



Application of State Financial Law in the Management of State-Owned Enterprises Persero in Indonesia

Kin Isura Ginting

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ir. Sutami street, No. 36 Ketingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126
kinisuraginting@student.uns.ac.id

I Gusti Ayu Ketut Rachmi Handayani

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ir. Sutami street, No. 36 Ketingan, Jebres, Surakarta, Jawa Tengah, Indonesia
57126Ayu_igk@staff.uns.ac.id

Ria Mardiana Yusuf

Fakultas of Economic, Universitas Hasanuddin, Sulawesi Selatan, Indonesia
Pintu Dua street Unhas No.KM.10, Tamalanrea Indah, Kec. Tamalanrea, Kota Makassar,
Sulawesi Selatan 90245
riamard@unhas.ac.id

Abstract—Management of State-Owned Enterprises (BUMN) Persero in Indonesia is an important issue in the context of state financial law. In order to ensure efficiency, transparency and accountability in BUMN management, a deep understanding of the legal aspects governing state finances in this context is required. This research aims to analyze the application of state financial law in the management of BUMN Persero in Indonesia. This aims to provide a more comprehensive understanding of the legal framework that regulates the financial management practices of BUMN Persero as well as to evaluate the level of compliance with existing regulations. This research uses a descriptive qualitative method approach with a normative juridical approach. Data collection was carried out mainly through document study techniques (library research), referring to various laws, regulations and related legal documents that regulate the management of state finances and state-owned companies in Indonesia. The research results show that the application of state financial law in the management of BUMN Persero in Indonesia faces various challenges and complexities. Even though the existing legal framework provides a clear basis, several discrepancies are still found between actual financial management practices and the provisions regulated in state financial law. Thus, this research contributes to the understanding of compliance and effectiveness in the application of state financial law in the management of BUMN Persero in Indonesia.

Keywords—State Financial Law; BUMN, Persero.

I. INTRODUCTION

The creation of State-Owned Enterprises (BUMN) is one method the state contributes to enhancing the wellbeing of its inhabitants. In addition to having wider goals and functions that are in line with government aims, such as enhancing community welfare and promoting national economic progress, BUMN is not exclusively focused on producing profits like private corporations are. Consequently, BUMN has emerged as a crucial instrument for the government to execute economic strategies that give precedence to the well-being and concerns of the community at large.

Law Number 19 of 2003 respecting State-Owned Enterprises (henceforth referred to as the BUMN Law) regulates Persero as an independent legal entity distinct from the state, which serves as its owner. Persero is a legal entity and cannot directly think or behave like a human. As a result, the Board of Directors, who are in charge of formulating strategy, putting policies into effect, and performing other operational duties on behalf of the Persero, assumes the responsibility of the Persero in managing and operating BUMN. This emphasises how crucial the Board of Directors' responsibility is in making sure that the Company's goals and the measures implemented to guarantee its development and sustainability are consistent.

The definition required by the BUMN Law states that the government must participate in capital for the establishment of a State-Owned Enterprise (BUMN) in full or to the extent of at least 51% (fifty-one percent), which must originate from state assets set aside specifically for that purpose. Put another way, the money utilised to create BUMN came from state assets that were especially designated for that purpose. This clause demonstrates

that BUMN is essentially a state owned and regulated entity whose primary goal is to maintain government control over businesses that are strategically important to the interests of the country and the well-being of society at large.

A Persero is a State-Owned Enterprise (BUMN) in the form of a Limited Liability Company (PT) with capital divided into shares, subject to the condition that the Republic of Indonesia possess a minimum of 51 percent of the shares, as stated in Article 1 number 2 of the BUMN Law. To turn a profit is this Persero's primary goal. This clause states that Persero is a corporation that the government owns the majority of. Its activities are focused on turning a profit, but it also acknowledges its duty and responsibility for the welfare of society and the interests of the country as a whole.

Strict adherence to the legal and good corporate governance principles is required of implementers, particularly in light of the substantial assets handled by State-Owned Enterprises (BUMN) in Indonesia, which amount to 3,500 trillion rupiah. Unfortunately, BUMN management frequently disobey or violate the law's set regulations as well as the fundamentals of sound corporate governance. This could have a negative effect on the state's and society's overall interests in addition to posing a risk to accountability, integrity, and transparency in the management of state assets.

Directors may face legal repercussions in line with Law No. 31 of 1999 about the Eradication of Corruption Crimes as a result of taking risks while making investment decisions that could endanger state resources. This law places a strong emphasis on the need for the government to intervene and punish those who commit crimes involving corruption, even when it comes to managing state finances. Directors who participate in financially disastrous investment decisions may be held accountable for corrupt practices that jeopardise public money and may face punishment under relevant laws. Therefore, in order to prevent financial losses for the state and adhere to the principles of good governance, directors must carefully analyse every investment decision they make.

The legal obligations of directors are affected by the overlap between the problems of corporate losses and state losses. Directors' freedom to make business decisions will be restricted if losses in State-Owned Enterprises (BUMN) are only treated as state losses. This is because directors may be concerned that their decisions could result in losses to the BUMN, which would then be treated as state losses and possibly become the focus of a criminal investigation into corruption. This circumstance urges directors to exercise caution when making business decisions in order to minimise legal risks and to make sure that the choices made are in the best interests of the BUMN and in compliance with all relevant laws.

The core role of State-Owned Enterprises (BUMN) as an integral part of the state in the management of crucial resources for the national interest and satisfying the fundamental needs of the entire community may be hidden if losses from BUMN are only recognised as losses in the business sector. BUMN has a strategic obligation to provide essential services and infrastructure, which not only have a substantial economic impact but also make a large social contribution, as an organisation that represents the state. If losses are only seen as a business issue, attention may be diverted from BUMN's primary responsibilities for preserving the community's access to vital services and for preserving economic stability.

II. LITERATURE REVIEW

A. State-Owned Enterprises (BUMN)

The Bureaucratic Company (Perjan) form is no longer included in the BUMN category following the modification of Law Number 9 Prp. 1969 regulating Forms of State Enterprises. BUMN is separated into two forms: Public firms (Perum) and firms (BUMN Persero) [1]. This modification was superseded by Law Number 19 of 2003 concerning BUMN, which aligns the two forms of BUMN that are still in use today and removes the Job Company category, reflecting changes in the structure and classification of State-Owned Enterprises.

Legal subjects are people or things that fall under the legal system and have rights and obligations. They fall into two primary categories: persons (*natuurlijke persoon*) who are human and legal entities (*rechts persoon*). Although people can naturally take legal action on their own behalf, legal entities did not exist in any tangible form prior to human creation. This indicates that a legal entity undergoes a creation and formation process that is governed by law before it can be considered a legitimate legal entity that exists independently of the people who form it [2].

BUMN Persero must adhere to formal and significant requirements in order to be recognised as a private legal company. The formal criteria pertain to the prerequisites that need to be fulfilled for a legal entity to be granted status. These requirements are often governed by the laws that govern the specific type of legal body in question. This covers the administrative processes.[3], the paperwork needed and the actions needed to become a legal corporation. In order to confirm the legality and legitimacy of the private legal entity in the context of BUMN Persero, adherence to certain formal norms is crucial.

To ensure that the welfare of the populace aligns with the values of the Constitution, the State plays a crucial role in implementing many initiatives aimed at achieving general prosperity. These initiatives are carried out by the government through tangible measures such as programmes, policies, and direct interventions that are

designed to raise the standard of living in society at large. Thus, it is highlighted how crucial it is for the government to take the lead in developing and carrying out a number of calculated measures to increase people's welfare and pleasure.

B. State finances

According to Harun Al-Rasyid, the concept of state finances is narrow. He maintained that the word "state finance" only had a definite meaning in the framework of article 23 paragraph 5 of the 1945 Constitution, prior to its revision. Al-Rasyid clarified that this perspective was founded on his methodical approach, which connected paragraph (5) with paragraph (1) of the corresponding article—which governs the State Revenue and Expenditure Budget (APBN) in particular. Thus, this perspective holds that state finances within the context of this article are more closely tied to issues pertaining to the APBN than they are to features of state finances generally.

The focus of this strategy is on how state finances are tailored to "the purpose or function of the relevant regulatory provisions in the context of today's society." This suggests that this strategy places a strong emphasis on the importance of comprehending the purpose and goals of pertinent legislation in light of the demands and dynamics of contemporary society. As a result, in order to manage state finances, it is necessary to modify and review current legislation in order to satisfy needs and expectations that are pertinent to the status of society today.[4].

State finances are defined as the total wealth of the state, which includes all assets and related liabilities, as well as assets managed by various officials and institutions, including the government, as well as assets managed by government banks, both in the context of public and civil law. This definition highlights the fact that state finances include all assets and liabilities that are the responsibility of the state, whether managed by the government or by state banks, in various existing legal statuses. It is based on several statutory regulations, such as Law Number 17 of 1965.

Section 1 of Law Number 17 of 2003 defines state finances as all state rights and obligations that are monetary in nature, as well as all forms of state ownership that are associated with the implementation of these rights and obligations. This means that the concept of state finance is not restricted to the monetary dimension alone, but encompasses all types of rights and obligations that are monetary in nature as well as various types of assets that belong to the state in the context of implementing these rights and obligations.

III. METHOD

The method used in this research is a descriptive qualitative method with a normative legal approach. In this research, the sources of secondary legal materials that will be utilized include various types, such as scientific publications, research results, and literature relevant to the research focus on State Financial Law in the Management of State-Owned Enterprises, Persero. Moreover, research will be strengthened by the use of tertiary legal materials, which act as additional supporting information to strengthen data from primary and secondary legal materials. This type of tertiary legal material can include data from various sources such as newspapers, journals, dictionaries, encyclopedias, and other relevant information. By using these two types of legal materials, it is hoped that research can find a solid basis and comprehensive understanding for in-depth analysis. Data collection was carried out through literature studies using documentary techniques, where data was collected from archival research and literature studies available in secondary data. Data analysis is carried out qualitatively, which will be expressed in narrative form by describing and telling in detail the findings and analysis obtained from the library materials.

IV. RESULTS AND DISCUSSION

A. Wealth Management of State-Owned Enterprises/Persero

The Persero organ, which is made up of the GMS, directors, and commissioners, is responsible for overseeing the entire management of BUMN/Persero, including the management of its assets. The establishment of BUMN/Persero asset management policies and plans is largely dependent on these corporate organs. The GMS has the power to set broad policies and oversee business operations on behalf of shareholders. Commissioners oversee the performance of directors and make sure that wealth management is done effectively and in compliance with set standards. Directors are in charge of overseeing daily operations, which includes wealth management. In order to efficiently and successfully accomplish corporate goals, management of BUMN/Persero assets is therefore a crucial component of the management process overseen by the firm's organs.[5].

As a result, BUMN/Persero wealth management has a strong aspect in the context of civil law, with the state acting as a shareholder. There are three essential aspects related to this: first, the Persero's assets are considered as a separate legal entity; second, limited liability related to the number of shares owned; and third, the rights of the state as a shareholder. In other words, the management of BUMN/Persero assets is not only dependent on

public law principles, but also takes into account civil law principles regarding the existence and ownership of the legal entity.[6].

When it comes to managing the company's assets, there are unambiguous limitations that mean the state can no longer regard the assets it includes as its absolute ownership. However, the existence of civil procedures limits ownership; that is, even though the state includes its capital, its rights and obligations are governed by civil law procedures, which treat the company's assets as a separate legal entity with limited rights and obligations in compliance with applicable regulations. As a result, when it comes to managing the company's assets, the state is not in complete control over the assets but rather is constrained by laws that govern ownership in the domain of civil law.

As a type of BUMN in the form of a company, Persero is confirmed by Article 11 of Law Number 19 of 2003 concerning BUMN to be subject to all the principles and rules governing limited liability companies as regulated in Law Number 1 of 1995 concerning Limited Liability Companies. This law was then revised with the implementation of Law Number 40 of 2007 concerning Limited Liability Companies. Accordingly, Persero must abide by the regulations governing limited liability companies, which have an impact on Persero's authority, governance, and structure as a crucial component of BUMN. This highlights the significance of Persero adhering to applicable regulations in order to perform functions and activities as a separate legal entity.[7].

The state of BUMN Persero's finances is still being discussed in Indonesia as of right now. The fact that multiple laws that govern this subject overlap gives rise to this issue. This circumstance is the main topic of discussion among stakeholders and raises doubts about the state's financial situation within the context of BUMN Persero. It will take more efficient law-coordination to get rid of this overlap and make it clear how the state finances in BUMN Persero are doing.

After the Constitutional Court reviewed Article 2 letters g and i of the State Finance Law and published Decision Number 48/PUU-XI/2013, the debate reached illumination. In the context of funding distribution and the power of state financial institutions, the interpretation and implementation of Article 2 letters g and i were previously a matter of debate. This decision clarifies these issues. This ruling of the Constitutional Court has a major influence on the execution of more equitable and quantifiable state financial policies by providing stronger and more precise guidance on the boundaries and protocols that apply to the administration of public funds.[8].

The petition was firmly denied by the Constitutional Court in this ruling, citing the lack of a direct transfer of rights in the use of state assets as capital in State-Owned Enterprises (BUMN). The Constitutional Court therefore stressed that there was no formal transfer of rights from the state to BUMN or Regional Owned Enterprises (BUMD) as a result of this investment. Thus, the legal status and position of state assets in the context of collaboration with BUMN are clarified. This indicates that the Constitutional Court upheld the position of state assets as assets that remain under state control, even when employed as capital in state-owned firms.

As required by Article 33 of the constitution, BUMN represents the state's interests in pursuing national economic development as a means of achieving prosperity for its population. State funds that are directed towards BUMN are therefore not BUMN property; rather, they are state property that needs to be closely watched over and maintained. In this instance, monitoring the assets invested in BUMN is crucial to ensuring that their usage is in line with the objectives of both societal welfare and national economic development. Therefore, the goal of overseeing state assets housed in BUMN is to guarantee that their use and administration serve the interests of both the state and society.

Divergent views on this issue are, at the very least, predicated on a number of clauses that declare funding directed towards BUMN Persero to no longer be regarded as state funding. A few of these clauses deal with different topics, such as the establishment of the BUMN Persero legal entity, which establishes a legal entity apart from the state, the autonomous financial management of BUMN Persero, which is distinct from the state budget, and the authority of BUMN Persero to conduct business without direct intervention from the state. These clauses provide a legal foundation for varying opinions about BUMN Persero's financial situation, supporting the claims of those who contend that the company's assets are no longer regarded as state property.[9].

According to Article 11 of the State-Owned Enterprises (BUMN) Law, state-owned enterprises are subject to the same regulations as other limited companies in Indonesia, as stipulated in Law Number 1 of 1995 concerning Limited Liability Companies. This means that state-owned enterprises must abide by all legal regulations that apply to limited liability companies, including those pertaining to the company's formation, management, and governance. As a result, Article 11 of the BUMN Law establishes a clear legal basis for the regulation of state-owned enterprises within the legal framework that is applicable in Indonesia.

Article 1 number 1 and number 10 of the State-controlled Enterprises (BUMN) Law, which governs that BUMN is a business entity whose capital is completely or primarily controlled by the state, are explained in Constitutional Court Decision Number 77/PUU-IX/2011. by direct involvement coming from assets owned by the state that are divided. The ruling so affirms that BUMN is a business whose substantial ownership is derived from direct state investment, which is derived from state assets that are kept apart from private wealth or other

assets. This offers a clearer explanation of the type and ownership of capital in BUMN and a strong legal foundation for government control and regulation of BUMN.

A key point raised by the Supreme Court's Fatwa WKMA/Yud/20/VII/2006 was the significance of having specific legislation governing State-Owned Enterprises (BUMN). The Supreme Court clarified in the second point of the ruling that the legislation expressly stipulates that BUMN capital originates from state assets that have been taken out of the State Revenue and Expenditure Budget (APBN). Aside from that, BUMN's development and administration are founded on the ideas of sound business management rather than the APBN method. As a result, this Supreme Court fatwa highlights that BUMN must be handled in line with the concepts of effective and long-term corporate management, has independent status and management mechanisms, and is distinct from the state financial system. This offers a clearer picture of BUMN's standing in Indonesian business management and legal circles.

The Limited Liability Company (PT) Law's Article 7 Paragraph 7 Letter A outlines how the state manages its finances, which are expressed in its ownership of shares. According to the article's description, "Persero" refers to a State-Owned Enterprise (BUMN) business that is governed by the BUMN Law, is formed like a firm, and has capital divided into shares. This justification highlights how legal requirements that define the circumstances and procedures surrounding the management of state share investments influence state financial governance in the form of share ownership in these businesses. Therefore, the PT Law's Article 7 Paragraph 7 Letter A offers a clear legal foundation for the control and administration of state finances in the form of BUMN shares.

Three main factors influence the professionalism of State-Owned Enterprises (BUMN): first, a company's legal status has a major impact on how SOEs are regulated and operate; second, BUMN's independence in making strategic and operational decisions allows them to face changes in the market and business environment more adaptably; and third, Persero's independence as a business entity has an important meaning in ensuring skilled management and maximum growth in accordance with its business mission. In the absence of these three elements, BUMN is more likely to become bureaucratic and less effective since it is dependent on outside interference, which can impede internal innovation and the decision-making process. Third, freedom from external interference guarantees that BUMN can conduct its business operations without undue pressure from outside parties.

As a result, skilled management can result in sustainable growth and the achievement of predetermined business goals. In this context, maintaining the independence of SOEs is not only important to ensure effective operational performance but also to ensure their sustainable and positive contribution to the country's economy. Furthermore, maintaining BUMN's independence highlights the importance of quality and open governance.

B. The Position of the State in the Management of BUMN

The choice of a Limited Liability Company as the legal entity for BUMN Persero's management implies that BUMN Persero will have to abide by all the regulations set forth in the Limited Liability Company regulations in order to preserve business continuity. This includes following all applicable legal provisions for limited liability companies, including those pertaining to the establishment, operation, and accountability processes of the company. Consequently, in its capacity as the chosen legal entity, BUMN Persero will have to conduct its business in accordance with the norms and governance specified in the Limited Liability Company regulations in order to ensure appropriate and sustainable compliance in operating its business.

When State-Owned Enterprises (BUMNs) were introduced as a means for the state to carry out the vision and mission of community welfare, they encountered corporate dynamics that were uncharted territory for Limited Liability Company regulations. This led to a rise in complexity in the management of BUMNs as Persero BUMNs. BUMN Persero is an organisation that seeks to enhance community welfare and public service efficiency. As such, it must conduct its business by taking into account a variety of interests from the market and the government. This calls for abilities in strategic decision-making to maintain a balance between corporate profits and the public interest, as well as flexibility and adaptability in the face of changes in a dynamic business environment. As a result, BUMN Persero's management necessitates a thorough strategy focused on attaining sustainable community welfare[10].

State revenue and expenditure budget (APBN) assets that have been segregated from state assets provide the initial capital of State-Owned Enterprises (BUMN). Subsequently, the government uses these divided assets as capital in Persero (Limited Liability Company), Public Company (Perum), and other limited companies. Funds from the APBN are being allocated to BUMN in order to support the organization's operations and growth, bolster its financial structure, and ultimately increase BUMN's contribution to public service delivery and the growth of the country's economy. Therefore, the government's commitment to promoting the development of infrastructure and public services through investments in state-owned businesses is demonstrated by the utilisation of funds from state assets that have been split to form BUMN.[11].

"Separated" refers to the process of taking state assets out of the State Revenue and Expenditure Budget (APBN) in order to use them as capital included by the state in State-Owned Enterprises (BUMN). The goal of

this process is to ensure that BUMN's development and management are guided by the principles of healthy company management rather than the APBN. It also signifies a change from government budget-focused management to a more independent and efficient management that emphasises sustainable and optimal business principles. This step reflects efforts to enhance BUMN's performance and make sure that its operations adhere to the company's high management standards.[12].

The Law essentially states that BUMN Persero has to operate under the same corporate legal guidelines that are applicable to other private companies. Nonetheless, certain policies in Indonesia continue to view BUMN as an essential component of the public sector and as having a direct bearing on state finances. BUMNs are required to conduct their business with the same professionalism as private companies, but they are nevertheless bound by laws that specify their place in the public sector and control the extent to which the government can manage and oversee them. As a result, there is a complicated interplay between the desire for BUMN to function as independent companies and the understanding that they are an integral component of the public sector that is intimately related to state funding.

BUMN's authorization as a component of the state financial system comes from a number of agencies, including the President, the DPR, the Minister of Finance, the Minister of BUMN, and related Technical Ministers. It also comes from supervisory agencies like the BPK, BPKP, and even the Corruption Eradication Committee. This authority is responsible for a number of things, including the formulation of strategic policies and the oversight of BUMN administration and operations. The President has the power to establish policies and oversee the management of BUMN directors, however the DPR is involved in approving BUMN strategic policies and budgets. According to their respective areas of jurisdiction, pertinent ministries including the Minister of Finance and the Minister of BUMN are in charge of managing and overseeing BUMN. Conversely, oversight organisations including the BPK, BPKP, and KPK are in charge of monitoring and auditing BUMN's funds and operations to guarantee responsibility, openness, and adherence to relevant laws. Thus, BUMN's management is a shared duty of several authority institutions as it is a component of the state financial system[13].

There are situations where the state's engagement in BUMN management hinders the BUMN's ability to advance. Though the government plays a significant role in monitoring the survival of BUMN, this involvement is frequently motivated by interests at odds with the BUMN's established course of development. For instance, BUMN management's effectiveness and concentration may be affected if the political or financial interests of particular people or organisations take precedence. As a result, political or personal factors may have an impact on strategic decisions, which may not always be focused only on the best interests of the organisation or on optimal business considerations. In order to ensure that BUMN keeps moving in line with the company's vision and goal over the long run, it is crucial to maintain a balance between effective government control and operational independence.

According to Riant Nugroho, Peter Drucker advocated for the government to stay away from topics outside of its purview and concentrate on its primary responsibilities. Drucker highlighted that the government shouldn't have to be actively involved in every step of the process or activity; instead, its job should be restricted to setting the overall direction and managing the situation. Using the analogy of a "rower" who needs to be intimately involved in every activity, he said the government should function as a "driver" who offers direction and vision. This way of thinking highlights how crucial it is for the government to concentrate on the primary tasks for which it is accountable in order to perform these tasks more successfully and efficiently.

In State-Owned Enterprises (BUMN), where the Board of Directors frequently faces obstacles in enforcing corporate policy, centralised variables have a tremendous impact on management. This means that higher-ranking entities, like the government or the Board of Directors, which represents the government's interests, frequently provide guidance and oversight for BUMN's strategic and operational decisions. Because they must take centrally decided policies into consideration, BUMN Directors may find it difficult to make decisions with flexibility and originality. Therefore, centralised elements significantly affect BUMN management dynamics, which affects the organization's capacity to swiftly and effectively adjust to changes in the market and business environment.

The Board of Directors is designated by the regulations governing Limited Liability Companies as a reliable group entrusted with controlling BUMN through executive activities. In actuality, nevertheless, the centralised bureaucratic paradigm forces BUMN Directors to participate as a part of the current governmental framework. The influence of a centralised bureaucratic environment frequently limits the authority of the Board of Directors, despite their role in executive decision-making within the company. This is because the Board must take into account the direction or interests of parties with higher authority, such as the government or related institutions. As a result, even while the Board of Directors represents BUMN formally, in reality, they are still constrained by the nature of the current political system and bureaucracy.

State-Owned Enterprises (BUMN), which should grow through an LLC structure in the hopes of becoming a more autonomous corporate entity and free from the tyranny of centralised bureaucracy, have seen their innovation and professionalism stifled by the centralization policy. BUMN's capacity to innovate and swiftly adjust to changes in the business environment has been impeded by this strategy. Although the form of Limited Liability Companies offers a framework that permits BUMNs to be managed with flexibility and efficiency,

centralization strategies that prioritise authority control and direction tend to curtail BUMNs' independence. Due to their ties to a system that restricts their individuality and creativity, SOEs find it challenging to realise their full potential. Therefore, in order to improve BUMN's performance and competitiveness in meeting global challenges and expanding the nation's economy, reforms that support independence and flexibility in the management of BUMN are crucial.

V. CONCLUSION

In the context of managing State-Owned Enterprises (BUMN), there are a number of factors that influence the dynamics and effectiveness of their operations. First, there is an effort to separate state assets from the State Revenue and Expenditure Budget (APBN) to be used as initial capital for BUMN, which shows the government's commitment to supporting the development of infrastructure and public services. However, although BUMN is regulated by Limited Liability Company regulations which should provide independence, centralized factors in the bureaucratic system tend to limit the creativity and professionalism of BUMN. This is reflected in the state's involvement in managing BUMN, where centralized policies reduce the flexibility and innovation that should be the hallmark of BUMN in carrying out its business activities. Even though BUMN directors act as trustees in managing the company, the influence of a centralized bureaucratic system often makes them indirectly involved in the dynamics of established government. Therefore, it is important to carry out reforms that encourage independence and flexibility in the management of BUMN to increase the competitiveness and contribution of BUMN to the country's economy in a sustainable manner.

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