

KEWENANGAN BADAN PEMERIKSA KEUANGAN DALAM PEMERIKSAAN PERSERO

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THE STATE AUDIT BOARD ; PERSERO

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ABSTRACT

AUTHORITY OF THE STATE AUDIT BOARD (BPK) IN THE EXAMINATION PERSERO

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The third amendment to the 1945 results in 2001 confirmed the position of the State Audit Board (BPK) as the only institution authorized to conduct an examination of management and financial responsibility in a free and independent country. Under Article 2 letter g of Law Number 17 Year 2003 regarding State Finance, property separated in state companies included in the scope of state finances. Law Number 17 Year 2003 is a translation of Article 23c of the 1945 Constitution. Consequences of judicial over setting the scope of state finance that includes wealth separated state, just became the basis of authority for the BPK to an examination the Persero. But from the aspect of private law, it is considered contrary to the norms of corporate law that puts the Persero as a business entity of pure and independent. The position of the state as a shareholder, represented by the government of the same and equal with the other shareholders. Immunity of state public presumed lost after the process of capital investment has been completed. Given the dimensions of public and private (business) is inherent in the Persero, then the validity of public law and private law in managing the Persero must be run in synchronous and functional. In order to ensure legal certainty, i t must be emphasized and it can be shown within the boundari es of where the authority of BPK can be applied by considering the interests of the state of the Persero and the interest of Persero in performing its business activities

Keywords: Authority of the BPK and Finance of Persero

SUMMARY

AUTHORITY OF THE STATE AUDIT BOARD (BPK) IN THE EXAMINATION PERSERO

To conduct an examination of the management and responsibility to the state finance, Article 23E Paragraph (1) third amendment of the Constitution of the Republic of Indonesia Year 1945 (UUDNRI 1945) mandated the establishment of the State Audit Board (BPK). This confirmed the presence of BPK as the only audit institutions as stipulated in the constitution. Authority of the BPK in examining the management and responsibility of the state finance is an authority attribution is singular because it is not divided and given to institutions in other countries.

As the subject of a single examination and management responsibilities to the state, then the BPK is authorized to conduct examinations of state finances with the entire scope. Limitation of state finances and the scope set out in Article 1 number 1 as amended by Article 2 of Law Number 17 Year 2003 regarding State Finance (Law on State Finance). The formation of this law is a translation of Article 23c of the 1945 Constitution which mandates other matters concerning state finances shall be regulated by law. Under Article 2 letter g Law on State Finance, state assets separated in state companies included in the scope of state finances. Capital Persero is based on Article 4 paragraph (1) of Act No. 19 of 2003 on State Enterprises (Act SOE s) is and come from rich countries who are separated, thus included in the scope of state finances. Because including the financial state then the BPK is authorized to conduct examinations of Persero. State finances as the genus of his financial and Persero as a species of it. But this becomes a dilemma because in Article 11 of SOEs Act declared against Persero applies all the provisions and principles which apply to limited liability company under the laws of limited liability. If subject to all provisions limited liability company, means the BPK is not authorized to conduct an examination of s because the duties and authority of BPK only check the state finances and finances of limited liability is not a financial state as stipulated in Law No. 1 of 1995 as amended by Law Number 40 Year 2007 regarding Limited Liability Company (LLC Atc). At this point it appears that there are inconsistencies and insynchronization in setting Persero particularly those related to public law and private law. On that basis, this thesis focused on t he assessment of the limits of authority of BPK in the examination continued as well as legal consequences arising from the results of the investigation, through research normative. To support this research, the approach of legislation (statute approach), conceptual approach, and case approach. To the formulation of the problem of the bo undaries of the authority of BPK in the examination continued, this study found that to fund public service obligation (PSO) which is managed c ompany is able to apply three types of examinations held by the BPK to remember the position of Persero as the users of funds PSO domicile is the same and equal with user's budget and / or users of goods accepted in government agencies. While on the wealth Persero derived from stocks, applicable provisions relating to the authority of BPK as regulated in Law Number 15 Year 2006 regarding the State Audit Board (BPK Act) and the Law Number 15 Year 2004 on Audit Management and Role - Responsibility of State Finance (PPTJKN Act) and the provisions of the SOEs Act, especially those that set about checking the external. In a general ex planation and Article 16 of PPTJKN Act stated that

the authority of BPK in the financial audit is limited to the financial statements of the government. Analogous to the above we can conclude that the authority of BPK in the examination continued, particularly on financial management sourced from shares is limited on the type of examination performance and examination with a specific purpose. This was confirmed also in Article 71 paragraph (2) of the Act state that states that the inspection company's financial statements conducted by external auditors are set by the shareholders meeting for the Persero. Regarding the legal effect BPK against Persero as described in the formulation of the problem the second one, conducted research on aspects and implications of law that govern it, ie, Administrative Law, Criminal Law and Civil Law. The findings of the examination which Administrative Law is the finding that caused the loss or potential loss of state finances but do not meet the elements of corruption. Against these findings, BPK has the authority to demand Treasury if the loss to the state referred to is caused by the Treasurer. Under Article 10 paragraph (1) of the BPK Act and Article 22 paragraph (5) of the PPTJKN Act, authority BPK in conducting demand treasury applies to administrators Persero. In the realm of Criminal Law, where an indication of corruption in the management of state finances, the results of BPK will decide to continue whether or not the process of investigation. If the results of BPK against an alleged corruption case processed law enforcement officials claim there is no loss to the state, then the investigators can not continue the case is to level out more or have issued a warrant termination of the investigation (SP3). The use of legal instruments civil to restore losses to the state also requires an assessment BPK. Based on Law Number 31 Year 1999 as amended by Law Number 20 Year 2001 on Eradication of Corruption, in order to restore losses to the state that can not be processed through the criminal justice requires the existence of losses to the state which significantly has occurred. Institution that is authorized to conduct inspections and to calculate the losses the country is the BPK through the examination with a specific purpose.