answering the formulation of the problem to be discussed in this study, a juridical basis and a theoretical basis will be used. the juridical basis used is the 1945 Constitution, Law Number 19 of 2003 concerning State-Owned Enterprises. The theoretical basis used is the Theory of Legal Purposes (Gustav Radbruch).

3. RESULTS AND DISCUSSION

The 1945 Constitution mandates the state to fulfill the prosperity of the people and organizing social welfare in a special section, namely Chapter XIV regarding the National Economy and Social Welfare. However, discourse about how much the state plays its role in this context always be in the room of long debate. Some argue that State involvement in the implementation of these two matters is direct (interventionist), while some others are of the view that the state does dominant role without taking over the entire role.¹¹

The development of social welfare in Indonesia actually refers on the concept of the welfare state. Pancasila as the basis of the state emphasized the principle of social justice and explicitly the constitution in articles 27 and 34 The 1945 Constitution, mandates the government's responsibility in development social welfare. However, the constitutional mandate has not consistently practiced. Both during the New Order era and the reform era

At present, social welfare development is only limited to jargon and not yet integrated with the economic development strategy.¹² In a modern state or welfare state, have obligations to organize the welfare of its people. Thus the government are required to act to resolve all aspects of the problems involved the life of its citizens. The concept of the Welfare State was born in the 20th century as a correction to the development of the concept of the state as a night watchman, symptom economic capitalism that slowly led to its occurrence imbalance in the distribution of the sources of mutual prosperity.¹³

Marshal defined the welfare state as part of a modern society in line with a capitalist market economy and structure democratic politics. According to Esping-Andersen, the welfare state is not something concept that uses a standard approach. The welfare state on generally identified with the characteristics that follow, namely service and social policies provided by the state to its citizens, such as health services, pension benefits, poverty

⁹ Bahrul Ilmi Yakup, *BUMN Dalam Sudut Pandang Tata Negara* (Yogyakarta: Genta Publishing, 2020).

¹⁰ Depri Liber Sonata, "Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum," *Fiat Justisia Jurnal Ilmu Hukum* 8, no. 1 (2014): 25.

¹¹ Bisariyadi, "Pergulatan Paham Negara Kesejahteraan (Welfare State) Dan Negara Regulasi (Regulatory State) Dalam Perkara Konstitusional," *Jurnal Hukum Ius Quia Iustum* 23, no. 4 (2016): 532, <https://doi.org/10.20885/10.20885/iustum.vol23.iss4.art1>.

¹² Winda Roselina Effendi, "Konsep Wellfare State Di Indoneisa," *Jurnal Trias Politika* 1, no. 1 (2017): 172, <https://doi.org/10.33373/jtp.v1i1.722>.

¹³ Djauhari, "Konsep Negara Kesejahteraan Pra Kemerdekaan RI," *Jurnal Hukum* 15, no. 3 (2005).

reduction, transfers income. So that both are between the welfare state and policy are often identified together. But basically it's not quite right because social policy does not have a bi-implication relationship with the state well-being. Social policies can be implemented in the absence of the state welfare, while the welfare state will always need it social policies to support its existence. A country can be classified as a welfare state if: there are four main pillars, namely: 1) social citizenship; 2) full democracy; 3) modern industrial relation systems; and 4) rights to education and the expansion of modern mass education systems. The four pillars must be pursued exist in the welfare state because the state is obliged to treat application of social policy as the conferment of social rights to citizens based on the basis of citizenship and not on basis of performance or social class.¹⁴

Philosophically BUMN was born as form of implementation of state obligations provide welfare to the people. Building an economic structure strong, through a healthy business and ethics, is one way to achieve well-being. Country is not possible directly carry out business activities, Therefore BUMN is the right choice for the state to provide welfare to people through the placement of state capital inside it.¹⁵

In considering the Law. Law Number 19 of 2003 concerning Agencies State Owned Enterprises (BUMN Law) there are 3 (three) things important in relation to the existence of the Agency State Owned Enterprises (BUMN), namely: First, BUMN is one of the actors of economic activity in the national economy based on economic democracy. Second, SOEs have an important role in implementation of the national economy in order to realize the welfare of society. Third, implementation of the role of Owned Enterprises State in the national economy for realizing social welfare not optimal.¹⁶

The role of BUMN in improving people's welfare or social justice is getting stronger. For example, the role of SOEs in infrastructure development has strengthened and reached an optimal point until the era of President Joko Widodo's administration. In the previous government periods, BUMN were deployed to continue the development of infrastructure that connected with small industries, SEZs (Special Economic Zones), tourism areas: also rice fields, plantations, ponds and fisheries in Indonesia, both land connectivity such as motorized vehicles and trains, Sea, air and telecommunications connectivity, not to be left behind, electricity infrastructure which is a fundamental capital towards a modern state is also accelerated.

In the 2014-2018 period, for the development of land connectivity, BUMN has operated 782 km of new toll roads in 2018 from the previously existing 780 km in 2014. For rail facilities, there are around 394.6 km of rehabilitated lines and the construction of 51, 5 km of new railroad tracks. At sea, ship connectivity has increased with the construction of 27 new ports and 100 ships supporting sea highways. Container capacity increased from 21.9 million TEUs (20-foot containers) in 2015 to 28.8 million TEUs in 2018. And dwelling time decreased from 7.36 days (2014) to 3. 12 days (2018). For air connectivity, there are 10 new airports with increasing capacities. Meanwhile in the telecommunication sector, PT Telkom as a state company has built 161 km of fiber optic, 189 thousand BTS, 79 thousand

¹⁴ Ariza Fuadi, "Negara Kesejahteraan (Welfare State) Dalam Pandangan Islam Dan Kapitalisme," *Jurnal Ekonomi Syariah Indonesia* 5, no. 1 (2015): 17, [https://doi.org/10.21927/jesi.2015.5\(1\).13-32](https://doi.org/10.21927/jesi.2015.5(1).13-32).

¹⁵ Muchayat, *Badan Usaha Milik Negara: Retorika, Dinamika Dan Realita (Menuju BUMN Yang Berdaya Saing)* (Surabaya: Gagas Media, 2010).

¹⁶ Muhammad Insa Ansari, "Peranan Badan Usaha Milik Negara Dalam Pembangunan Kemaritiman," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 2 (2019): 187, <https://doi.org/10.33331/rechtsvinding.v8i2.315>.

villages with internet access, and services in 458 cities/regencies. In terms of electricity, from 2015 to 2018 the electrification rate has continued to increase, from 86.2% to 97.2%. Development of electricity infrastructure in the form of power plants with a capacity of 57 thousand MW, 53 km of electricity transmission and a substation with a capacity of 131 thousand MVA.¹⁷

SOEs or state-owned enterprises are business entities that are partially or the entire ownership is controlled by the state. But the country in question in particular. The Unitary State of the Republic of Indonesia. There are also state-owned enterprises in the form non-profit venture. There are two types and characteristics of SOEs, namely having a company type of company and public companies. The characteristics of BUMN are being a resource state income, shares can be owned by the public and so on. Objective the establishment of this non-profit-based state-owned enterprise (BUMN) is to provide goods and services for society. BUMN is present as the embodiment of the government in role as an economic agent. In addition, in the capital of state-owned enterprises, both partially and wholly owned by the Indonesian government.¹⁸

BUMN assets experienced significant growth. In 2015, BUMN assets were recorded at Rp. 5,760 trillion, and at the end of 2019 it was Rp. 8,734 trillion. Over the last five years, BUMN assets have grown 51.63% or an annual average growth of 11%. Next, SOEs are seen from the equity side. Equity is a measure of the net worth of a company. The growth of BUMN equity is an indicator of the government's investment performance in BUMN. As seen in Table 1.1 above, BUMN equity in the last five years has experienced significant growth, namely nearly IDR 800 trillion.

In addition to assets, equity, BUMN profit achievements in the last 5 years in general have also increased, despite experiencing pressure at the end of the fifth year. In 2015, the realized profit of SOEs amounted to IDR 150 trillion and has increased consistently with the highest achievement in 2018 amounting to IDR 189 trillion. In 2019 the number of SOE profits decreased slightly to IDR 152 trillion.

Lastly is capital expenditure (Capital Expenditure/Capex) for SOEs. Capex is a BUMN contribution in supporting national economic growth. In 2015, the aggregate amount of SOE capital spending in a year reached IDR 221 trillion and increased from year to year until the peak in 2019 reached IDR 361 trillion. As a business institution, BUMN capital expenditure also pays attention to the company's financial condition and the returns to be obtained.

The contribution of SOEs as agents of development can be seen in supporting the Government's programs as stated in the 2015-2019 Medium Term Development Plan (RPJMN). There, SOEs have the responsibility of building infrastructure, encouraging financial inclusion, as well as fostering MSMEs (Micro, Small and Medium Enterprises). From infrastructure development the 2015-2019 RPJMN stipulates a number of projects: 1) Ground Connectivity: a) Toll Roads; b) Trans Java Toll Road (Merak-Probolinggo), parts of Trans Sumatra Toll Road, Kalimantan Toll Road, and Sulawesi Toll Road; c) Light Rail Transit (LRT) Jabodebek LRT and South Sumatra LRT; 2) Ocean Connectivity: a) Service of

¹⁷ Kementerian Badan Usaha Milik Negara Republik Indonesia, "Jasa Marga Konsisten Percepat Konektivitas Indonesia," 2020, <https://bumn.go.id/post/jasa-marga-konsisten-percepat-konektivitas-indonesia>.

¹⁸ Ismail Koto, "Peran Badan Usaha Milik Negara Dalam Penyelenggaraan Perekonomian Nasional Guna Mewujudkan Kesejahteraan Masyarakat," in *Seminar Nasional Teknologi Edukasi Sosial Dan Humaniora*, vol. 1, 2021, 459.

6 Link toll roads by PT Pelni; b) Harbor and wharf construction Construction of Belawan Container Terminal Phase II, Construction of Kuala Tanjung port Development of Merak-Bakauheni Executive Pier Development of Labuan Bajo Port Area Development of Kijing Port Development and Development of Kendari New Port Development of Tarakan Port Development of Tenau Kupang Port, Development of Bitung Port, Development Port of Sorong – Seget, Development of Port of Ambon, Development of Port of Manokwari, Development of Merauke Port, and Development of Jayapura Port; 3) Air Connectivity: a) Development of New Yogyakarta – Kulon Progo Airport; b) Development of Ahmad Yani Airport – Semarang; c) Development of Syamsudin Noor Airport in Banjarmasin; d) Bright Indonesia from Sabang – Merauke. Here the role of PT PLN can be seen from the construction of a power plant with 35,000 MW (MegaWatt) and an increase in the national electrification ratio. In 2018, a Power Purchase Agreement (PPA) was signed for 32,932 MW and construction progress has reached 23,425 MW. In 2018 the electrification ratio also increased to 97.2% or an increase of 4.2% from the previous year; 5) Financial Inclusion: The government has a duty to increase financial inclusion and community economic development. The goal is economic equality and increasing the welfare of the Indonesian people. There are several BUMN programs related to this issue. For example, the Present for the Country program that has been implemented by BUMN in the field of financial inclusion and community economic development includes: Microeconomic financing programs, Mekaar (Fostering a Prosperous Family Economy), BUMN Creative House, Rumah Pangan Kita, Farmer's Card, Balkondes, Social Forestry, and Cash Labor Intensive.

SOEs need to improve their management governance, both in terms of internal management and public communication so that they can better deal with various problems in their lives. Good management will increase the company's valuation and the trust of the government and the public. This is because good management and good quality, if not accompanied by good public communication, will not have a good impact on the public.

As stated in the RENSTRA of the Ministry of BUMN 2020-2024, that in carrying out this task, BUMN faces four major problems which are obstacles to optimizing the role and duties of BUMN to the state, namely strategy, governance/regulation, finance and human resources. Here's the explanation: a) Strategy Aspect: strategy implementation at the BUMN level still faces several main challenges, including the first that the upstream-downstream and cross-sectoral development strategy is not yet synergized. Second, there is still competition and duplication of BUMN business in the same sector. Third, the lack of ability to differentiate business (differentiating capabilities) and BUMN innovation to be able to compete in each sector; b) Governance/Regulatory Aspects: The above strategy formulation will not be implemented properly without good governance/regulation support. In this regard, SOEs face several challenges to ensure that governance/regulation is carried out prudently, namely, among others, the complexity and overlap of cross-sectoral regulations, the large number of stakeholders, both external and internal; and ineffective decision making; c) Financial aspect: Another aspect that is no less crucial is finance. A good strategy and optimal governance will not work properly without the support of adequate financial capacity and effective and efficient funding sources. Some of the challenges faced by SOEs related to financial aspects include: first, limited investment capacity, uncompetitive cost of funds; and fundraising which is still limited to traditional instruments; d) Human Resources Aspect: The following are the challenges that will be faced by SOEs related to HR aspects. First, BUMN has not fully become the employer of choice so that it has not been fully able to capture the best talent in society. Second, the development of strategic human resources

which is not output oriented. Third, the HR system and work culture still follow bureaucratic patterns. Fourth, there is a large gap in the management system and quality of human resources among BUMNs. Fifth, there is still a talent shortage, especially at the Board of Directors level.

However, of the four challenges and obstacles, this dissertation focuses on aspects of regulation and governance around BUMN. The duties and responsibilities carried out by BUMN are very large and difficult in the future. On various occasions, legislators in parliament have often voiced the importance of the professional and fast-paced work of SOEs like other private companies. SOEs are even asked to be able to compete with other state-owned enterprises such as Khazanah and Temasek. However, in terms of laws and regulations, the treatment of SOEs and private companies is unequal.

The regulations around SOEs are very fat. Not only in BUMN, the phenomenon of obesity has even become very complex in all lines of national and state life. The quality and quantity of legislative products in Indonesia today are very complex, experiencing obesity and being trapped in a condition commonly called super regulation or hyper regulation. Jimly Asshiddiqie quotes Richard Susskind's opinion in his book "The Future of Law" (1990). He said Indonesia tends to develop into a "hyper regulated society". For this reason, efforts are needed to consolidate, integrate, and even simplify.

Jimly Asshiddiqie said, there are two important agendas in the framework of national law reform, namely the simplification agenda and the agenda for integration or integration of the national legal system.¹⁹ Because of this, it is important to make improvements, especially to regulations that cover SOE and regulations related to BUMN, so that BUMN have the same competitiveness and speed as other private companies, and even then they can compete with and precede SOE in other Southeast Asian countries. as coveted by legislators in Senayan.

For example, SOEs in the Food, Infrastructure and Housing Sector. There are 10 laws surrounding SOE, namely: Law Number 19 of 2003 concerning BUMN, Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 18 of 2012 concerning Food, Law Number 1 of 2012. 2011 concerning Residential Housing, Law Number 38 of 2004 concerning Roads, Law Number 18 of 1999 concerning Construction Services, Law Number 15 of 2006 concerning BPK, Law Number 17 of 2003 concerning State Finance, Law Number 5 of 1999 concerning Anti Monopoly of Unfair Competition, and Law Number 31 of 1999 concerning Corruption Crimes.

Within the ten (10) laws above: *First*, there are around 12 articles that are potentially inconsistent with the norms, principles, indicators above (the Constitution). For example, the BUMN Law (Article 78). There, it needs clear norms related to privatization, that privatization is allowed by selling shares directly to investors. However, said investors here are not explained whether domestic or foreign, as well as restrictions on foreign participation in its management. So the article must be revised so that it prioritizes domestic investors over foreign investors in managing state companies. *Second*, there are as many as 25 articles that have the potential to overlap/disharmonize one another between articles in laws or between articles between laws. For example, the issue of SOE ownership is inseparable from the capital owned by SOE. In article 4 (1) SOE Law No. 19 of 2003, as

¹⁹ Jimly Asshiddiqie, *Hukum Tata Negara Dan Pilar-Pilar Demokrasi* (Jakarta Timur: Sinar Grafika, 2011); Jimly Asshiddiqie, *Omnibus Law Dan Penerapannya Di Indonesia* (Jakarta: Konstitusi Press, 2020).

previously explained, explains that the capital of SOE comes from state finances which is separated from the management of the APBN. *Third*, the effectiveness of regulation implementation. BUMN Infrastructure and energy often receive assignments from the government to build infrastructure and energy, which is not feasible from a business perspective. So Article 2 paragraph (1) of Law no. 19 of 2003 (ius constitutum), where "pursuit of profit" is a measure of company performance, by itself it is not implementative (ius operandum). The measurement that is supposed to be imposed for these SOEs which receive a lot of government assignments is at the level of service (ius constituendum).

Based on this, in terms of regulations, the regulations governing BUMN have not been able to achieve the legal objectives as stated by Gustav through the Theory of Legal Ideals. The number of regulations governing BUMN does not reflect the existence of certainty, justice and legal benefits in it because there can be overlapping regulations between one and another. Therefore, there is a need for a unification of laws which might be made in the form of an omnibus law.

4. CONCLUSION

Public welfare is one of the goals of the Republic of Indonesia as mandated in the 1945 Constitution. BUMN is one of the lines that plays a significant role in realizing general welfare. However, there are various obstacles for BUMN in realizing this prosperity, one of which is related to governance. Governance in question is governance in terms of legal arrangements. Legal arrangements regarding BUMN are still regulated in various different laws. This is of course an obstacle because it is very likely that there will be overlapping or friction between one regulation and another. Therefore, it is necessary to have a legal entity that regulates SOEs which are regulated in a legal form that is an Omnibus Law.

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