

## ***Implications of State Position Dualism on the Financial Settlement of PT Garuda Indonesia (Persero) Tbk.***

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### ***Abstract***

*This study raises the issue of the implications of the dualism of the state's position as a public authority and shareholder in the financial settlement of PT Garuda Indonesia without injuring the intended use of APBN. The financial problems of PT Garuda Indonesia (Persero) Tbk. is already on the verge of requiring immediate action from the state. The focus of this research on the dualism of the state's position has never been discussed in previous research, even though this position is a determining element for the government's actions regarding the Garuda problem. The position of the state itself as the highest public authority and shareholder limits the state's actions to overcome the problems of PT Garuda Indonesia. This is based on the limitation of the use of the state budget (APBN) as regulated in the Constitution, which is only intended for the prosperity of the people. To answer the research problem, the regulations, the theory of legal entities, the public choice theory, the theory of state responsibility, and the international practices are used as analytical tools. The result of the analysis is that the efforts made by the state, both as a public authority and as a shareholder, must be based on considerations of benefits for the interests of the people – not based on mere nostalgia. Learning from the history of Garuda's management governance which has never improved significantly, the Government should not need to help Garuda because it will only waste the APBN and not be beneficial to the community, because the most important benefit is in deciding on APBN spending actions. Actions to increase capital can be carried out as long as it is believed that with the addition of capital, PT Garuda Indonesia can bounce back from adversity and generate sufficient profits to provide dividends to the state. If indeed the condition of PT Garuda Indonesia it is not possible to get up and operate so as to generate dividends, preferably PT Garuda Indonesia bankrupt.*

**Keywords:** *Bankrupt; PT Garuda Indonesia; State Role*

## **1. INTRODUCTION**

Financial management in the business world is strongly influenced by various things, both the company's internal capabilities and external influences. Similarly, what happened to PT Garuda Indonesia (Persero) Tbk. (Garuda) is the high amount of debt as the result of decades of poor management including corruption, coupled with a prolonged pandemic that disrupted the smooth running of flight operations caused Garuda to become one of the business entities that are experiencing adversity at this time. Citing the company's financial statements as of the first semester of 2021, Garuda has liabilities or debts amounting to US\$12.96 billion, with details of short-term debts amounting to US\$5.05 billion and long-term debts amounting to US\$7.9 billion.<sup>1</sup>

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<sup>1</sup> “Daftar BUMN Yang Punya Utang Jumbo Dan Menumpuk” (Jakarta), accessed June 2, 2022, <https://www.cnnindonesia.com/ekonomi/20211216074242-92-734683/daftar-bumn-yang-punya-utang-jumbo-dan-menumpuk>.

Garuda is a flag carrier airline that carries the name of the country of Indonesia.<sup>2</sup> Therefore, for many people, Garuda has more meaning than other airlines in Indonesia such as PT Merpati Nusantara. This is what demands special treatment in dealing with the financial problems of Garuda. However, Garuda is also a State-Owned Enterprise (SOEs). In this context, Garuda provides funds for state revenues through dividends that are part of the state and can be given special tasks from the state. Through both perspectives, Garuda has a special meaning for the country.

Based on the form of the company, Garuda is a Limited Liability Company (PT). For SOEs companies in the form of Persero, PT Law (Article 11 of the SOEs Law) also applies. Referring to Article 1 point 1 of PT Law, “PT is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares.” Thus, in this construction, the state is domiciled as a shareholder.

In the constitutional concept, the state is the highest public authority that can take action in the realm of public law and civil law. In the event that the state takes public legal action, the rules of public law apply. It is different if the state takes civil law actions, then the rules of civil law apply. With such legal construction, the state's actions against Garuda a distinction must be made between acting as the highest public authority and acting as a shareholder. The actions of the state as the highest public authority caused the state to be subject to public law arrangements, while the actions of the state as shareholders are subject to civil law arrangements. This implies different responsibilities for the business continuity of Garuda.

In viewing the existence of BUMN and BUMD according to Waluyo, BUMN/BUMD is a business entity whose main goal is profit where the higher the profit obtained, the better its performance. In the case of a fixed depreciation burden, Waluyo proposes several options, namely being closed or sold or included as part of the Ministry (not as a business entity).<sup>3</sup> Referring to the form of BUMN, namely Persero and Perum, which are distinguished not only in terms of ownership but also differences in the level of public service. It is necessary to further examine the application of Waluyo’s solution in this study because the difference in form certainly has an impact on the actions that will be taken by the government and the benefits for the people.

BUMN is the spearhead of the state in improving the welfare of the community so according to Ariffin, BUMN is required to be able to compete in the global market. For this reason, BUMN organs are expected to become triggers in maximizing innovation efforts in managing BUMN

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<sup>2</sup> “No Title,” accessed June 2, 2022, [www.garuda-indonesia.com](http://www.garuda-indonesia.com).

<sup>3</sup> Indarto Waluyo, “Menyikapi Badan Usaha Milik Negara (BUMN) Dan Badan Usaha Milik Daerah (BUMD) Yang Kurang Sehat,” *Jurnal Pendidikan Akuntansi Indonesia* III, no. 1 (2004): 51–58, <https://doi.org/https://doi.org/10.21831/jpai.v3i1.834>.

businesses sustainably to obtain profits.<sup>4</sup> There is a need to be a strict limitation on the Minister of SOEs's role. This study proposes that limiting the role of the Minister of State-Owned Enterprises should be based not only on the interests of the Company but also pay attention to the interests of the people, especially in terms of the use of APBN funds to resolve SOE financial problems.

According to Wiranta,<sup>5</sup> government ownership does not automatically have a negative impact because the success of a company depends more on the prospects of governance and management. This proposal needs to be strengthened in terms of the benefits of using APBN funds to resolve Garuda's financial problems because without reforming the role of the Minister of SOEs, the addition of state capital to Garuda will be in vain and will not provide benefits to the people in terms of dividends or the availability of transportation services.

Supporting the division of roles between the Minister of SOEs and company organs, Yoyo,<sup>6</sup> Rahadian,<sup>7</sup> and Kurniawan<sup>8</sup> have the opinion that SOEs Persero must be treated using the private law paradigm because the position of the state in SOEs is as a shareholder. The position of the state in SOEs is only limited to being a shareholder with the same rights and obligations as other shareholders. The state's responsibilities are only limited to the capital that is deposited. It must be acknowledged that the state is positioned as a public authority that has an obligation to manage state finances to achieve state goals and as a shareholder in BUMN. The research conducted by Yoyo, Rahadian, and Kurniawan only uses the paradigm of the state's position as a shareholder that limits the state's responsibility to BUMN, therefore it is necessary to deepen to examine the role of the state in BUMN that holds the national flag from the perspective of benefits for the people.

From a budget perspective, the state's actions in rescuing Garuda need to consider the impact on fiscal sustainability. Moreover, there is a limitation on the use of APBN as stipulated in Article 23 paragraph (1) of the 1945 Constitution,<sup>9</sup> which is limited to achieving state goals. These conditions add to the complexity of the debt settlement of Garuda. Actions that can be taken by the State against the problems of Garuda must be adjusted to the position of the state, namely as a public authority and shareholder. For this reason, this study raises the issue of the implications

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<sup>4</sup> Tb. Boy B. Ariffin, "Meningkatkan Peranan Perusahaan BUMN Yang Sudah Go Publik Dalam Mengoptimalkan Pengelolaan Bisnis Berbasis Budaya Dan Kepastian Hukum," *Jurnal Penelitian Hukum* 02, no. 01 (2023): 36–43, <https://doi.org/http://doi.org/10.24967/jaeap.v2i01.2079>.

<sup>5</sup> Sukarna Wiranta, "Privatisasi BUMN Dan Perannya Terhadap Pembangunan Ekonomi Nasional: Kasus PT. Garuda," *Jurnal Ekonomi & Kebijakan Publik* 2, no. 1 (2011): 371–94.

<sup>6</sup> Yoyo Arifardhani, "Kemandirian Badan Usaha Milik Negara: Persinggungan Antara Hukum Privat Dan Hukum Publik," *Otentik's: Jurnal Hukum Kenotariatan* 1, no. 1 (2019): 54–72.

<sup>7</sup> Inda Rahadian, "Kedudukan BUMN Persero Sebagai Separate Legal Entity Dalam Kaitannya Dengan Pemisahan Keuangan Negara Pada Permodalan BUMN," *Jurnal Hukum Ius Quia Iustum* 20, no. 4 (2013): 624–40.

<sup>8</sup> M. Beni Kurniawan, "Redefinisi Tanggung Jawab Negara Dalam Kasus Kepailitan PT Istaka Karya Ditinjau Dari Three Keywords Theory," *Jurnal Ilmiah Kebijakan Hukum* 11, no. 3 (2017): 249–61.

<sup>9</sup> "Undang-Undang Dasar 1945" (n.d.). Article 23 paragraph (1): "The state revenue and expenditure budget is a manifestation of state financial management and is implemented openly and responsibly for the greatest prosperity of the people."

of the dualism of the state's position as a public authority and shareholder on the financial settlement of Garuda without injuring the intended use of APBN.

## 2. METHOD

To answer this problem, this study uses a doctrinal juridical research method by basing the study on the principles and systematics of legislation. In addition, comparisons of the settlement of similar conditions in other countries are also used. To give a clear picture, the description of the research starts from the problems of Garuda, the position of Garuda as a national flag carrier airline, the dualism of the state's position in Garuda as both a shareholder and a regulator which will be reviewed based on the theory of legal entities, the limitations of the use of APBN based on laws and regulations and public choice theory, and the responsibility of the state for the financial settlement of Garuda which will be analyzed based on the theory of responsibility.

## 3. RESULTS AND DISCUSSION

In the Indonesian economy, the existence of SOEs as one of the actors in economic activities has contributed to many changes and improvements in economic conditions that have a direct or indirect impact on the community. SOEs are part of the democratic economic system launched by the founders of the country that will bring the Indonesian economy to a more advanced level and serve the needs of the community.

The establishment of the SOEs itself began with the transfer and nationalization of Dutch companies in Indonesia.<sup>10</sup> Its main purpose, apart from managing Indonesia's wealth and providing for the needs of the community, is also to increase state revenues. This is reasonable considering that the administration of government and development requires no small amount of funds. For this reason, the state is allowed to carry out economic activities directly, namely by establishing SOEs.

Garuda Indonesian Airways (GIA) is the name given by President Soekarno as the national airline. GIA is a subsidiary of the Dutch airline *Koninklijke Luchtvaart Maatschappij* (KLM) which was handed over to the Indonesian government as part of the 1949 Round Table Conference (KMB) agreement. Since then GIA has become the national flag carrier.<sup>11</sup>

The history of the national flag carrier began at the 1944 Chicago Convention of Civil Aviation. In the world of aviation, the term flag carrier means an airline that represents a country or becomes an ambassador for its nation. Often these airlines give a nation a sense of pride in their ability to own a high-tech product. However, not all countries have national flag carriers, for example, the United States which only has private airlines.<sup>12</sup> For Indonesia itself, the presence of Garuda already has a special place in the hearts of the Indonesian people because apart from

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<sup>10</sup> "Undang-Undang No. 86 Tahun 1958 Tentang Nasionalisasi Perusahaan-Perusahaan Milik Belanda" (n.d.).

<sup>11</sup> [www.garuda-indonesia.com](http://www.garuda-indonesia.com), accessed 2 June 2022.

<sup>12</sup> "Daftar Negara Tak Punya Flag Carrier," accessed June 2, 2022, <https://www.cnnindonesia.com/ekonomi/20211111141943-92-719770/daftar-negara-tak-punya-flag-carrier>.

being part of the struggle of the Indonesian people to gain recognition of independence from the Netherlands, it has also participated several times in state security operations and as an airline providing Hajj flight services. In its development in terms of capital, Garuda is no longer fully funded by the State with its status as a public company. Until now, the state still holds 60.5 percent of the shares of Garuda.<sup>13</sup>

In the state administration structure, all SOEs are fostered by the Ministry of SOEs. In such a position, the Ministry of SOEs proposed several options for resolving the financial problems of Garuda based on a review of the experiences of other countries, namely Hong Kong, China, Thailand, Malaysia, Belgium, Switzerland, Brazil, and Hungary in assisting their flag carrier airlines. The following options are proposed by the Ministry of SOEs.<sup>14</sup> *First*, the government provides equity loans. Similar things have been done by the Singapore government which assisted Singapore Airlines, the Hong Kong government which assisted Cathay Pacific, and also the Chinese government on Air China Airlines. Considering the debt of Garuda at this time, this is the easiest way out, however this option is taken it will burden APBN. *Second*, use the legal bankruptcy process to restructure obligations and apply for deferment of debt repayment obligations (PKPU). The completion of this model has been carried out by Thai Airways International and Malaysia Airlines. This requires support in terms of statutory arrangements and the approval of the relevant parties. Completion of this model also requires the support of a change in management, without which the settlement of debt restructuring and delays in payment of debt obligations will be futile and cannot be fulfilled at maturity. Referring to Garuda's management experience to date, of course, the options offered here have a fairly low success rate if implemented at Garuda. *Third*, restructure Garuda and establish a new national airline. This option draws on Belgium's experience in dealing with Sabena Airlines' financial problems and Switzerland's experience with Swissair. Completion of this model requires a minimum of 1.2 billion US\$ for the establishment of a new company. To choose this option, it is necessary to assess the benefits and costs incurred, considering that the costs of this model are quite high. *Fourth*, liquidate Garuda. This last settlement model will make Indonesia not have a national carrier flag. Actually, what should be considered is not its historical and sociological value, but also its usefulness in providing public services. The existence of a national carrier flag does not guarantee the implementation of better public services. *Fifth*, increase state capital. This option, of course, uses APBN. This model requires quite in-depth consideration. It is necessary to consider an adequate amount to reactivate the operational activities of Garuda with the ability of the state budget and dividend yields to be obtained by the state.

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<sup>13</sup> "Siapa Pemegang Saham Garuda Indonesia," 2021, <https://databoks.katadata.co.id/datapublish/2021/12/09/siapa-pemegang-saham-garuda-indonesia>.

<sup>14</sup> "Garuda Indonesia Krisis Akankah Nasib Garuda Indonesia Sama Seperti Merpati Airlines?No Title," Kompas.com, accessed June 2, 2022, <https://money.kompas.com/read/2021/06/03/150000526/akankah-nasib-garuda-indonesia-sama-seperti-merpati-airlines?page=all>.

In the economic literature, it is written that the initial establishment of SOEs in Indonesia was based on the need for funds for government administration and public services. The state's financial condition at that time, as a newly independent country, made the government nationalize Dutch companies into state-owned enterprises as a way to get state income. Moreover, not long after that in 1957, there was an economic crisis in the world so the availability of state funds was needed to help the revival of the national economy. In the next era, the establishment of SOEs was based on the needs of public goods and services which the private sector could not afford.

The role of the state at the beginning of independence dominated economic activity. This was due to the limited resources of economic actors at that time. The state is needed to build an economic foundation for the implementation of community economic activities. This is where the function of the state as the highest public authority performs its various roles to create conditions that are able to generate the presence of economic activity. This is important because economic activities will have a direct impact on the community, both in providing their necessities of life and in improving their welfare.

Along with the development of the world economy, the state no longer plays an active role in the economy. The involvement of the state in business, whether aimed at obtaining additional revenue or for the efficiency of providing goods/services to the community, is no longer managed directly by the state but through the business entities it establishes. This paradigm change then affected the form of SOEs business which was originally all in the form of state companies, until now only Public Companies (Perum) and Limited Liability Companies (Persero).

In the civil concept, a legal entity company has its own characteristics as a legal subject.<sup>15</sup> To be able to act as a legal subject, the company must have wealth and management. The concept limits the authority of the state in the company. In a company in the form of a limited liability company, in particular, the state's authority over the company is limited to the authority of the shareholders. The actions of the state in the company are aimed at the benefit of the company's progress. The progress of the company is important considering that shareholders will get dividends or a share of the company's profits.

As the holder of the highest public authority who also carries out activities in the business world, the actions of the state must be clearly distinguished considering that actions as the holder of the highest public authority and actions as shareholders have different objectives and consequences. The actions of the state as the holder of the highest public authority are aimed at the interests of the people by using its public power, while the actions of the state as the shareholder are aimed at the interests of the company, and these actions are carried out within the civil sphere. In the realm of law, state actions are limited by the legal environment of each of their actions. Public

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<sup>15</sup> Salim HS, *Pengantar Hukum Perdata Tertulis (BW)* (Jakarta: Sinar Grafika, n.d.), hlm. 26.

acts of the state are subject to the provisions of public law, while civil acts of the state are subject to the provisions of civil law. The generalization of legal provisions for different actions will only cause chaos in legal relations and cannot be denied will only cause losses.

In the business world, there are always two possibilities, namely the opportunity to gain profit and the possibility of loss. In the economy, many factors affect the success of a company, both internal and external. It has become a law of nature, that good corporate management can minimize the impact of losses so that losses do not continue to decline or go bankrupt.

Until now, the performance of SOEs is still not optimal for the benefit of the state and society. The results of the World Bank's (2014) research show several problems that cause SOEs to not develop properly, namely: a) Inefficiency, overstaffing, and low productivity. These three problems are considered acute and dominant in SOEs which are fully under the supervision of the government; b) Low product quality; c) Sustained losses resulting in the accumulation of debt; d) Slow decision-making and low entrepreneurial spirit; e) Investment activities are financed by debt; f) Excessive government intervention that hinders the activities of SOEs; g) The dualism of SOEs' goals; h) Sub-optimal utilization and performance of assets; i) No implementation of good corporate governance (GCG); j) KKN, nepotism and corruption often occur. Such conditions have resulted in many SOEs being at a loss. As is the case with Garuda. Referring to the proposal of the Ministry of SOEs to overcome the financial problems of Garuda, the option for the state must be based on a dualism study of the state's position.

Related to the role of the state in the settlement of SOE debt, research conducted by the OECD<sup>16</sup> on SOE debt financing in 36 countries that have SOEs shows that half of the countries studied assist in financing SOE debt under certain conditions. Even the UK provides loans directly from the state, be it through the national loan fund or from the relevant ministries. On these loans, several countries (the United Kingdom, Estonia, Hungary, and Switzerland) charge the same loan interest as commercial loans. It is noted, in the Chilean constitution, that the state is not allowed to give to SOEs, so SOEs must make commercial loans.

From the research, it was also revealed that the recapitalization of SOEs by the state is a reasonable action to take. The returns on state capital participation are quite varied. In most countries, this additional equity investment is made by adjusting share ownership. For EU countries and several other countries (Australia, Estonia, Hungary, New Zealand, and Sweden), the addition of state capital participation follows a minimum expected rate of return (RoR) on investment.

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<sup>16</sup> The 36 countries studied by the OECD are Argentina, Australia, Brazil, Canada, Chile, Costa Rica, Estonia, Finland, Germany, Greece, India, Indonesia, Ireland, Israel, Italy, Japan, Kazakhstan, Korea, Latvia, Lithuania, Malaysia, Mexico, Netherlands, New Zealand, Norway, Peru, Philippines, Poland, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Ukraine, United Kingdom. "Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices 2021," 2021, <https://www.oecd.org/corporate/ownership-and-governance-of-state-owned-enterprises-a-compendiumof-national-practices.htm>. p. 36-37, accessed 16 October 2022.

Another form of the role of the state towards SOEs is in the form of direct state support. Most of the countries studied by the OECD used the assignment by the state to SOEs as a reason to provide direct financial assistance to SOEs. Specifically for EU countries, the provision of state assistance can only be done under special conditions and as long as the procedures for calculating compensation are determined in advance and the level of compensation does not exceed the cost of delivering the public service. In some countries, compensation for the provision of direct financial assistance based on assignments by the state to SOEs is carried out with a policy of lower overall rate-of-return requirements. However, because the commercial activities of SOEs and activities in the context of assignment by the state are not clearly separated in these countries, the impact on the calculation of RoR is not pure. In some countries studied by the OECD, the form of state assistance to SOEs is in the form of state guarantees on commercial debt. Only Australia, Estonia, Finland, Ireland, Italy, Lithuania, New Zealand, Norway, Spain, Sweden, Switzerland, and the United Kingdom do not have such a policy.

Referring to the OECD research above, there are positive and negative values from each solution to BUMN financial problems in the countries above. Associated with the condition of the dualism position of the state as a shareholder and also as a regulator, the following things must be considered. In the position of the state as the highest public authority, there are two things that should be considered, namely the limited use of APBN and the status of Garuda as the national flag carrier. It is certain that the state will use APBN to overcome the financial problems of Garuda. Therefore, it is necessary to pay attention to the restrictions on the use of APBN as regulated in the 1945 Constitution. The management of the APBN is only aimed at achieving people's prosperity – nothing else. So purely for actions that are public and have an impact on the people. The current budget condition does not provide sufficient policy space to be used for the takeover of Garuda's debt even in the concept of a loan. The use of APBN for this will reduce the people's rights to services provided by the government and reduce people's access to their basic needs, including people's access to improved welfare. This, of course, injures the function of the state budget itself. Although the status of Garuda. To provide a spiritual atmosphere of its own, of course, the impact of using APBN should be the government's main consideration in choosing settlement options. It is time for this nation to rise from nostalgia and rest on the real conditions and needs of society and the state. it is very inappropriate for the state to take over the debts of Garuda.

In the Fourth Paragraph of the Preamble to the 1945 Constitution,<sup>17</sup> the objectives of the Indonesian state are stated, namely: "To protect all the Indonesian people and all of Indonesia's homeland and to advance public welfare, protect all of Indonesia's homeland, educate the nation's life and participate in implementing world order based on independence, eternal peace, and social justice." To realize these objectives, the Government is mandated to create a budget and activity plan through the State Budget (APBN). Article 23 paragraph (1) of the 1945

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<sup>17</sup> Undang-Undang Dasar 1945.



Constitution regulates "The State Budget as a manifestation of state financial management is determined annually by law and implemented openly and responsibly for the greatest prosperity of the people." This provision provides constitutional limitations on the function of the APBN,<sup>18</sup> namely to achieve the objectives of the state, namely the prosperity of the people.<sup>19</sup> In addition, the objectives of the state are imperative objectives (commands; obligations) or obligations that must be implemented by the government in budgeting (budget obligatory government).<sup>20</sup> The APBN means state responsibility, namely to achieve state goals. For this reason, funds disbursed by the government must reflect this accountability. Through state spending, the priority of government activities is depicted, whether it will bring the people closer to socially just welfare or otherwise, thus the constitution has provided limitations for the use of APBN funds. This is in accordance with the function of budgeting, namely as a tool that contains steps to realize certain goals. As stated by Lee, Jr., and Johnson as follows. "Public budgeting involves the selection of ends and the selection of means to reach those ends. Public budgeting systems are systems for making choices about ends and means."<sup>21</sup> For this reason, the budget plan and work plan of the Government listed in the APBN must reflect the Government's real efforts and steps in realizing the achievement of state goals. This UUD norm is the legal basis for the receipt, expenditure and financing by the Government.<sup>22</sup>

Administratively, government expenditure is divided into expenditures intended for the administration of government and expenditures intended for development to create a just and prosperous society. The fiscal limitations owned by the Government require the Government to prioritize activities in accordance with these two objectives. The selection of these priorities (fiscal policy) requires a balance in the budget plan and work plan that are routine in nature for the implementation of government, which are of a nature that encourages economic growth and which are of a nature that benefits the people or has an impact on increasing the people's welfare evenly. This is where the chosen fiscal policy can be tested. Buchanan Jr., stated that constitutional norms can be used as a measuring tool to assess whether an economic policy is influenced by the personal interests of politicians and non-economic forces (how politicians' self-interest and non-economic forces affect government economic policy).<sup>23</sup> This is because constitutional norms are the highest legal norms in a country. Constitutional norms, according to

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<sup>18</sup> According to Jimmy Ashidiqie, within a nation's constitution it is the economic constitutions that are filled with norms and guidelines to a nation's economy. Based on these constitutional norms the rules of economy are formed. Of course within them APBN. Jimly Ashidiqie, "Memperkenalkan Gagasan Konstitusi Ekonomi" (Jakarta: Universitas Trisakti, 2012).

<sup>19</sup> The said constitutional limits reflect Indonesia as a modern lawful nation, which based on the Lemair and de Kat Angelino concept, the government's duty is to achieve public welfare through governmental directives including within them activities concerning the management of state funds. Utrecht in Dian Puji N. Simatupang, *Paradoks Rasionalitas Perluasan Ruang Lingkup Keuangan Negara Dan Implikasinya Terhadap Kinerja Keuangan Pemerintah* (Jakarta: Badan Penerbit FHUI, 2011), hlm. 345-346.

<sup>20</sup> Simatupang. *Ibid.*, hlm. 137.

<sup>21</sup> Jr and Ronald W. Johnson Robert D. Lee, *Public Budgeting Systems* (Baltimore: University Park Press, 1978), hlm. 1.

<sup>22</sup> APBN's posture covers receiving, expenditure, funding, and ensuring primary stability.

<sup>23</sup> James M. Buchanan, "The Constitution of Economic Policy," 1986, <http://nobelprizes.com/nobel/economics/1986a.html>, accessed 20 April 2017.

Michelman, are a political-moral principle.<sup>24</sup> Fiscal policy as an operational policy of the Constitution is morally bound by constitutional norms and must not conflict with the underlying constitutional norms. Fiscal policy (APBN) must refer to the goals of the state (constitutional norms). In accordance with the State's goal to achieve people's prosperity, Kartohadiprodjo firmly stated that the State as an organization is a unity of people to achieve certain goals, which set aside other goals that are not state goals.<sup>25</sup> Therefore, the State Budget must be allocated to realize state goals, not other goals.

Several things also need to be considered if the option of using the State Budget funds to improve Garuda's condition is taken. *First*, several studies show that the positive impact of providing government funds to BUMN is influenced by the managerial capabilities of the BUMN itself. This is shown in a study by Dinarjito on BUMN that received PMN in 2014 to 2017, the results showed that PMN and asset growth from the BUMN together affected BUMN performance, but partially did not affect BUMN performance or BUMN asset growth. This is due to the management capabilities of the PMN itself in each BUMN.<sup>26</sup> Similar results were also obtained from a study conducted at PT Waskita Karya (financial report research for the period 2013-2017) which showed that the provision of state capital participation (PMN) based on the profitability ratio increased and the liquidity ratio did not change significantly, while the solvency ratio and activity ratio decreased. This means that the provision of PMN given is less significant with PT Waskita's transactions as a large BUMN, so it only affects working capital turnover.<sup>27</sup>

*Second*, after the privatization of Garuda, based on the 2012-2014 financial report, research conducted by Widyastuti et al. showed that Garuda's average financial performance did not show satisfactory results. The increase in Garuda's added value was not distributed optimally to the government, creditors, employees, and capital owners.<sup>28</sup> *Third*, based on research conducted by Yunus et al.<sup>29</sup> who analyzed Garuda's bankruptcy rate in 2016-2019, it is known that Garuda's bankruptcy rate is included in the bad category and is in a state of bankruptcy, especially in 2019 due to the increase in current liabilities that occur every year. These results are obtained based on the calculation of the net working capital to total assets ratio; retained earnings to total assets ratio; earnings before interest and taxes to total assets ratio; and the market value of equity to book value of debt ratio. Here are the details: a) increase in the company's current liabilities such as increased bank and financial institution debt, increased growth in current and non-current

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<sup>24</sup> Ashidiqie, "Memperkenalkan Gagasan Konstitusi Ekonomi."

<sup>25</sup> Soediman Kartohadiprodjo, "Negara Republik Indonesia Negara Hukum" (Jakarta, 1953)., hlm. 6.

<sup>26</sup> Agus Dinarjito, "Penyertaan Modal Negara Pertumbuhan Aset Dan Kinerja Badan Usaha Milik Negara," *E-Jurnal Akuntansi* 28, no. 2 (2019): 1323–45, <https://doi.org/HTTPS://DOI.ORG/10.24843/eja.2019.V28.I02.P20>.

<sup>27</sup> Vijey Hamdani Yusuf Ikhsan, "Analisis Efektivitas Penyertaan Modal Negara (PMN) Terhadap Kinerja Keuangan PT Waskita Karya (Persero) Tbk.," *Jurnal Indonesia Rich* 2, no. 2 (2021): 25.

<sup>28</sup> M. Achsin Avianti Widyastuti, Gugus Irianto, "Privatisasi: Kinerja Keuangan Dan Distribusi Laba (Analisis Kritis Pada PT Garuda Indonesia (Persero) Tbk.)," *Jurnal Reviu Akuntansi Dan Keuangan* 5, no. 1 (2015): 695–704.

<sup>29</sup> Yusnita Yunus, M. Ilham Wardana Haeruddin, Muhammad Ichwan Musa, "Analisis Tingkat Kebangkrutan PT Garuda Indonesia (Persero) Tbk.," *Jurnal Manajemen* 1, no. 1 (2021): 10–11.

assets, increased cash and cash equivalents, increased accounts receivable, increased inventory, increased down payments and prepaid expenses, aircraft maintenance funds and security deposits, investment in associated entities, increased assets in the form of buildings and equipment; b) decrease in net profit which affects the decrease in retained earnings; c) utilization of total assets in obtaining profits is still inefficient due to high investment costs, global economic conditions that reduce people's purchasing power; and d) changes in prices every year.

In the study it is suggested that a) the company suppress current liabilities that do not exceed assets so that the company is able to pay off its current liabilities; b) the company manages the company's profitability by maximizing profits and minimizing the company's business expenses; c) the company must be able to utilize the use of total assets that increase every year to be used to obtain profits and benefits.

From the perspective of the state budget, referring to the provisions of the constitution, namely Article 23 paragraph (1) of the 1945 Constitution, the use of funds from the APBN is limited only to achieving public welfare. This is also in accordance with the principles used in the implementation of government in general as regulated in Articles 5 and 10 of Law No. 30 of 2014 concerning Government Administration, that the implementation of government must, among other things, provide benefits, impartiality, and refer to the public interest.<sup>30</sup> In line with these regulations, specifically regarding the management of state finances, the principles apply, among others, accountability oriented toward results as stated in Law No. 17 of 2003 concerning State Finances.<sup>31</sup> Of course, the takeover of Garuda's debt will only bring benefits to the community as long as Garuda's operational activities after the provision of PMN significantly affect the increase in the flow of national goods and services, and provide dividends that significantly increase state revenues, thereby increasing benefits to the community through development carried out by the state based on the revenues it receives.

Referring to previous research the success and benefits of PMN on BUMN performance are more influenced by the managerial ability of recipient BUMN in managing the PMN itself. Meanwhile, Garuda's managerial ability shows that Garuda's average financial performance does not show satisfactory results. This is reflected in Garuda's bankruptcy rate, which is included in the bad category and is in a state of bankruptcy in 2016-2019, especially in 2019 due to the increase in current liabilities that occur every year. It can be assumed that it will be difficult for Garuda's management to be able to provide significant benefits for increasing state revenues in particular.

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<sup>30</sup> Government directives must be based on the principle of legality, the principle of protection towards human rights and good governmental principle in general (AUPB) (Article 5). Anything that is not included in AUPB (Article 10) covers the principle of absolute law, benefits, neutrality, thoroughness, not abusing authority, transparency, public interests, and good service. "Undang-Undang No. 30 Tahun 2014 Administrasi Pemerintahan," Pub. L. No. 30 (2014).

<sup>31</sup> A common explanation about UU No. 17 Tahun 2003 concerning state money explains the principles that work in directing state finances that covers: yearly principles, universal principles, united accountability that orients on results, professionalism, proportionality, transparency in state financial management, financial audits done by a auditor wing that is free and independent. "Undang-Undang No. 17 Tahun 2003 Tentang Keuangan Negara" (2003).

PMN provided by the state must also show impartiality and refer to the public interest. Impartiality and public interest are manifested in government policies in providing assistance to business actors without taking sides but are more oriented towards the priority of providing goods and services that are basic needs of the community during this pandemic and the mobility of the general public. So it is not based on ownership where each business actor must receive assistance according to the priority level of providing goods and services for the community or the mobility of the general public. Thus, not only BUMN is owned by the state but also applies to business actors who meet the requirements above. Garuda, which operates in the transportation service sector, certainly participates in providing goods and services for the community, but for the mobility of the general public, air transportation is still less beneficial for community mobility because it is included in the high-class level so that Garuda's benefits in terms of community mobility are less than optimal. Of course, the APBN funds used to increase Garuda's PMN are not on target.

The current budget conditions do not provide sufficient policy space to be used for the takeover of Garuda's debt even in the concept of a loan. The use of APBN funds for this will reduce the people's rights to services provided by the government and reduce the people's access to their basic needs, including the people's access to improved welfare.<sup>32</sup> This certainly harms the function of the APBN itself. Although Garuda's status provides its own spiritual atmosphere, of course, the impact of the use of APBN funds should be the government's main consideration in choosing a resolution option. It is time for this nation to rise from nostalgia and stand on the real conditions and needs of the community and the state. It is very inappropriate for the state to take over Garuda's debt.

In the business world, there are always two possibilities, namely the opportunity to make a profit and the possibility of a loss. In the economy, many factors influence the success of a company, both internal and external. It is a natural law that good company management can minimize the impact of losses so that losses do not continue to decline or bankrupt.

As previously stated, based on research conducted by Yunus et al.<sup>33</sup> who analyzed Garuda's bankruptcy rate in 2016-2019 by referring to the calculation results of the net working capital to total assets ratio; retained earnings to total assets ratio; earnings before interest and taxes to total assets ratio; and the market value of equity to book value of debt ratio, it was concluded that Garuda's managerial ability did not show good performance. Thus, Garuda's opportunity to obtain profits that can be distributed to shareholders in the form of dividends is certainly difficult to expect.

In the position of the state as a shareholder, the actions taken by the state are based on the condition of the company. It's really just a matter of business logic. Every business action is

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<sup>32</sup> Sijbren Cnossen and Hans-Werner Sinn, ed., *Publik Finance and Public Policy In The New Century* (Cambridge, Massachusetts, London, England: The MIT Press, 2003).

<sup>33</sup> Yusnita Yunus, Muhammad Ichwan Musa, "Analisis Tingkat Kebangkrutan PT Garuda Indonesia (Persero) Tbk."

always targeted at achieving profit. Actions taken must bring benefits to shareholders. In the event that the company's condition allows it to rise from adversity if it receives additional capital, then shareholders should consider providing their capital. If the condition of the company is deemed to be unable to return to its profitable operations, then the shareholders will certainly withdraw the invested capital. This business logic should be the main basis for taking state action. Especially considering that the funds used for additional capital come from APBN funds. Do not let the people lose money due to failed state investments.

Based on the analysis above, the government is required to consider the method in resolving Garuda's financial problems considering the two-state positions, namely: 1) as a shareholder, the government can ask the management to take corporate action; 2) as the holder of the highest form of public authority, the APBN can be used to help only if the value of the benefits in the form of improving services to the community exceeds that than the cost of saving Garuda.

#### **4. CONCLUSION**

The dualism of state position in the case of Garuda needs to be taken into consideration considering that both in their position as the highest public authority and as shareholders, they use APBN. As the holder of the highest form of public authority, the state should consider the impact of its actions on the people. Do not let the actions of the state injure the people's sense of justice. It is time for the nation and state to rise from the nostalgic sentiment and make choices based on the pure real condition of the people. Learning from the history of Garuda's goveranal management that has never improved significantly, the Government should not help Garuda because it will only waste the State Budget and not benefit the community. It is time for the government to bankrupt BUMN which is not worth maintaining if the rescue costs are not comparable to the benefits expected to be achieved. In its position as a shareholder, the state has the right to demand responsibility from BUMN management to take action as a corporate action to overcome the financial problems. If indeed the condition of Garuda is, it is not possible to get up and operate again so as to generate dividends, preferably Garuda becomes bankrupt.

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