

Normative Conflict Between the State Finance Law and the State-Owned Enterprises Law Regarding the Status of Separated State Assets

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ABSTRACT

This study aims to examine the contradiction between the legal perspectives in Law No. 17/2003 concerning state finances and Law No. 19/2003 concerning State-Owned Enterprises (BUMN) regarding separate state assets, and to investigate the legal ramifications of these contradictions on the responsibility and transparency of information in BUMN governance. This study employs normative legal research methodology using statute approach, conceptual approach, and analytical approach. Legal materials consist of primary legal materials including relevant laws and regulations, and secondary legal materials from academic literature, legal books, and scientific journal articles. The research findings indicate fundamental legal perspective differences between the two laws regarding separated state assets. The State Finance Law adopts a broad conception that separated state assets remain part of state finance under public law regime, while the SOE Law adopts a strict separation principle where such assets are no longer part of state assets but become SOE assets under corporate accountability system. This normative conflict creates contradiction in terminis that weakens the application of *lex specialis derogat legi generali* principle. The legal implications include the creation of a dual accountability system that burdens SOE management, confusion regarding transparency standards between corporate and public transparency, and ambiguity in corporate governance authority and responsibilities that generates high regulatory risk for SOE managers.

Keywords: *State-Owned Enterprises, State Finance, Legal Protection, Normative, Conflict.*

1. INTRODUCTION

The national economic system is an essential pillar in government administration, oriented toward achieving public welfare as enshrined in the Preamble to the 1945 Constitution of the Republic of Indonesia. To actualize vital sectors that significantly influence society's existence, government participation is crystallized, among others, through the establishment of State-Owned Enterprises (BUMN), which serve a dual function as business entities and as instruments for implementing government policies to support national development and contribute to state revenue [1], [2].

The establishment of BUMN is codified under Law No. 19/2003 on State-Owned Enterprises. This regulation emphasizes that BUMN's assets originate from capital injections provided by the government, derived from state-owned wealth that has been separated. This separation results in the transformation of such assets, meaning they are no longer considered components of the State Budget (APBN), but instead become corporate property under BUMN as private legal entities. The principle of separating state assets in BUMN is intended to provide flexibility for company management in line with efficient and transparent business practices. Nevertheless, state finances also include state wealth that has been separated into state or regional enterprises. This provision creates a significant normative conflict because, on one hand, such assets are owned by BUMN as private legal entities, while on the other, they are still categorized as part of state finances and thus remain subject to the public law regime [3], [4].

In the context of regulatory hierarchy, Astariyani asserts that “delegating regulatory authority to gubernatorial regulations must ensure benefits and fairness in its implementation, especially when managing state assets that have a direct impact on public welfare.” This underscores the importance of harmonization within the Indonesian legal system, particularly in the management of state assets [5].

This normative conflict does not only have theoretical implications but also poses serious practical consequences. One manifestation of this issue concerns the authority of the Audit Board of Indonesia (BPK) to oversee and audit BUMN finances. In practice, BPK conducts audits on BUMN similarly to other state institutions, whereas, as private entities, oversight of BUMN—particularly those established as Persero (limited liability companies)—should ideally be carried out by public accountants appointed through the General Meeting of Shareholders (RUPS). Such practices create legal uncertainty in BUMN management and may hinder the companies’ operational efficiency.

Empirical studies by [6] on BUMN management indicate that regulatory inconsistencies have caused overlapping supervisory authorities, resulting in weakened governance of state-owned companies. Similarly, Emmanuel Kevin and Martika Dini Syahputri argue that separated BUMN assets remain subject to BPK audits, and even financial losses are often interpreted as state financial losses. This interpretation potentially blurs the distinction between private and public entities and directly impacts criminal liability in the context of corruption cases.

[7] reveals that the dualism between the State Finance Law and the BUMN Law has created a “grey area” in managing BUMN finances, potentially leading to multidimensional legal issues. However, this study did not comprehensively analyze the legal implications of differing views on the status of separated state assets, particularly regarding accountability and transparency in managing BUMN Persero. [8] also identify that the normative conflict between the State Finance Law and the BUMN Law has caused disharmony in Indonesia’s legal system, which not only threatens legal certainty but also potentially reduces BUMN’s competitiveness in the global market. However, this study remains limited to theoretical discussions and has yet to explore concrete solutions to address these problems.

Based on the identification of previous studies, there exists a significant analytical gap in examining normative harmonization between the State Finance Law and the BUMN Law. This research offers novelty by providing a comprehensive analysis of the differing legal perspectives between the two laws regarding the status of separated state assets and their legal implications for accountability and transparency in BUMN management. The urgency of this study is further heightened given BUMN’s strategic role in the national economy, where legal uncertainty in its management may have systemic impacts on the country’s economic stability [9]–[11].

This normative disharmony not only undermines the principle of *lex specialis derogat legi generali* but also threatens financial accountability and transparency within BUMN, especially those structured as Persero. Therefore, this research is crucial in identifying normative inconsistencies and formulating legal harmonization recommendations to ensure legal certainty, efficiency in managing state finances, and legal protection for BUMN management.

Based on this background, this study examines two main research questions. First, how do the differing legal perspectives between Law No. 17/2003 on State Finance and Law No. 19/2003 on State-Owned Enterprises affect the status of separated state assets? Second, what are the legal implications of these differences for accountability and transparency in BUMN management? These

issues are analyzed using a normative juridical approach through comparative analysis of statutory provisions and an examination of BUMN management practices in Indonesia.

2. METHODS

This normative legal research aims to examine the existence of normative conflicts within statutory regulations concerning the separation of state assets in State-Owned Enterprises (BUMN). This type of research was chosen because the focus of the study originates from the ambiguity of norms and inconsistencies between the State Finance Law and the State-Owned Enterprises Law.

The approaches used in this research are the statutory approach, the conceptual approach, and the analytical approach. The statutory approach is employed to examine and analyze relevant regulations, particularly the legal basis provided by Law No. 17/2003 on State Finance and Law No. 19/2003 on State-Owned Enterprises. The conceptual approach is used to understand juridical concepts related to separated state assets, the legal status of BUMN, and the principles of financial accountability and transparency from the perspective of constitutional law and corporate law. Meanwhile, the analytical approach is applied to critically explore and analyze the normative conflicts that arise between these two laws.

The hermeneutic legal approach, as highlighted by [7] in the context of regulatory reform at the village level, emphasizes that “a systematic interpretation of legal norms requires a deep understanding of the social context and the legal objectives intended to be achieved.” This approach is highly relevant for analyzing the normative conflicts between the State Finance Law and the State-Owned Enterprises Law.

The sources of legal materials in this research consist of primary and secondary legal materials. Primary legal materials include statutory regulations governing state finance and BUMN, particularly Law No. 17/2003 on State Finance, Law No. 19/2003 on State-Owned Enterprises, and their implementing regulations. Secondary legal materials are obtained from academic literature, law books, articles in national and international scientific journals, theses, dissertations, and other relevant and up-to-date scholarly publications that discuss normative conflicts, state finances, BUMN assets, and their legal implications for financial accountability and transparency.

The technique used to collect legal materials is a document study through inventory, identification, and classification of all legal materials relevant to the research problems. Primary legal materials are collected through searches in statutory regulation databases, while secondary legal materials are gathered through literature studies from various academic sources.

The method of legal material analysis applied in this study is qualitative analysis using systematic and conceptual interpretation techniques. Systematic analysis is carried out by interpreting legal norms in relation to the overall legal system, while conceptual analysis is used to understand the meaning and legal concepts contained within the statutory provisions. The entire analytical process is conducted deductively and inductively to produce scientifically accountable conclusions.

3. RESULTS AND DISCUSSION

3.1 Differences in Legal Perspectives on Separated State Assets in State-Owned Enterprises (BUMN)

1. The Concept of Separated State Assets under the State Finance Law

Law No. 17/2003 on State Finance adopts an expansive approach to the conceptualization of state finances. Article 2 letter (g) explicitly stipulates that state finances include “state assets separated into state/regional enterprises.” This provision indicates that the legislator adheres to the philosophy that even though state assets have been separated and transferred to BUMN, these assets are still classified as an integral part of state finances and thus remain subject to the public law regime.

This conception is based on the understanding that the state, as the capital owner, cannot completely relinquish responsibility for managing assets derived from the State Budget (APBN), even though those assets have been transferred to corporate entities. This aligns with the view that BUMN functions as a policy instrument of the state that cannot be separated from the constitutional mandate to achieve public welfare.

The implication of this conception is that all BUMN financial activities, including asset management, revenue, and operational expenses, remain under the supervision of the state finance regulatory framework. Consequently, the authority to audit and supervise BUMN's financial management lies with the Audit Board of Indonesia (BPK), as stipulated under Article 6(1) of Law No. 15/2006 concerning the Audit Board of Indonesia.

2. The Concept of Asset Separation under the BUMN Law

In contrast to the State Finance Law, Law No. 19/2003 on State-Owned Enterprises adopts a definitive doctrine of asset separation. Article 4(1) of the BUMN Law states that "the capital of BUMN comes from state assets that have been separated," while Article 4(2) explicitly provides that "the separated state assets are no longer part of the state's assets accountable under the state wealth responsibility system, but instead become BUMN assets that must be accounted for under the corporate responsibility system."

This concept reflects a corporate-oriented perspective, viewing BUMN as business entities that must be managed based on modern corporate principles. The separation of assets is intended to provide greater flexibility for BUMN management in making business decisions without being constrained by the rigid bureaucratic procedures applicable to state financial management.

This principle of separation aligns with the separate legal entity theory in corporate law, where a corporation possesses a distinct legal personality separate from its shareholders. Accordingly, BUMN, as legally incorporated entities, own assets, rights, and obligations that are independent of the state as the shareholder, even though the state retains control through its shareholding structure.

3. Analysis of the Normative Conflict Between the Two Laws

The conceptual disparity between the State Finance Law and the BUMN Law creates a fundamental normative contradiction. This contradiction can be classified as *contradictio in terminis*, where two equally binding legal provisions regulate the same subject matter but produce opposing legal consequences. On one hand, the State Finance Law stipulates that separated assets remain part of state finances, while on the other, the BUMN Law asserts that these assets are no longer classified as state assets.

This normative conflict becomes even more complex when analyzed from a legal principles perspective. Astariyani, in her study on preventive and evaluative regulatory mechanisms, states that "analyzing regulatory and legislative reforms in Indonesia requires a comprehensive approach to identify and resolve normative inconsistencies." This statement reinforces the argument that the conflict between the State Finance Law and the BUMN Law necessitates comprehensive legal reform.

According to the principle of *lex specialis derogat legi generali*, the BUMN Law should take precedence as the special regulation governing BUMN, whereas the State Finance Law functions as the general regulation governing state finances overall. However, in practice, provisions of the State Finance Law are often used as the legal basis for supervising BUMN, illustrating the weak application of this fundamental legal principle.

This normative conflict also reflects a difference in paradigms regarding the role and function of BUMN. The State Finance Law prioritizes public accountability and state oversight, whereas the BUMN Law focuses on efficiency and corporate competitiveness. These divergent paradigms create legal uncertainty that can hinder BUMN's performance in carrying out its business functions effectively.

3.2 Legal Implications for Accountability and Transparency in BUMN Management

1. Impact on BUMN Accountability Systems

The normative contradiction between the State Finance Law and the BUMN Law directly affects the accountability mechanisms within BUMN governance. The ambiguity surrounding the legal status of BUMN assets has resulted in the creation of a dual accountability system, which carries the risk of overlapping authorities and responsibilities.

In the context of power distribution, Astariyani analyzes that “comparative studies on constitutional power distribution highlight the importance of clear authority allocation to prevent overlaps that may create legal uncertainty.” This analysis is highly relevant to the problem of dual supervisory regimes in BUMN management.

On one hand, under the BUMN Law, the accountability of BUMN asset management follows a corporate accountability system, audited by independent auditors and reported to shareholders through the General Meeting of Shareholders (RUPS). On the other hand, under the State Finance Law, BUMN remains subject to the state financial accountability system, supervised by the Audit Board of Indonesia (BPK).

This dual accountability system creates a double burden for BUMN management, which must comply with two different accountability standards simultaneously. The result is not only operational inefficiency, but also a potential conflict of interest between corporate commercial objectives and the public interest represented by the state.

Empirical studies indicate that BUMNs experiencing dual supervisory systems tend to perform worse than private companies or BUMNs governed by a clear, unified regulatory framework. This performance gap is largely due to regulatory uncertainty, which constrains management’s ability to make strategic business decisions, especially those involving long-term investments and business expansion.

2. Influence on Financial Management Transparency

The dimension of openness in BUMN financial management has also been significantly affected by the ongoing normative contradictions. Transparency in BUMN has a dual nature:

- a. Corporate transparency as a publicly regulated corporation.
- b. Public transparency as an entity managing state-derived assets.

This dual nature creates confusion regarding which transparency standard should take priority. As corporations, BUMNs are required to comply with corporate transparency principles under Law No. 40/2007 on Limited Liability Companies and relevant capital market regulations. This includes obligations such as publishing audited financial statements, disclosing material information that may affect share value, and providing information access to shareholders.

However, as entities managing state assets, BUMNs are also required to comply with public transparency obligations under Law No. 14/2008 on Public Information Disclosure.

This duality of transparency standards creates a practical dilemma for BUMNs, particularly regarding the disclosure of strategic or commercial information. Information classified as trade secrets or business strategies in a corporate context may still have to be disclosed under public transparency requirements, potentially harming the company’s competitive position.

3. Implications for Corporate Governance and Decision-Making

The normative conflict also has significant implications for the corporate governance framework within BUMNs. Good corporate governance requires clarity regarding ownership structures, decision-making authority, and supervisory mechanisms. However, legal uncertainty regarding the status of BUMN assets has created ambiguities in the distribution of authority and responsibility among different corporate organs.

In practice, BUMN management often faces difficulties in making strategic business decisions because they must navigate multiple regulatory frameworks that may impose

contradictory requirements. For example, a decision to pursue a major acquisition or investment might be commercially sound and aligned with the company's business strategy but could raise issues under state financial management rules if the investment leads to financial losses.

This legal uncertainty also affects internal supervisory mechanisms. BUMN boards of commissioners often face dilemmas in fulfilling their oversight functions, as they must simultaneously consider:

- a. Corporate governance standards, which primarily focus on shareholder interests.
- b. Public supervisory standards, which encompass broader societal interests.

Furthermore, this normative conflict has implications for criminal liability among BUMN executives. The uncertain legal status of BUMN assets increases the risk of criminalization of business decisions made in good faith and based on reasonable commercial judgment. This creates a high regulatory risk for BUMN management and may discourage highly qualified professionals from pursuing leadership roles within BUMNs.

CONCLUSION

Based on the study that has been conducted, it can be concluded that there exists a significant disparity in legal perspectives between Law No. 17/2003 on State Finance and Law No. 19/2003 on State-Owned Enterprises (BUMN) regarding the status of separated state assets. The State Finance Law adopts the conception that separated state assets remain an integral part of state finance and are therefore subject to the public law regime. In contrast, the BUMN Law adopts a strict separation principle, whereby such assets are no longer considered state property but become corporate assets of BUMN, which are governed under the corporate accountability system. This conceptual difference creates a normative conflict in the form of *contradictio in terminis*, which undermines the application of the principle *lex specialis derogat legi generali* and reflects a paradigm shift between a public accountability-oriented approach and a corporate efficiency-oriented approach.

This normative conflict has serious implications for accountability and transparency in BUMN management. In terms of accountability, the conflict leads to a dual accountability system, creating a double burden for BUMN management, which must simultaneously comply with corporate accountability standards and state financial accountability standards. This situation potentially causes operational inefficiency and increases regulatory uncertainty. In terms of transparency, the conflict generates confusion over which transparency standard should be prioritized — corporate transparency or public transparency — a dilemma that may weaken BUMN's competitive position. Furthermore, the conflict affects the corporate governance system, creating ambiguities in the distribution of authority and responsibilities within BUMN's corporate organs and generating a high regulatory risk for BUMN executives, which could discourage highly qualified professionals from joining BUMN.



To address these issues, this study recommends the need for normative harmonization through the revision of transparency provisions within BUMN governance. This includes obligations to publish audited financial statements, disclose material information that may affect share prices, and ensure shareholders' access to relevant information. Additionally, it is necessary to establish implementing regulations that clearly define the division of supervisory authority between the Audit Board of Indonesia (BPK) and independent auditors, as well as to set uniform standards of accountability and transparency for BUMNs, based on the principles of good corporate governance while still prioritizing the public interest.

REFERENCES

- [1] Z. A. Amiruddin, "Pengantar Metode Penelitian Hukum. cet. 9," Jakarta: RajaGrafindo Persada, 2016.
- [2] J. Asshiddiqie, "Konstitusi Ekonomi, Jakarta: PT," Kompas Media Nusantara, 2016.
- [3] R. Atmasasmita, "Sistem peradilan pidana kontemporer," 2011.
- [4] M. Fuady, "Hukum Perusahaan: Dalam Paradigma Hukum Bisnis," 2004.

- [5] A. Y. Hernoko, *Hukum perjanjian asas proporsionalitas dalam kontrak komersial*. Kencana, 2010.
- [6] R. Khairandy, "Karakter Hukum Perusahaan Perseroan dan Status Hukum Kekayaan yang Dimilikinya," *J. Huk. Ius Quia Iustum*, vol. 20, no. 1, pp. 81–97, 2013.
- [7] M. Marzuki, *Penelitian hukum: Edisi revisi*. Prenada Media, 2017.
- [8] R. Nugroho, *Kebijakan publik: implementasi dan pengendalian kebijakan*. Elex Media Komputindo, 2021.
- [9] N. L. G. Astariyani, I. G. Yusa, B. Hermanto, and R. da Cruz, "Legal Hermeneutics in Reforming Preparation of Village Regulation: Case of Indonesia and Timor Leste," in *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan*, 2025, pp. 136–155.
- [10] S. Sembiring, *Hukum perusahaan tentang perseroan terbatas*. Nuansa Aulia, 2007.
- [11] S. Soekanto, "Penelitian hukum normatif: Suatu tinjauan singkat," 2007.

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