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Economic Democracy Value Erroring through the Establishment of Soe Holding

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Abstract

Economic democracy is an economic system based on the principles of democracy, namely freedom, equality and accountability. In an economic democracy, the roles of the government and the private sector are balanced. The government plays a role in creating a conducive business climate, while the private sector plays a role in driving the economy. The establishment of BUMN holding is one of the government policies in order to increase the role of BUMN in the economy. The purpose of this study is to analyze the misvalues of economic democracy through the establishment of BUMN holding. This research uses qualitative research methods. The data collection technique in this research is literature study. The data that has been collected is then analyzed in three stages, namely data reduction, data presentation and conclusion drawing. The results showed that the formation of BUMN holding is a policy that can improve the efficiency and competitiveness of BUMN. However, the formation of BUMN holding also has the potential to cause mistakes in the value of economic democracy. The government needs to consider the potential for errors in the value of economic democracy in implementing the policy of establishing BUMN holding.

Keywords: *Democratic Values, Economy, SOE Holding.*

1. INTRODUCTION

Economic democracy is the foundation of an economic system that follows the basic principles of democracy, such as freedom, equality and accountability. In this context, the balance between the roles of the government and the private sector is at the core of the system. This means that the government has a role in regulating and ensuring the protection of individual rights as well as setting a framework that allows the market to operate fairly. Meanwhile, the private sector also plays a role in carrying out economic activities and contributing to economic growth, but within the limits set by the government to ensure fairness and equality in economic opportunities for all parties.

The government has a central role in creating a business environment that is supportive and conducive to economic growth. This includes creating supportive policies, regulations, and infrastructure for companies and the private sector. On the other hand, the private sector plays a key role in driving economic activity through innovation, investment and job creation. One of the strategies implemented by the government to strengthen the role of State-Owned Enterprises (SOEs) in the economy is through the establishment of SOE holding companies.

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This step aims to improve the efficiency, competitiveness, and contribution of SOEs in the economy by consolidating several SOE companies under one entity or holding company. By doing this, it is expected that SOEs can be more competitive, have greater economies of scale, and can play a more active role in supporting the country's economic growth. Previous research by Sumarna & Solikin examined the effect of restructuring through the formation of BUMN holding on the financial performance of BUMN, the results showed that holding affected financial performance in terms of profitability, leverage, and liquidity. Profitability deteriorates after holding, while leverage and liquidity show mixed results.

Another study by Judhanto examined the formation of BUMN Holding Company in the Perspective of Business Competition Law, the results showed that the initial purpose of the idea of restructuring and the formation of BUMN holding is to optimize the management of BUMN. However, although the main goal is to gradually intensify management and profits, the government's plan to restructure state-owned companies must face several obstacles, one of which is related to anti-competition laws. There are indications that the holding company formed by the government will clash with the trusteeship agreement in violation of Law No. 5/1999. Based on the description of the research background, this study aims to analyze the misvalues of economic democracy through the formation of BUMN holding.

2. METHOD

This research uses qualitative research methods. Qualitative research method is a method that focuses on a deep understanding of a research object. Therefore, the application of qualitative methods in research allows for a more thorough understanding of a phenomenon.The data collection technique in this research is a literature study. The data that has been collected will be analyzed through three stages. The first stage is data reduction, where raw data is filtered, organized, and simplified to facilitate further analysis. Then, the data is presented through various methods such as tables, graphs, or diagrams to clarify identified patterns or trends. Finally, from the results of data reduction and presentation, conclusions are drawn to describe the findings or insights obtained from the analysis.

3. RESULTS AND DISCUSSION

BUMN in Tradition Civil & Common Law

BUMN (also known as the term State-Owned Enterprises) are also owned and/or managed by the Government in many countries. BUMN or State-Owned Enterprises also enforced, both in Continental European legal systems (civil law) and Anglo Saxon (common law). Legal system civil law as is known to be sourced from Roman law, meanwhile common law Derived from English original law. Basis of BUMN management orState-Owned Enterprises, from countries adhering to the Continental European legal system (civil law) and Anglo Saxon (common law) can be used as a source of legal research, through a comparative approach (comparative) there are 2 (two) main systems of legal traditions that have developed in many countries in the world. As is known, the two legal systems that exist and are adhered to by many countries are the Continental European legal system (civil law) and Anglo Saxon (common law). The civil law legal tradition adopted by Continental European countries is based on Roman law originating from Emperor Iustianus Corpus Iuris Civilis Colonial countries of former colonies of Continental European countries adhere to the Law Civil Law.

According to Rahmi Jened in his book Copyright Law by quoting Henry Merryman stating that Civil Law is a tradition inherited from Roman law that began in 450 BC. At

the moment Civil law applies to most of Western Europe or Continental Europe, Central America and South America, Louisiana, Québec and Puerto Rico and former European colonies, including Indonesia which had experienced Dutch colonialism. Whereas Common Law is a legal tradition inherited from the Anglo Saxons that originated in the British Empire (British Empire) along with the colony. Currently valid for UK, Ireland, Canada, Australia, New Zealand and several Asian and African countries. United States (although starting to develop Anglo American Law).

Centralised Model, in which one government agency has the mission of being a shareholder in all state-controlled companies and organizations (with or without exceptions). This agency can be a special ownership body or a designated government ministry. Financial targets, technical and operational issues, and the process of monitoring SOE performance are all carried out by a central agency. Board members are appointed in different ways but important input comes from the central unit. This model is adopted by SOEs in Austria, Chile, China, Colombia, Finland, France, Greece, Hungary, Iceland, Israel, Italy, Korea, Netherlands, New Zealand, Norway, Peru, Russia, Slovenia, South Africa, Spain, Sweden.

Coordinating Agency/Department, where there is one coordinating ministry that has an advisory role (in technical and operational matters, in addition to being responsible for performance monitoring) for several ministries that are shareholders in SOEs. This model is adopted by countries such as Bulgaria, Costa Rica, India, Ireland, Latvia, Lithuania, Morocco, the Philippines, Poland and the United Kingdom.

Twin Track Model, where two different government agencies exclusively exercise the ownership function of the portfolio of each SOE. This model is embraced by Belgium and Türkiye.

Separate Track Model, where there are a small number of ownership bodies, holding companies, privatizing bodies or similar entities that have separate SOE portfolios. This model is used by the State of Kazakhstan and Malaysia.

Dual Ownership, where two ministries or other high-level public agencies jointly exercise ownership. In this case there are different aspects of the ownership function allocated to different ministries, for example: one ministry is responsible for financial performance and another is responsible for operations, or each ministry appoints a portion of the board of directors. This model is adopted by Australia, Brazil, Croatia, the Czech Republic, Estonia, Romania and Switzerland.

Dispersed Ownership, whereby a large number of government ministries or other high-level public agencies exercise ownership rights over SOEs (in the absence of a coordinating body). This model applies to Argentina, Canada, Denmark, Germany, Japan, Mexico, Saudi Arabia and Ukraine. Referring to the notes of the International Monetary Fund (IMF) , an outline of the objectives of establishing SOEs from various countries includes:

a. Support national economic and strategic interests;

b. Supplying goods and services;

c. Support social goals;

d. Ensure continuation of national ownership of companies;

e. Conducting business operations in natural monopoly arrangements; dan

f. Creating a state-owned monopoly in terms of market regulation is considered inefficient.

Although some countries have pursued a holistic approach through a combination of the mechanisms outlined previously, Australian or European Union (EU) national practices are prominent examples. Australia, as is known, has entered into a commitment

toCompetitive Neutrality in federal and state law, and implement a comprehensive complaints mechanism for enforcement. In the public sector, the application of the principle Competitive Neutrality involved a series of reforms for state-owned enterprises (SOEs), including structural reforms and corporatization of government-owned business activities, expansion of anti-competitive conduct laws to include state-owned businesses, establishment of a national access regime to provide third-party access to monopoly infrastructure (that some mostly owned by the public), as well as develop a framework Competitive Neutrality to regulate competition between government businesses and competitors from the private sector. Australia designates specific bodies and/or agencies to implement the principles Competitive Neutrality.

Refers to the application of principles Competitive Neutrality in Sweden, the principles of the Swedish Government's investment strategy largely follow the OECD Guidelines on State-Owned Enterprises Corporate Governance. Such international standards are implemented with the intention of helping states avoid the mistakes of passive ownership or excessive interference as owners. In the application of principles Competitive Neutrality This, it is important to separate the function of state ownership and its role as market regulator. This is ensured in government organizations, where responsibility for sector-specific legislation is usually segregated from those involved in managing state-owned enterprises.

The competitive advantage provided by the government to BUMN can have economic and fiscal implications domestically and internationally. For example profits can distort competition i.e. tilt the playing field in favor of SOEs or retain SOEs that are inefficient, possibly lowering growth and tax revenues.

Government intervention in the financial system, including through commercial banks, is significant in many countries. Although the existence of commercial banks (commercial banks) providing corporate and retail banking services to the general public and development banks providing credit for development-related projects, has declined sharply since the 1990s when economic liberalization and financial globalization gained traction, they still have significant market share in several major economies. State ownership of banks has been justified by the need to overcome market failures and promote economic development, although many banks also pursue maximizing profits.

The government also asked commercial banks to fight the recession. Public banks were used extensively for this purpose during the global financial crisis, often financed by direct support from government budgets (eg loans or capital injections by Brazil, Canada, and India). Countries also increase the credit limits of their commercial banks (eg Finland and Korea) or issue special guarantees (eg Mexico) for public banks to support key markets and firms. There are several limitations to the effectiveness of public banks in stabilizing the economy. Public bank loans are less procyclical than private bank loans.

More broadly, SOE debt levels can pose a risk to public sector finances, even in the absence of explicit government guarantees. In several countries, BUMN debt exceeds 20% (twenty percent) of GDP and in some cases reaches half or more of the public sector debt shares. In other countries, BUMN foreign debt exceeds 25% (twenty five percent) of the country's exports of goods and services. Even if debt is issued to develop natural resources, as in oil-exporting countries, it can increase the government's vulnerability to shocks (eg a fall in the price of oil). In addition to debt, SOEs may have significant obligations to the private sector through joint ventures, public-private partnerships, and power purchase agreements.

SOE risk realization can also have a multiplier effect on the economy as a whole. When these risks materialize in public banks, credit growth can be limited. Discussions so far indicate that there is scope for SOE reform targeting governance and financial incentives to improve SOE performance. Some empirical cross-country evidence, although limited, suggests that SOE reforms can increase their efficiency (Megginson and Netter, 2001).

Take advantage ofdatabase new to a sample consisting primarily of emerging markets and emerging economies, as well as some developed countries (members with IMF-supported programs in 2002–17), we study the effect of SOE reforms in cross-country arrangements.

The results show that several reforms have a positive effect on financial performance. SOE governance and pricing reforms increased financial variables for all sectors except mining SOEs. For example, the governance reforms implemented were associated with productivity increases of $10,000 per worker and cost reductions of 5% (five percent) in the power sector. Reforms such as arrears elimination and financial targets have had a weaker or no impact, perhaps reflecting that if other structural reforms were not part of the package, the underlying factors driving performance would probably have remained unchanged.

These reforms required development and broad popular support over several years. It is also important that improvements to the financial health of SOEs are achieved while protecting more vulnerable segments of the population from possible adverse impacts. The experiences of Jordan and Ukraine provide two examples. Subsidies for the Jordanian electricity company, NEPCO, were close to 6% (six percent) of GDP in 2014 (for context, the share of total health spending is 7.5% (seven point five percent) of GDP in the same year). NEPCO undertook a series of reforms, including gradual tariff adjustments since 2012 and the installation of liquefied natural gas plants to ensure cheaper inputs. At the same time, vulnerable households are supported by an increase in cash transfers. As a result, public transfers to NEPCO were phased out in 2015, and NEPCO has posted small positive or negative net operating balances since 2016.

Ukraine's national oil and gas company, Naftogaz, went from a loss-making company receiving significant budget assistance to a profitable one in a few years. Gas and heating prices have significantly increased, in tandem with the restructuring and governance reforms since 2014 accompanied by the expansion of the utility subsidy program for vulnerable households.

The performance of SOEs and the realization of fiscal risks from SOEs can significantly affect public finances. Over the years, the government has provided significant support to financial SOEs (mainly capital injections) and non-financial SOEs (particularly recapitalization and debt assumptions), with maximum annual support to financial and non-financial SOEs reaching 18% and 16% of GDP respectively (latest version of database by Bova and others 2016). 19 SOEs operating in the airline, banking, mining, railways and utilities sectors are among those in need of costly support. For example, Italy's national airline is under bankruptcy protection and has received large loans or transfers from the government.

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For reasons of inheritance, political lobbying, bureaucratic hurdles, or government strategic considerations, such challenges abound in the Middle East & Central Asia region. In particular, many SOEs in the region do not operate in a competitive environment and, in many cases, enjoy various protections and benefits that place them in

a stronger competitive position than private sector players and foreign entrants. Overall, the available evidence suggests that it achievescompetitive neutrality in many countries in the region this will require achieving neutrality in the areas of regulation, taxation, public procurement, access to resources, and separation of non-commercial and commercial activities of SOEs.

SOEs and the Role of the State in Economic Development

According to Meir Friedmann the role of the State in economic development is as follows: a) Regulators (regulation makers); 2) Entrepreneur (entrepreneur); and 3) Umpire (referee). The state as a provider means that the state is responsible for providing social services and guaranteeing a minimum standard of living for all its people.

The state as a regulator means that the state uses various levels of control, especially the power to regulate economic development and investment. While the state as the arbiter (umpire) is the most difficult function of the state, meaning the state as a poweradministrative judicial which must, set standards of fairness between different economic sectors, some of which are State-Owned Enterprises (BUMN), which in fact are State Companies. The state must act as an intermediary between the state and private sectors So the difference in the function and role of the state is not only a matter of efficiency, economics, politics, but also a matter of justice.

Finally, the country as a business hero (entrepreneur) means that the state operates in certain economic sectors through semi-autonomous government departments or state-owned enterprises (BUMN). The existence of provisions in our constitution which provide the basis for the existence of branches of production that are important for the state and affect the livelihood of many people, gives a clear signal that our economic system does not only recognize state control alone, but also recognizes control by private businesses. This reflects that our economic system is actually an economic system characterized by a mixed economy.

Furthermore, it can be stated that with the stipulation of three national economic actors in the Outlines of State Policy (GBHN), which consist of; cooperative business, state business and private business, it is clearly seen that the adopted economic system can be equated with the concept used by W. Friedmann in seeing the balance between the public or state sector and the private or private sector namely, Mixed Planned Economy System. This would be appropriate if it was based on the division of the two economic systems that we know, namely, the free economic system and the centralized economic system.

The economic system according to Pancasila and the 1945 Constitution recognizes that economic life is created not only on the initiative of citizens as individuals, but also recognizes guidance and encouragement from the state. The stipulation of the principle of joint venture and kinship in Article 33 paragraph (1) of the 1945 Constitution further emphasizes the limitations of the Pancasila economic system, namely, emphasizing the values of mutual cooperation, mutual help, mutual obligations, mutual and reciprocal responsibility as well as a sense of solidarity among fellow actors. national economy. The principle of kinship rejects the liberal concept of the economy and economic life.

Control by the state as mandated by the 1945 Constitution to control certain branches of production which affect the livelihood of many people, is aimed at increasing people's prosperity to the maximum. This is in line with the opinion of R. Wiyono who quoted Soepomo's opinion that state control can be interpreted as regulating and/or organizing especially to improve and increase production. Sri-Edi Swasono argues that the word controlled does not have to be interpreted as owned. State government can control through regulations and economic policies without having to own. Being controlled by the state provides a direct indication that market mechanisms or free price mechanisms may not apply in the economy,the most important and the main goal is to safeguard the interests of the state and the interests of the people at large.

Formationholding BUMN is regulated in Government Regulation (PP) Number 43 of 2005 (PP 43/2005) concerning Mergers, Consolidations, Acquisitions and Changes in the Form of BUMN Legal Entities. Formation of eachholding SOEs are regulated in a separate Government Regulation (PP), such as PP No. 4/2017 which made PT. Inalum (Persero) as the parent companyholding companiesMining BUMN with subsidiary PT. Bukit Asam, PT. Aneka Tambang, and PT. Tin. PP No. 73/2021 stipulates BUMN PT. Bank Rakyat Indonesia (Persero) as the Parent (Holding) ultra micro from a subsidiary of PT. Pawnshops and PT. Civil National Capital (PNM). Shares from the Dwiwarna Merah Putih Series A in BUMN PT. Bank Rakyat Indonesia (Persero) as the parent (holding) as a BUMN becomes a shareholder in a subsidiary company PT. Pawnshops and PT. PNM (Private).

Formation Holding BUMN raises many concerns about the loss of control of the Government in BUMN and its subsidiaries. The fear of losing control of the Government in BUMN is groundless because the Government still holds control through ownership of Merah Putih Shares or Dwiwarna Shares or Series A Shares. Series A shares are shares owned by the Government in BUMN usually only 1 (one) share and have special rights that do not owned by other shareholders.

According to Rudhi Prasetya, the origin of SOEs is inseparable from the existence of a Limited Liability Company (PT) institution that entered Indonesia through Dutch law under the name Anonymous Partnership (Unnamed Partnership).Naamloze Venotshaap/NV) regulated in Articles 36 to 56 of the Commercial Code (Commercial Code/WVK Statblad No. 448 of 1925). Then regarding PT issued separately regulated in Then regulated separately in Law Number 1 of 1995 concerning Limited Liability Companies (UU No. 1/1995) State Gazette Number Year (LN) No. 13/1995 and its explanation in the Supplement to the State Gazette (TLN) Number 3587. Now in Law no. 40/2007 concerning Limited Liability Companies, LN No.67/2007 and TLN No. 4756/2007.

State Enterprises are "all forms of companies whose capital is partly or wholly owned by the state or government." This company was founded by the Dutch in 1925 based onIndian Comtability Act (ICW) which refers to laws governing the financial responsibilities of government agencies. State companies, on the one hand, take the form of companies, but on the other hand, the laws governing private companies generally do not apply because these companies are declared as government agencies. In reality, companies generally operate in public services and their expenses are borne by the government, including in the government budget. These companies are substantially free to carry out their activities based on the Dutch government policy of a decentralized system of government.

After 2 (two) years, the second special arrangement regarding state companies was issued throughIndian Companies Act (IBW) which regulates 2 (two) types of companies, namely: State Companies that are subject solely to IBW, and State Companies that are subject to IBW and ICW. The two state companies are still considered government bodies, but are given autonomous authority to carry out their activities. For internal activities, all companies under IBW are still considered part of the Government, their income and expenses are included in the Government budget. However, there is a special budget burden in terms of losses when expenses are greater than income.

Therefore, in realizing Article 33 of the 1945 Constitution of the Republic of Indonesia, the State feels the need to increase control over all national economic power, both through sectoral regulations and through state ownership of certain business units with the aim of providing maximum benefits for the prosperity of the people. Soepomo's view states that the matter referred to in Article 33 of the 1945 Constitution of the Republic of Indonesia cannot involve the role of individual private companies, these companies must go through the formation of BUMN. Soepomo's opinion is as follows:The private

sectormay be involved only in non-strategic sectors-that do not effect the lives of most people… if the state does not control the strategic sectors, they will fall under the control of private-individuals and the people will be oppressed by them".

SOEs, which in their efforts are given separate state finances, are expected to be able to become development agents and drivers for the creation of an economic form that benefits all Indonesian people. The reaffirmation of Article 33 of the 1945 Constitution of the Republic of Indonesia where the State controls all matters relating to the livelihoods of many people should be reflected through SOEs. The purpose and objective of SOEs is not the State, in this case doing business with its people, but rather the form of carrying out the public interest.

For example, the state having BUMN engaged in the transportation sector (PT. KAI, PT. GIA, DAMRI, etc.) is meant first of all so that the people of Indonesia have adequate facilities in the field of transportation. The Indonesian people either directly or indirectly receive "benefits" from the State for the taxes paid by the people. These benefits must be social for all Indonesian people, not only for certain groups.

Therefore BUMN as a pioneer in existing businesses that are not yet attractive to the private sector due to insufficient private capital to manage them, as well as other matters. SOEs exist as a "bridge" in this regard, the public interest can be fulfilled and besides that it can stimulate the private sector to continue to move forward through cooperation schemes, profit sharing, privatization, privatization or others.

Competitive Neutrality To an Access to Justice

Principle Competitive Neutrality generally means that private and state-owned enterprises must compete on a level playing field. The idea is that no actor operating in the market should suffer an unwarranted competitive advantage or disadvantage. The OECD provides a definition of "Competitive Neutrality" in the following sentence: "competitive neutrality occurs where no entity operating in an economic market is subject to undue competitive advantages or disadvantages". By definition "Competitive NeutralityThus, it is hoped that there will be fairness among business actors in a healthy competition.

In principle, with the guarantee of equal freedom for all people, justice will be realized (the principle of equal rights). According to Agus Yudha Hernoko,the greatest equal principle is the "principle of equal rights" which is a principle that provides equality of rights and of course is inversely proportional to the burden of obligations owned by each person. Thomas Aquinas, in relation to justice proposes three fundamental structures (basic relations), namely:

a. Relationships between individuals (order of parts to parts);

b. Relations between society as a whole with individuals (the order of the whole to the parts);

c. Inter-individual relationships to society as a whole (the order of the parts to the whole).

According to Thomas Aquinas, distributive justice is basically respect for the human person (acceptance of persons) and nobility (dignitas). In the context of distributive justice, fairness and decency (equity) is not achieved solely by determining the actual value, but also on the basis of similarities between one thing and another (equality of thing to thing). There are two forms of similarity, namely: 1) Equality of proportionality (the quality of proportion) and 2) The similarity of quantity or amount (quantity of water).

Thomas Aquinas stated that respect for person can be realized if something is shared or given to someone in proportion to what he should receive (praeter proportionem dignitas ipsius). On that basis, recognition of persons must be directed at recognition of propriety

(equity), then services and awards are distributed proportionally on the basis of human dignity.

The meaning of justice can be summarized as follows, fair (just), legal (legal), lawful, impartial, equal rights (equal), eligible (fair), morally reasonable (equitable), morally right (righteous). The relationship between justice and law by Aristotle is explained through the need to investigate which actions justice relates to and in the midst of which actions justice exists. Justice is an attitude of mind that wants to act fairly, what is unfair is a person who violates the law who inappropriately wants more benefits from other people and essentially does not want the principle of equality, equal taste. Everything that is established by law is fair, because fair is what can bring happiness in society, and as long as that justice is aimed at others then it is virtue. Between these two unequal or different interests, the law must stand in the middle (balancing), because whoever does injustice, takes too much stuff and whoever suffers from injustice gets too little, the Judge will revoke the interests of the person who did it. unfair earlier by fixing the balance with punishment.

Hans Kelsen writes about justice in terms of legality, in which, according to him, a general rule is "fair" if it actually applies to all cases to which, according to its content, this rule should be applied. A general rule is "unfair" if applied to one case and not applied to another similar case, and this appears "unfair" regardless of the value of the general rule itself, whose application is being considered. Justice, in the sense of legality, is a quality related not to the content of a positive legal order, but to its application. This inner justice is in accordance with, and required by, every positive law, be it a capitalistic or communistic, democratic, or autocratic legal order.

H.L.A. Hart writes that the general principle hidden in various applications of the concept of justice is that individuals before others are entitled to a relative position of certain equality or inequality. This is something that must be considered in the uncertainty of social life when burdens or benefits are to be distributed; this is also something that must be recovered when disturbed. According to tradition, justice is seen as maintaining or restoring balance (balance) or share ratio (proportion), and the cardinal rule is often defined as 'treat like things in like way'; although we need to add to it and treat different things in different ways. Thus when, in the name of justice, we protest a law that prohibits non-white people from using public parks, the object of the criticism is the badness of such a law, because in distributing the benefits of public facilities among the population the law discriminates in between persons who are similar in all relevant respects.

Principle "Competitive Neutrality" is essentially the principle by which all Companies are given an equal level of play with respect to ownership, regulation, or activity within a State (including at the national, regional, federal, provincial, county, or municipal level) in the market. In principle "Competitive Neutralityfor example determined through enforcement of competition and insolvency laws, that competing Companies are subject to equivalent competition and insolvency regulations, regardless of ownership, location, or legal form, and that enforcement of those laws does not discriminate between a State-Owned Enterprise and an entity private business as a competitor, or between various types of privately owned business entities. Principle "Competitive Neutrality" must be implemented by establishing open, fair, non-discriminatory and transparent competition conditions in the government procurement process to ensure that no company, regardless of ownership, nationality or legal form is given an undue advantage.

One of the criticisms leveled by many private business actors is that SOEs are too dominant in certain business fields. In the field of red and white vaccine production, for example, the corporations involved in the Merah Putih vaccine industry should consist of state-owned enterprises, the private sector, and academia, in which this is done so that the

principles of fair business competition are maintained and vaccine prices are affordable for all people.

In one of the examples of KPPU's decision No. 15/KPPU-L/2018 where PT Pelabuhan Indonesia III which operates as a BUMN was found guilty of committing and violating Article 17 Paragraphs (1) and (2) of Law No. 5 of 1999, which violated the authority of Article 51 Law no. 5 of 1999, as well as Article 33 of the 1945 Constitution. In this case, SOEs as companies or institutions that have different authorities from other business actors who are given privileges must be reviewed and reviewed based on the principle of fair business competition. The need for extra supervision from various elements involved regarding business competition must be carried out as well as possible, this supervision must be carried out by the Government by carrying out various things, one of which is in the accountability of each of its activities.

Article 33 Paragraph 4 of the 1945 Constitution of the Republic of Indonesia establishes various principles related to the national economy, one of which is the principle of fair efficiency. The concept of "efficiency with justice" in Article 33 Paragraph (4) of the 1945 Constitution is a combination of the concept of efficiency and the concept of justice which, when juxtaposed with the word efficiency, forms the word "justice". The inclusion of the term "just efficiency" aims to make the Indonesian economy more friendly to the market, but still in harmony with the family principle contained in Article 33 Paragraph (1) of the 1945 Constitution which states that "The economy is structured as a joint venture based on the principle of family."

It cannot be denied that the principle of efficiency in economics is indeed the basis of a market/free competition economic system. In an economic review or analysis of the law (economic analysis of law), it is stated that justice must be seen as distributive in nature, having an equal component (equality), contains elementsfair, and even justice can be studied as efficiency.

Efficiency, effectiveness, and responsiveness to regulations and legal provisions in this globalization era can be seen from the ability of regulations and legal provisions to becomeaid which ishealing, which means that the law not only accommodating, but also being able to support important components in the trading market, starting from government and/or private institutions, market players, to professionals able to move in rhythms that complement each other and synergize so as to produce developments and progress to keep up with current era of economic globalization and free trade. On the other hand, it is very important that these regulations and legal provisions do not create rigidities that can impede market responsiveness, because they have a domino effect on the overall dynamics of economic interaction.

According to Pareto and Kaldor/Hicks efficiency, efficiency is achieved when everyone gets what they want, and under ideal conditions the market mechanism will always produce efficient results. Through research conducted by Romli Atmasasmita and Kodrat Wibisono, where the two of them seek to juxtapose and/or align the relationship between microeconomic principles (efficiency, balance and maximization) with legal goals/ideals (justice, legal certainty and expediency) in a criminal law ecosystem, found that fairness was compatible with efficiency.

H.L.A. Hart writes that the general principle hidden in various applications of the concept of justice is that individuals before others are entitled to a relative position of certain equality or inequality. This is something that must be considered in the uncertainty of social life when burdens or benefits are to be distributed; this is also something that must be recovered when disturbed. According to tradition, justice is seen as maintaining or restoring balance (balance) or share ratio (proportion), and the cardinal rule is often defined as 'treat like things in like way'; although we need to add to it and treat different things in different ways. Thus when, in the name of justice, we protest a law that prohibits non-white people from using public parks, the object of the criticism is the

badness of such a law, because in distributing the benefits of public facilities among the population the law discriminates in between persons who are similar in all relevant respects. However justicejustice) can be enforced if there is legal certainty (legal certainty). The conflict between justice (justice justice) and legal certainty (legal certainty) so that Gustav Radbruch never talks about expediency as a Legal Purpose.

4. CONCLUSION

The constitutional basis for BUMN is in Article 1 paragraph (2) and Article 33 of the 1945 Constitution concerning state sovereignty and ownership. PrincipleCompetitive Neutrality contains the understanding that private and state-owned companies must compete on an equal playing field as stated in Article 33 paragraph (1) of the 1945 Constitution and the principle of togetherness in Article 33 paragraph (4) of the 1945 Constitution. Justice for SOEs in Indonesia must be strictly regulated in the context of maximizing the sovereignty and control of the state over natural resources which concern the livelihoods of the people at large so that the role of the state in economic development can be seen in order to create social justice for all Indonesian people.

5. SUGGESTION

There should be an official explanation of Article 33 from the decisions of the Constitutional Court on several cases of judicial review of laws that conflict with Article 33, so that there is clarity so that the principles Competitive Neutrality can be achieved. As well as business qualifications that can be run by SOEs need to be regulated in a statutory regulation, so that the principlesCompetitive Neutrality can be explicitly implemented in Indonesia. And according to legal tradition civil law, SOEs qualification parameters should be strengthened in legal principles and terminology (legal terms and principle), not an economic formula.

References

Abdul Madjid dan Sri-Edi Swasono (Editor), Wawasan Ekonomi Pancasila, UI-Press, Jakarta, Cetakan Kedua, 1986, h. 17.

Agus Yudha Hernoko, “Hukum Perjanjian Asas Proporsionalitas dalam Kontrak Komersial”, Yogyakarta : Laksbang Mediatama, 2008, h. 21.

Arda Alvin Pandu Ekaputra et al., “Praktik Monopoli Yang Dilakukan Oleh BUMN Ditinjau Dari Hukum Persaingan Usaha (Studi Kasus Putusan KPPU Nomor 15/KPPU-L/2018)”, Supremasi: Jurnal Pemikiran dan Penelitian Ilmu-ilmu Sosial, Hukum, & Pengajarannya, Volume XVI Nomor 1, April 2021, h. 84.

Bank Dunia 2020; WEO 2019; dan perhitungan staf IMF. Catatan: Angka ini mencakup BUMN keuangan dan nonkeuangan. Label data pada gambar menggunakan kode negara International Organization for Standardization (ISO). BUMN = Badan Usaha Milik Negara.

Dahl, R. A. (2023). A preface to economic democracy (Vol. 28). Univ of California Press.

E. Sumaryono, Etika Profesi Hukum, Kanisius, Yogyakarta, 1995, h. 124.

Hans Kelsen, Teori Umum Tentang Hukum dan Negara, Nusa Media, Bandung, 2008, h. 17.

H.L.A. Hart, Konsep Hukum (The Concept of Law), Nusa Medua, Bandung, 2018, h. 246.

Judhanto, A. S. (2018). Pembentukan Holding Company BUMN dalam Perspektif Hukum Persaingan Usaha. E-Jurnal SPIRIT PRO PATRIA, 4(2), 154-169.

Kuntana Magnar, Inna Junaenah, dan Giri Ahmad Taufik, “Tafsir MK Atas Pasal 33 UUD 1945: (Studi Atas Putusan MK Mengenai Judicial Review UU No.7/2004, UU No.22/2001, dan UU No. 20/2002,” Jurnal Konstitusi, Vol.7, No. 1, Februari 2010, h. 121.

Kusumastuti, A., & Khoiron, A. M. (2019). Metode penelitian kualitatif. Lembaga Pendidikan Sukarno Pressindo (LPSP).

M. Friedmann, The State And The Rule of Law In A Mixed Economy, Steven And Son, London, 1970.

W. Friedmann, Op.Cit., h. 4., mengemukakan bahwa dalam negara yang menganut sistem ekonomi campuran terdapat keseimbangan antara sektor publik dengan sektor privat atau swasta. Dengan kata lain, kegiatan dari usaha negara berlangsung paralel dengan kegiatan usaha swasta.

Michael Brennan, Competitive Neutrality in Australia, dalam Guo Kai, Alfred Schipke, PBC and IMF Seventh Joint Conference Opening Up and Competitive Neutrality: The International Experience and Insights for China, The People Bank of China and International Monetary Fund, tt, h. 10.

Mubyarto, Sistem Dan Moral Ekonomi Indonesia, LP3ES, Jakarta, Cetakan Ketiga, 1994, h. 57-58.

Muhammad Erwin, Filsafat Hukum : Refleksi Kritis Terhadap Hukum dan Hukum Indonesia (Dalam Dimensi ide dan Aplikasi), Rajawali Press, Depok, 2018, h. 296.

OECD, Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices 2021 (selanjutnya disingkat OECD IV) h. 16, dalam https://www.oecd.org/corporate/ownership-and-governance-of-state-owned-enterprises-a-compendium-of-national-practices.html, di akses pada tanggal 4 April 2022.

OECD, Competitive Neutrality - National Practices, 2012, h. 10. https://www.oecd.org/daf/ca/50250966.pdf diakses pada 06 April 2022.

OECD, Recommendation of the Council on Competitive Neutrality, OECD/LEGAL/0462, h. 5.

Fajar Sugianto, Economic Approach to Law : Seri Analisis Keekonomian Tentang Hukum, Jakarta, Kencana, 2013, h.9.

Prof Peter Mahmud, Diskusi dalam mata kuliah MKPKK.a

Peter Mahmud Marzuki, Pengantar Ilmu Hukum, Jakarta: Kencana, 2015 (selanjutnya disingkat Peter Mahmud II), h. 223.

Rashed, A. H., & Shah, A. (2021). The role of private sector in the implementation of sustainable development goals. Environment, Development and Sustainability, 23, 2931-2948.

Romli Atmasasmita dan Kodrat Wibowo, Analisis Ekonomi Mikro Tentang Hukum Pidana Indonesia, Kencana, Jakarta, 2016, h. 87.

Rudhi Prasetya, Kedudukan Mandiri Perseroan Terbatas, Cetakan Kedua, Citra Aditya Bakti, Bandung, 1996, h. 100.

R.Wiyono, Garis Besar Pembahasan Dan Komentar UUD 1945, Alumni, Bandung, 1975, h. 225.

Samuel Freeman, dalam Romli Atmasasmita dan Kodrat Wibowo, Analisis Ekonomi Mikro Tentang Hukum Pidana Indonesia, Kencana, Jakarta, 2016, h. 52.

Sheila Namira Marchellia, “Penggunaan Antitrust Immunity dan Kartel di Masa Pandemi”, Jurnal Persaingan Usaha, Vol.1 No. 1 Tahun 2021, h. 23.

Soerowo Abdoelmanap, Op.Cit., h. 356.

Sumarna, R. A., & Solikin, S. E. (2018). Pengaruh restrukturisasi melalui pembentukan holding BUMN terhadap kinerja keuangan BUMN. Substansi, 2(2), 240-260.

State-Owned Enterprises in Middle East, North Africa, and Central Asia: Size, Costs, and Challenges”, https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2021 /09/17/State-Owned-Enterprises-in-Middle-East-North-Africa-and-Central-Asia-Size-Costs-and-464657, diakses pada 30-01-2023, jam 09.53 WIB.

Thomas Östros, Opening Up and Competitive Neutrality:The Case of Sweden, dalam Guo Kai, Alfred Schipke, PBC and IMF Seventh Joint Conference Opening Up and Competitive

Neutrality: The International Experience and Insights for China, The People Bank of China and International Monetary Fund, tt, h. 15.

Tim Penyusun Naskah Komprehensif Proses dan Hasil Perubahan UUD 1945, Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Latar Belakang, Proses dan Hasil Pembahasan 1999-2002, Buku VII: Keuangan, Perekonomian Nasional, dan Kesejahteraan Sosial, dalam Adhi Anugroho et al., "Analisis Yuridis Terhadap Asas Efisiensi Berkeadilan Berdasarkan Pasal 33 Ayat (4) Uud 1945 Dalam Peraturan Perundang-Undangan Di Bidang Ketenagalistrikan," Jurnal Hukum & Pembangunan 47 No. 2, 2017, h. 184.z

Urbano, D., Audretsch, D., Aparicio, S., & Noguera, M. (2020). Does entrepreneurial activity matter for economic growth in developing countries? The role of the institutional environment. International Entrepreneurship and Management Journal, 16, 1065-1099.

Rahmi Jened, "Ringkasan dan Analisis Buku the Regulation of Indonesian Sate Entreprise, karangan Rudhi Praseya dan Neil Hamilton", Tugas Mata Kuliah Hukum dan Pembangunan Ekonomi, Program Doktor Ilmu Hukum Program Pascasarjana Universitas Airlangga, Surabaya, 2002 (selanjutnya disingkat Rahmi Jened VII), h. 1-3. Bisa juga dilihat dari Rahmi Jened, Laporan Penelitian Potensi Hak Kekayaan Intelektual Pasca Perubahan Status Perusahaan Umum menjadi Perusahaan Perseroan, Jakarta, 2017 (selanjutnya disingkat Rahmi Jened VIII), h. 8-12.

WTO Law Insufficient to Ensure Competitive Neutrality under EU Standards, September 2016", https://www.jonesday.com/en/insights/2016/09/wto-law-insufficient-to-ensure-competitive - neutrality-under-eu-standards, di akses pada 06 April 2022.