

The Aspects of State Finance In Indonesia Regulations

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Abstract: State finance is regulated in a number of laws and regulations where each regulation is related to other aspects. The spread of laws and regulations on various laws and regulations resulted in the provision of state finances being perceived differently between one regulation and another. This research aims to unite aspects of state finance in several laws and regulations. This research is a normative juridical study that uses secondary data in the form of legislation in Indonesia. Data collection is done through library research. Analysis is carried out by reference to the principles of applicable laws and regulations. The results of this study show that some of the most complete aspects of state finances are regulated in state finance laws so that state finance laws are an umbrella for other laws and regulations if there are aspects of state finances that are not regulated by other laws and regulations.

Keywords – eradication of corruption, establishment of legislation, limited liability companies, state finance, state treasury

Date of Submission: 15-11-2018

Date of acceptance: 30-11-2018

I. INTRODUCTION

Article 22A of the Indonesia Constitution stated that further provisions concerning the procedure for establishing a law are regulated by law. From the sound of Article 22A of the 1945 Constitution, then in the process of forming a law, the regulation is required by law. In connection with that, to implement the mandate of Article 22A, in June 2004 Law Number 10 of 2004 was stipulated concerning the Establishment of Legislation. Thus, the establishment of laws must be carried out based on the procedures in Law Number 10 of 2004 and the Rules of Procedure of the DPR RI which are established based on the mandate of Law Number 10 of 2010.

The term hierarchy in laws and regulations is translated into hierarchical arrangements or arrangements, and in layers where lower regulations are always sourced and based on higher regulations. According to Hans Kelsen about the hierarchy which states that, legal norms are tiered and layered in a hierarchy in order. This means that a lower norm applies which originates from a higher norm, and so on up to a norm that cannot be traced further and is hypothetical and fictional, namely the basic norm.

Based on the theory of the hierarchy of norms from Hans Kelsen, an understanding of the meaning of the hierarchy of legal norms is obtained, that a legal norm obtains validity if its formation is determined by higher legal norms, and the establishment of legal norms includes the method of formation and content of legal norms. Thus, when a legal norm is made originating from higher legal norms, basically the lower legal norms carry out higher legal norms.

The making of a legislation aimed at people's welfare is based on a basic values such as legal certainty, justice and usability, and the validity of the enactment based on philosophical enforceability, namely a policy made based on the values of a nation's life view. While the sociological application that legislation can be accepted and recognized by the community because it provides the maximum benefit for the prosperity of the people. For the value of legal certainty which is a legal basis in accordance with the hierarchy of legislation and made by authorized institutions.

The law that regulates state finance at present is Law Number 17 of 2003 concerning State Finance. The general explanation of the KN Law in the third paragraph, mentions several provisions of the relevant law, namely (a) Transitional Rules of the 1945 Constitution, namely *Indische Comptabiliteitswet*, better known as ICW Stbl. 1925 No. 448 subsequently amended and promulgated in the State Gazette of 1954 Number 6, 1955 Number 49; (b) Law Number 9 of 1968, which was first established in 1864 and entered into force in 1867, *Indische Bedrijvenwet (IBW) Stbl. 1927 No. 419 jo. Stbl. 1936 No. 445*, (c) *Reglement voor het Administratief Beheer (RAB) Stbl. 1933 No. 381*. In the meantime, *Instructie en verdere bepalingen voor de Algemeene Rekenkamer (IAR) Stbl was conducting an examination of state financial accountability. 1933 No. 320*.

Regarding the laws and regulations, it cannot accommodate various developments that occur in the state institutional system and financial management of the government of the Republic of Indonesia. Therefore,

even though the various provisions formally still apply, materially some of the provisions in the said legislation are no longer implemented.

The weakness of legislation in the field of state finance is one of the causes of several forms of irregularities in the management of state finances. One of them is a number of laws and regulations which also regulate state finances such as the Law on State Treasury, the Law on the Eradication of Corruption Crimes, the Law on Limited Liability Companies and the Law on State-Owned Enterprises.

Therefore it is necessary to compare the financial aspects of the state regulated in the State Finance Law with other laws such as the Law on State Treasury, the Law on the Eradication of Corruption Crimes, the Law on Limited Liability Companies and the Law on State-Owned Enterprises.

II. RESEARCH METHOD

This research is a normative juridical study that uses secondary data in the form of legislation in Indonesia. Data collection is done through library research. The data consist of (a) *Indonesische Bedrijvenwet* as amended several times and added, most recently by Law Number 12 of 1955; (b) Law Number 19 Prp Year 1960 concerning State Enterprises, (c) Law Number 31 of 1999 concerning Eradication of Corruption Crime Jo Law Number 20 Year 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Criminal Acts Corruption, (d) Law Number 17 of 2003 concerning State Finance, (e) Law Number 19 of 2003 concerning State-Owned Enterprises, (f) Law Number 1 of 2004 concerning State Treasury, (g) Act - Law Number 15 of 2004 concerning Examination of Management and Responsibility for State Finance, (h) Law Number 40 of 2007 concerning Limited Liability Companies. Analysis is carried out by referring to the principles of applicable laws and regulations.

III. RESULT AND DISCUSSION

Some of the prevailing laws and regulations currently related to the management of State finances, including (a) *Indonesische Bedrijvenwet* as amended several times and added, most recently by Law Number 12 of 1955; (b) Law Number 19 Prp Year 1960 concerning State Enterprises, (c) Law Number 31 of 1999 concerning Eradication of Corruption Crime Jo Law Number 20 Year 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Criminal Acts Corruption, (d) Law Number 17 of 2003 concerning State Finance, (e) Law Number 19 of 2003 concerning State-Owned Enterprises, (f) Law Number 1 of 2004 concerning State Treasury, (g) Act - Law Number 15 of 2004 concerning Examination of Management and Responsibility for State Finance, (h) Law Number 40 of 2007 concerning Limited Liability Companies. Some of these laws and regulations need to be harmonized so that law enforcement in the state finances goes well.

The National Legal Development Agency of the Ministry of Justice, provides an understanding of legal harmonization as a scientific study to lead to a process of harmonizing written law that refers both to philosophical, sociological, economic, and juridical values. Assessment of draft legislation in various aspects whether it has reflected harmony and conformity with other regulations, unwritten laws that live in the community.

The elements that build harmonization of law are (a) adjustments to laws and regulations, government decisions, judges' decisions, legal systems, and legal principles; (b) with the aim of increasing legal unity, legal certainty, comparability of usability and justice; (c) legal clarity, without obscuring and sacrificing legal pluralism. d. balance, suitability, harmony, harmony and compatibility of laws and regulations vertically and horizontally.

Regulations regarding State finance, besides being regulated in UUKN, are also spread in a number of laws and regulations in various levels. The use of the term state finance is also used in legislation both horizontally and vertically. In revealing the reality to what extent the level of synchronization of regulations concerning state finance, both horizontally and vertically, preliminary research has been carried out, namely an inventory of related regulations. The inventory carried out only focuses on the prevailing laws and regulations.

The State Finance Law contains the basic principles and principles for the management of state finances which serve as an umbrella for the preparation of other laws and regulations relating to State finances in SOEs and for the adjustment of existing laws and regulations.

3.1. State Finance Law

The Act Number 17 of 2003 concerning State Finances began to be promulgated on April 5, 2003.²⁵ This law revoked several previous provisions as long as it was regulated, namely *Indische Comptabiliteitswet* (ICW) Stbl. 1925 No. 448 as amended several times, most recently by Law Number 9 of 1968 concerning State Treasury, *Indische Bedrijvenswet* (IBW) Stbl. 1927 Number 419 jo. Stbl. 1993 Number 381. The enactment of Law Number 17 of 2003 concerning State Finance is mandated by the provisions of Article 23 C Chapter VIII 1945 which states other matters concerning State finances regulated by law.

The definition of State finance as referred to in the provisions of Article 1 number 1 of Law Number 17 of 2003 concerning State Finance (State Finance Law) is: ... All rights and obligations of a country that can be valued with money, as well as everything in the form of money or goods that can be used as state property due to the implementation of these rights and obligations.

Furthermore, in Article 2 of the State Finance Law states that:

State Finance as referred to in Article 1 number 11 includes: (a) The right of the state to collect taxes, issue and circulate money, and make loans; (b) The obligation of the State to carry out the tasks of public services of the State and to pay third party bills; (c) State Revenues; (d) State Expenditures; (e) Regional revenue; (f) Regional expenditure; (g) State assets / regional assets that are self-managed or by other parties in the form of money, securities, goods receivable, and other rights that can be valued with money, including assets separated from the state / regional company; (f) The wealth of other parties that are controlled by the government in the context of carrying out government duties and / or public interests; (i) Wealth of other parties obtained by using assets provided by the government. Explanation of Article 2 of the State Finance Law emphasized in article I which reads: "The wealth of other parties as referred to in letter I includes wealth managed by other people or entities based on government policies, foundations in the environment of State ministries / institutions, or State / regional companies."

The definition and scope of State finance in Law Number 17 of 2003 concerning State Finance is emphasized in the general explanation section which says: "The approach used in formulating State Finance is in terms of objects, subjects, processes, and objectives. In terms of the object referred to as State Finance, it covers all the rights and obligations of the State that can be valued with money, including policies and activities in the fiscal, monetary and management of separated State assets, as well as everything in the form of money or goods that can be used as State relating to the implementation of these rights and obligations. From the subject matter referred to as State Finance, it covers all objects as mentioned above which are owned by the State, and / or controlled by the Central Government, Regional Government, State / Regional Companies, and other bodies that are related to State finance." Furthermore, in another general explanation in the State Finance Law it is also said: "In the relationship between the government and state companies, regional companies, private companies, and public fund management bodies are determined that the government can provide loans / grants / equity participation to and receive loans / grants from state / regional companies after obtaining DPR / approval DPRD". Furthermore, the provisions of the State Finance Law governing the participation of state capital in SOEs are as follows:

- a. Article 3 Paragraph (8) with the formula as follows: "The use of surplus state / regional revenues as referred to in paragraph to form a reserve fund or participation in a State / Regional Company must obtain prior approval from the DPR / DPRD".
- b. Article 24 Paragraph (1), (2) and Paragraph (7), with the formula as follows:
 - (1) The government can provide loans / grants / equity participation to and receive loans / grants from state / regional companies. (2) Provision of loans / grants / capital participation and receipt of loans / grants as referred to in paragraph (1) shall be stipulated in the APBN / APBD first.
 - (7) In certain circumstances, in order to save the national economy, the Central Government can provide loans and / or make capital participation to private companies after obtaining DPR approval.

General explanation on number 7 with the following sound "In relations between the government and state companies, regional companies, private companies, and public fund management bodies are determined that the government can provide loans / grants / equity participation to and receive loans / grants from state / regional companies after obtaining approval from the DPR / DPRD".

3.2. State Treasury Law

The regulation of provisions concerning State Treasury has been described in the general explanation of Law Number 17 of 2003 concerning State Finance which is the basis for the law on the management of State finances. The general explanation regarding the State Treasury in the State Finance Law is described as follows:

Provisions regarding the management of State finances in the context of implementing the APBN / APBD are stipulated separately in the laws governing the State Treasury, considering that there are more administrative relations between state ministries / institutions within the government.

Article 29 of Law Number 17 of 2003 also regulates the provisions of the State Treasury that "Provisions regarding the management of State finances in the context of implementing the APBN and APBD are stipulated in the law governing the State Treasury". Law Number 1 of 2004 concerning State Treasury began its enactment and promulgation on January 14, 2004. The rationale for the enactment of the State Treasury Law as explained in the general explanation section of the law is in the context of management and accountability of the State stipulated in the APBN and APBD, so that it requires a law of State financial administration law.

The definition of the State Treasury as stipulated in the provisions of Article 1 point 1 of the Law on the Treasury of the State is "... Management and accountability of State finances, including investments and separated assets, which are stipulated in the APBN and APBD".

Furthermore, in the provisions of Article 2 it says: "The State Treasury as referred to in Article 1 Number 1 includes a. Implementation of State revenues and expenditures; b. Implementation of regional income and expenditure; c. Implementation of State revenues and expenditures; d. Implementation of regional revenues and expenditures; e. Cash management; f. Management of state / regional accounts receivable and debt; g. Management of investment and state / regional property; h. Organization of accounting and financial management information systems of the State / region; i. Preparation of accountability reports for the implementation of the APBN / APBD; j. Settlement of State / regional losses; k. Management of public service bodies; l. Formulation of standards, policies, and systems and procedures relating to the management of State finances in the context of implementing the APBN / APBD". The provisions of the State Treasury Law governing the inclusion of State capital are regulated in Article 41 Paragraph (4) and Paragraph (5), with the following formula: (1) The government can make long-term investments to obtain economic, social and / or other benefits. (2) Investment as referred to in paragraph (1) shall be carried out in the form of shares, debt securities, and direct investment. (3) Investment as referred to in paragraph (1) is regulated by government regulations. (4) Central government capital participation in state / regional / private companies is determined by government regulations. (5) Local government capital participation in state / regional / private companies is determined by regional regulations.

3.3. Law on the Eradication of Corruption Crimes

Law Number 31 of 1999 concerning Eradication of Corruption Crime jo. Law Number 20 Year 2001 concerning Amendment to Law Number 31 Year 1999 concerning Eradication of Corruption Acts is a Law that regulates corruption. Although the two laws regulate corruption, the subject matter of State finance is also regulated. This is because corruption is categorized as an act that is against the law can be detrimental to the state or the country's economy.

The definition of State finance as referred to in the explanation of the general section of the Law concerning the Eradication of Corruption Acts is: "... All state assets in any form, separated or not separated, including all parts of the State's wealth and all rights and obligations arising from: a. Being in control, management and accountability of State officials, both at the central and regional levels; b. Being in control, management, and accountability of BUMN / BUMD, foundations, legal entities, and companies that include state capital, or companies that include third party capital based on agreements with the State. Meanwhile, what is meant by the state economy is economic life which is arranged as a joint effort based on the principle of family or an independent business based on government policy, both at the central and regional levels in accordance with applicable laws and regulations aimed at providing benefits, prosperity and prosperity to the entire life of the community.

The provisions of the Eradication of Corruption Crimes Law regulate the participation of state capital in SOEs, but explain the principle of the use of state finances.

3.4. Law on State-Owned Enterprises

Law Number 19 of 2003 concerning BUMN regulates state finances, with several rules, namely: Article 45, with the formula as follows:" a) Those who can be appointed as members of the Board of Directors are individuals who are capable of carrying out legal actions and have never been declared bankrupt or become members of the Board of Directors or Commissioners or Supervisory Board which was found guilty of causing a company or Perum to be declared bankrupt or a person who has never been convicted of a crime which is detrimental to state finances. Article 57, with the formula as follows: (1) Those who can be appointed as members of the Supervisory Board are individuals who are capable of carrying out legal actions and have never been declared bankrupt or become members of the Board of Directors or Commissioners or Supervisory Board that were found guilty of causing a company or Perum to be declared bankrupt or a person who has never been convicted criminal offense that is detrimental to the state's finances

Explanation of Article 2 Paragraph (1) Letter a, with the formula as follows: BUMNs are expected to be able to improve the quality of service to the community while at the same time contributing to improving national economic growth and assisting in the receipt of state finances.

Explanation of Article 4 Paragraph (6), with the formula as follows: The Government Regulation includes regulating the mechanism of relations between the Minister and the Minister of Finance and the Technical Minister in accordance with their respective positions and functions, namely the Minister of Finance as the state financial manager, the Minister appointed to represent the government as the shareholder, and the Technical Minister as the regulator.

Furthermore, the provisions of the BUMN Law governing the participation of state capital in SOEs are as follows: Article 1 number 1 and number 10, with the formula as follows: (1) State-Owned Enterprises, hereinafter referred to as BUMN, are business entities whose entire or part of their capital is owned by the state through direct participation derived from separated state assets. (10) Separated State Assets are state assets

originating from the State Revenue and Expenditure Budget (APBN) to be used as state capital participation in Persero and / or Perum and other limited companies.

Article 4 paragraph (1), (2), (3), (4), (5) and (6) with the formula as follows: (1) SOE capital is and originates from separated state assets. (2) The participation of state capital in the framework of establishing or participating in SOEs comes from: a. State budget; b. reserve capitalization; c. other sources. (3) Every participation of state capital in the framework of the establishment of a BUMN or a limited liability company whose funds come from the State Revenue and Expenditure Budget is stipulated by Government Regulation. (4) Any changes in state capital participation as referred to in paragraph (2), whether in the form of additions or deductions, including changes in the structure of state ownership of Persero shares or limited liability companies, are stipulated by Government Regulation. (5) Excluded from the provisions referred to in paragraph (4) for the addition of state capital participation originating from the capitalization of reserves and other sources. (6) Further provisions concerning procedures for the participation and administration of state capital in the framework of the establishment or participation in SOEs and / or limited liability companies whose shares are partially owned by the state are regulated by Government Regulation.

Article 76 Paragraph (2) with the formula as follows: (2) Some of the assets or activities of the Persero that carry out public service obligations and / or those based on the Law must be carried out by SOEs, and can be separated into participation in the establishment of the company, if necessary, privatization.

3.5. Limited Liability Company Law

Law Number 40 of 2007 concerning Limited Liability Companies which regulates state finances, with several rules, namely: Article 93 Paragraph (1) huru c, with the formula as follows: (1) Those who can be appointed as members of the Board of Directors are individuals who are capable of carrying out legal actions, except within 5 (five) years before their appointment: a. declared bankrupt; b. become a member of the Board of Directors or a member of the Board of Commissioners found guilty of causing a Company to be declared bankrupt; or c. convicted of committing a criminal offense that is detrimental to the country's finances and / or related to the financial sector.

Article 110 Paragraph (1) letter c, with the formula as follows: (1) Those who can be appointed as members of the Board of Commissioners are individuals who are capable of carrying out legal actions, except within 5 (five) years before their appointment: a. declared bankrupt; b. become a member of the Board of Directors or a member of the Board of Commissioners found guilty of causing a Company to be declared bankrupt; or c. convicted of committing a criminal offense that is detrimental to the country's finances and / or related to the financial sector.

IV. CONCLUSION

The results of this study show that some of the most complete aspects of state finances are regulated in state finance laws so that state finance laws are an umbrella for other laws and regulations if there are aspects of state finances that are not regulated by other laws and regulations. Thus, if there is an inconsistency in the provisions regarding one aspect of state finance in the laws and regulations with state financial law, the provisions used are state finance laws in accordance with the principles of legislation.

ACKNOWLEDGEMENTS

The author would like to thank The Ministry of Research, Technology and Higher Education for providing research funds.

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Regulation:

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- [6] Indonesia Law Number 17 of 2003 concerning State Finance
- [7] Indonesia Law Number 19 of 2003 concerning State-Owned Enterprises
- [8] Indonesia Law Number 1 of 2004 concerning State Treasury
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- [10] Indonesia Law Number 40 of 2007 concerning Limited Liability Companies