

## ***State Financial Position as State Equity Participation in Indonesia Investment Authority***

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### ***Abstract***

*The aim of this research is to examine the position of state finances as state capital participation in the INA. Through Government Regulation in Lieu of Law (PERPPU) No. 2/2022, the Investment Management Institution as known as Indonesia Investment Authority (INA) is a new initiative by the government to manage Central Government investments. Referring to the Santiago Principles, the government uses the separate legal entity model for the establishment of INA. The capital of INA comes from state equity participation, which in Indonesia's financial system is categorized as separate state assets. This means that, in essence, INA's capital is considered state finance. However, there is a regulatory construction in Article 158 paragraph (4) which states that INA's losses are not state losses, thus INA's equity is no longer considered state finance. This is akin to the concept of a separate legal entity in corporations, which have their own assets separate from the assets of their owners/managers. Previously, Constitutional Court Decisions No. 48/PUU-XI/2013 and No. 62/PUU-XI/2013 had established that separated state assets remain state finance. Therefore, a question arises regarding the status of INA. Using normative legal research methods, the research findings indicate that INA's equity originating from state equity participation has transformed into INA's private finance. However, this transformation is not in line with the national financial system constructed based on the welfare state principle. Consequently, this could potentially create loopholes for the embezzlement of state funds.*

**Keywords:** *Indonesia Investment Authority; Separated State Assets; State Finance; State Losses*

## **1. INTRODUCTION**

Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation (PERPPU 11/2020) introduces a new government initiative to establish the Investment Management Institution as known as Indonesia Investment Authority (INA) aimed to managing Central Government investments. In order to increase investment and strengthen the economy, the new scheme under PERPPU 11/2020 grants authority for the implementation of investments according to the legislation to the State General Treasurer, held by the Minister of Finance, and to the new institution with special authority (*sui generis*) for investment management. The *sui generis* institution referred to INA, which, based on Government Regulation No. 74 of 2020 on the Investment Management Institution (PP 74/2020), is named the Indonesia Investment Authority.

Based on the global financial system, INA is known as Sovereign Wealth Funds (SWF). Over the past thirty years, Sovereign Wealth Fund (SWF) has become a significant participant in the global economy, serving as a major source of funding.<sup>1</sup> Sovereign Wealth Funds (SWF) as government-controlled investment vehicles created to achieve diverse macroeconomic objectives. Typically, these funds are sourced from the reallocation of

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<sup>1</sup> Riad A. Ajami, "Sovereign Wealth Funds: Opportunities, Global Challenges & Relevance to the Oil-Producing Economies," *Journal of Asia-Pacific Business* 24, no. 3 (2023), <https://doi.org/10.1080/10599231.2023.2241012>.

foreign exchange reserves, subsequently invested internationally over extended periods.<sup>2</sup> Researchers describe Sovereign Wealth Funds (SWF) as government-controlled and operated investment entities.

In the survey results of 21 SWF that are members of the IWG, SWF is often established by specific laws and in some cases by the Constitution. More than half of the respondents stated that they were established as separate legal entities from the state or central bank, while the rest were not separate legal entities or pools of assets.<sup>3</sup> The flexibility of the form is regulated in the "Generally Accepted Principles and Practices for SWF" known as the Santiago Principle. This means that there are no specific international provisions that require SWF to be formed with a certain model. This reflects that each country has the freedom to use its own ideal model.

Referring to the description, the government chose to use a separate legal entity model for INA. Article 156 paragraphs (2) and (3) of PERPPU 2/2022 emphasizes that the Indonesian Government holds full ownership of INA as a legal entity responsible to the President. The consequence is that there is a separation of responsibilities between the owner and the corporation and the existence of separate capital from the owner's assets. The government injects state capital to INA amount of Rp75,000,000,000,000 (seventy-five trillion). The sources of the state equity participation include cash, state-owned belongings, state bills on BUMN or limited liability companies, and/or state-owned shares in limited liability companies or BUMN.

The state equity participation used as INA equity in the financial system in Indonesia is categorized as separated state assets. The government's responsibility to provide public services as an idea contained in the Constitution is the reason for the separated state assets as part of state finances.<sup>4</sup> The recognition of the position of separated state assets as part of state finances is stated in Law Number 17 of 2003 on State Finances (Law 17/2003) and the General Explanation of Law Number 31 of 1999 on the Eradication of The Crime of Corruption as amended by Law Number 20 of 2001 (Law 31/1999). The implication of the concept of the state's financial position is that the state has a full role in every activity of state financial management.<sup>5</sup>

Since the enactment of PERPPU 2/2022, there have been legal issues listed in the norms that discuss INA. One of them is in Article 158 paragraph (4) of PERPPU 2/2022 explains that profits or losses in carrying out investments suffered by INA are profits or losses of INA. The explanation of Article 158 paragraph (4) of PERPPU 2/2022 states that all assets of INA belong to INA and any losses suffered by INA are not state losses. This is certainly contrary to the concept of state finance adopted by the government in its laws,

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<sup>2</sup> Jan Cernohorsky and Katerina Tesnerova, "The Importance and Perspectives of Sovereign Wealth Funds in the Globalised Economy," *SHS Web of Conferences* 92, no. 03006 (2021), <https://doi.org/10.1051/shsconf/20219203006>.

<sup>3</sup> Cornelia Hammer, Peter Kunzel, and Iva K. Petrova, "Sovereign Wealth Funds: Current Institutional and Operational Practices," *IMF Working Paper*, 2008. 5

<sup>4</sup> David Syam Budi Bakroh, "Pengelolaan Investasi Pemerintah" (Politeknik Keuangan Negara STAN, 2020). 114

<sup>5</sup> M. Rafi Al Farizy et al., *LPI Dalam Lingkaran Pertanggungjawaban Kerugian Negara* (Yogyakarta: Bintang Semesta Media, 2023).

which positions state finances in other entities as still state finances. However, Article 164 paragraph (2) of PERPPU 2/2022 derogates<sup>6</sup> all existing regulations concerning state assets, state financial management, and state-owned enterprises (BUMN), provided that these matters are covered under PERPPU 2/2022. The special characteristics of INA have the potential issue to trigger chances for the occurrence of crimes against state finances, especially regarding the potential for corruption.

INA, which was born after the ratification of PERPPU 2/2022, has a special feature in the use of state finances, specifically by no longer recognizing separated state assets as state finances so that it can have an impact on the absence of accountability for state financial losses, while state financial losses should be imposed by legal entities that receive capital from the state. From a philosophical standpoint, Indonesia subscribes to the principle of a rule of law, necessitating that every law is crafted with the objective of enhancing public welfare. This principle aligns with one of the core tenets of the welfare state, emphasizing the significant role of the state in economic management, including the ownership of state enterprises that have vital business functions or oversee essential aspects of public livelihood.<sup>7</sup>

The issue of separated state assets is closely related to the debate on the capital of BUMN, which is often studied by researchers. According to the research by Dahoklory (2020),<sup>8</sup> it is analyzed that, based on several Constitutional Court Decisions, all assets of BUMN are classified as state assets. Therefore, any losses incurred by BUMN fall under the category of state losses. To determine accountability in the event of losses in BUMN, it is necessary to first examine whether the losses were caused by actions/decisions of directors in the administrative or business field. However, this research focuses more on the accountability of directors and the forms of BUMN supervision. Thus, it needs to be further elaborated using the INA as the research object.

In line with this study, according to Roza (2022),<sup>9</sup> the interpretation of the status of state finances included in BUMN should be understood as absolute state finances. This is based, among other things, on the constitutional mandate and the purposes of BUMN related to economic improvement for the welfare of society. However, since this research focuses on BUMN, it needs to be adjusted and further examined with a different research object, namely the INA.

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<sup>6</sup> Derogation can be interpreted as the elimination of the validity of a norm against another norm. Its function is important to determine which norm should be prioritized/enforced if there are conflicting norms.

<sup>7</sup> Immanuel Karya Juang Wau and Hendry Julian Noor, "Analisis Dampak Perubahan Status Keuangan Negara Badan Usaha Milik Negara Terhadap Rencana Pembentukan Super-Holding Oleh Pemerintah Berdasarkan Prinsip Welfare State" (Universitas Gadjah Mada, 2021). xiv

<sup>8</sup> Madaskolay Viktoris Dahoklory, "Dinamika Pengelolaan Keuangan BUMN Perihal 'Dilema' Antara Kerugian Negara Ataupun Kerugian Bisnis," *Jurnal Rechtsvinding* 3, no. 2 (2020), <http://dx.doi.org/10.33331/rechtsvinding.v9i3.457>.

<sup>9</sup> Nelvia Roza, "Problematika Penentuan Status Keuangan Negara Dalam Badan Usaha Milik Negara Persero," *Lex Renaissance* 7, no. 1 (2022), <https://doi.org/10.20885/JLR.vol7.iss1.art4>.

On the other hand, there is research that disagrees with categorizing BUMN assets as state finances, written by Sandi (2023).<sup>10</sup> According to them, the separated state assets used as capital participation in BUMN are considered BUMN finances, as BUMN are independent legal entities separate from their founders or shareholders. However, this research does not elaborate on the concepts contained in the 1945 Constitution and adopted by the Constitutional Court's Decisions. The 1945 Constitution, as the supreme law, provides the foundation for the government in conducting its administrative functions.

Because the amount of state money held and injected into INA is very large, it is necessary to analyze the certainty of its responsibility and supervision. Relating to accountability, especially if there is a criminal act related to the misuse of state finances commonly called corruption, with the formulation of a law like this there is the potential for not being able to be charged with a criminal act of corruption. Regarding supervision, it is currently regulated in Article 161 of the PERPPU that the audit of INA's financial management and accountability is carried out by a public accountant registered with the Audit Board of Indonesia (BPK) and the Indonesia Financial Services Authority (OJK). However, on the other hand, there is an external institution, BPK, which is directly tasked to auditing financial management as mandated by the 1945 Constitution and laws. Therefore, it is important to analyze the financial position of the state in INA to ensure the ambiguity of the laws.

Based on previous studies, it can be understood that the issue of INA regarding the position of state finances within it is a new topic that has not been previously discussed. Hence, the researcher aims to delve into this novel issue by exploring the position of state finances as state capital participation in the INA. The objective of this study is to investigate the position of state finances within the INA and the implications of this position. From an academic standpoint, this analysis will offer insights and solutions concerning the regulation of an entity for the government and legislators.

## **2. METHOD**

Analyzing this problem, researchers use a normative legal research method. This research method is a research conducted by reviewing library materials and tracing all regulations that are related to the problem being studied.<sup>11</sup> This method uses a statutory and conceptual approach to analyze the feasibility of a legal rule. This research material consists of primary legal materials which include PERPPU 2/2022 and other laws related to state finances. In addition, there are secondary legal materials used in this research which include related books and journals.

The method of data collection in this thesis research is a literature study. The search involves seeking legal materials relevant to the established legal issue. The literature study is conducted by reading, understanding, and reviewing library materials or resources

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<sup>10</sup> Meidy Yanto Sandi, Muhammad Hadin Muhjad, and Akhmad Syaafi, "Kekayaan Negara Yang Dipisahkan Dalam Badan Usaha Milik Negara (BUMN) Dalam Bentuk Persero," *Notary Law Journal* 2, no. 3 (2023), <https://doi.org/10.32801/nolaj.v2i3.45>.

<sup>11</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (Jakarta: Kencana, 2024). 194

available on the internet that are related to this thesis research. In conducting research, one begins by identifying legal facts. This is followed by gathering relevant research materials. The next step involves analyzing the legal issues with the collected materials. Upon completing the analysis, researchers draw conclusions from the discussion and address the identified legal problems. Additionally, they provide suggestions within the conclusion. Utilizing these research methods, researchers are expected to justify their responses to the studied legal issues and offer prescriptions to the relevant parties involved in this thesis research.

Using this method, the research focuses on addressing the legal status of assets in LPI by elaborating on the welfare state concept adopted by Indonesian law. The study will compare the concept of state finances in a company as previously discussed in existing legal materials to provide insights and solutions for future legal reforms.

### **3. RESULTS AND DISCUSSION**

INA serves as a Sovereign Wealth Fund (SWF) dedicated to fostering future generations' prosperity and supporting sustainable economic growth in Indonesia. The SWF framework adopted by INA aligns with the Generally Accepted Principles and Practices for SWF, also known as the Santiago Principles. These principles offer flexibility regarding the institutional structure of SWF, allowing for different models. For instance, some SWF are created as distinct legal entities, while others function as asset pools without separate legal entity status.<sup>12</sup> Based on this, the Indonesian government then took the separate legal entity option as reflected in Article 156 paragraph (2) and (3) of PERPPU 2/2022 which stipulates that INA is entirely owned by the Indonesian government and operates as a legal entity accountable to the President.

In corporate law theory, the doctrine of a separate legal entity exists. Generally, this doctrine asserts that a company or corporation is recognized as a distinct legal entity, independent from its shareholders and members. Consequently, a corporation has the ability to engage in legal actions such as suing and being sued, owning property, entering into contracts, and conducting other legal activities as an entity distinct from its owners.<sup>13</sup> In such a context, a corporation has its own assets that are separate from the assets of its owners/managers.

The equity of INA is derived from state equity contributions in the form of cash, state-owned assets, government receivables in BUMN or limited liability companies, and state-held shares in BUMN or limited liability companies. Additionally, INA's equity can also originate from other sources such as reserve capitalization, accumulated retained earnings, and gains from asset revaluation. This equity contribution is identified as one of INA's assets, as mentioned in Article 160, paragraph 1 of PERPPU 2/2022.

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<sup>12</sup> Udaibir S. Das, Adnan Mazarei, and Han van der Hoorn, *Economics of Sovereign Wealth Funds: Issues for Policymakers*, IMF (Washington D.C., 2010). 69

<sup>13</sup> Yasmine Budustour and Leen Budustour, "The Doctrine of Separate Legal Personality and It's Significance in International Business," *SSRN*, 2023, <https://dx.doi.org/10.2139/ssrn.4384050>. 2



In the context of Indonesia's financial system, INA equity participation is classified as separated state assets. This concept was initially established in Article 6 paragraph (1) of Government Regulation in Lieu of Law Number 19 of 1960 concerning State Enterprises, which specifies that "State enterprise capital consists of separated state assets". These separated state assets refer to state equity participation in state enterprises. Essentially, state equity participation allocated within the management of state enterprises is recognized as separated state assets.<sup>14</sup>

The aim of separating state assets is to allocate these assets as equity participation in the Indonesia Investment Authority (INA), with management adhering to corporate principles. As defined in Article 1 number 10 of Law Number 19 of 2003 on State-Owned Enterprises, amended by PERPPU 2/2022 (Law 19/2003), Separated State Assets are state assets derived from the state budget (APBN) intended for equity participation in BUMN and other limited companies. According to Government Regulation Number 72 of 2016 on the Amendment to the Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies (PP 72/2016), state equity participation involves the separation of state assets from the APBN or the allocation of company reserves or other sources for capital in BUMN and/or limited liability companies, managed under corporate governance. Although these provisions are specifically aimed at BUMN, the equity participation in INA follows the same principle, making INA's equity part of separated state assets within state finances.

Separated state assets are part of state finances as stipulated in Article 2 letters g and i of Law Number 17 of 2003 on State Finances (Law 17/2003) which essentially states that state finances are all state/regional assets that have value whether managed independently, by other parties or by parties facilitated by the state. Other laws and regulations also position separated state assets as part of state finances. Law 31/1999, in its General Explanation, asserts that state finances encompass all state assets, whether separated or not, including all portions of state assets and all rights and obligations arising from: Firstly, those managed by state institution officials. Secondly, those under the management of any company handling state finances. According to these provisions, separated state assets are considered part of state finances.

As an illustration, there are parties that receive state equity participation, namely: BUMN, Central Bank of Indonesia (BI), Social Health Insurance Administration Body (BPJS), Indonesian Export Financing Institution (LPEI), and others. The consequences of separating state assets as state finances, namely errors in their management that are clearly detrimental to the company, can be said to be state losses. According to Law Number 1 of 2004 on State Treasury Law, state loss is a deficiency of money, securities and goods, which is actual and definite in amount as a result of unlawful acts, whether intentional or negligent. According to the definition of state loss, there are several elements on the

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<sup>14</sup> Muhammad Djafar Saidi and Eka Merdekawati Djafar, *Hukum Keuangan Negara : Teori Dan Praktik* (Jakarta: Rajawali, 2017). 47

definition, namely: deficiency of money, goods, valuable documents; the amount of actual and definite losses; unlawful acts, whether intentional or negligent; the existence of a person responsible/perpetrator of the loss; the causal relationship between the unlawful act and the loss that occurs.<sup>15</sup>

However, it should be understood that the losses suffered by the state-owned legal entity are not necessarily identified as state losses. It could be that the losses suffered are purely caused by unavoidable business risks. As long as the managers in managing the company are guided by the principles of the company and are responsible in accordance with the provisions of laws and articles of association, the risk of loss does not become something that leads to criminal sanctions.

The concept of separated state assets as state finances in a corporation, especially BUMN, has often been a debated since long ago. This problem is based on one of the concepts of a separate legal entity that has separate assets from its members or owners. Therefore, those who oppose it consider that the assets in BUMN are no longer state finances, but rather the finances of the BUMN itself. According to Law 19/2003, most or all of the BUMN equity comes from separated state assets which are state finances as explained at the beginning. Thus, it is explicitly explained that the management of BUMN is based on the principles of a healthy company.<sup>16</sup> This means that, legally, the equity included in BUMN is no longer identified as state assets, but becomes the private assets of the BUMN itself.

The birth of the Constitutional Court Decision Number 48/PUU-XI/2013 and the Constitutional Court Decision Number 62/PUU-XI/2013 became the end of the issue of separated state assets. The Constitutional Court Decision highlights that state finances do not transform into private finances when state assets are transferred to other parties. Both decisions assert that state assets, even when separated and managed by others, remain classified as state finances. The claimant contended that Article 2, letters g and i of the State Finance Law, which broadens the scope of state finances, are in conflict with Article 23 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which restricts state finances to the State Budget. Ultimately, the Court dismissed the claim, reasoning that the broad definition of state finances is intended to close regulatory gaps that could lead to losses. Moreover, this comprehensive approach to defining state finances ensures the protection of state assets derived from public resources.<sup>17</sup> Moreover, the purpose of the provisions of Article 2 letters g and i of the State Finance Law is the state can monitor and be accountable for every use of state money.

The next point asserts that state assets employed as capital participation in a company are governed by the business judgment rules (BJR). Nevertheless, segregating state assets does not equate to relinquishing them, as these transactions do not involve a change in

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<sup>15</sup> Nizam Burhanuddin, *Hukum Keuangan Negara* (Yogyakarta: Total Media, 2017).

<sup>16</sup> Explanation of Article 4 paragraph (1) Law Number 19 of 2003 on State-Owned Enterprises as amended by Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation

<sup>17</sup> Constitutional Court Decision Number 48/PUU-XI/2013, 228

ownership. Consequently, the company's assets remain state assets, and state oversight is still applicable. However, this oversight now adheres to the principle of BJR, rather than government judgment rules.<sup>18</sup>

Uniquely, unlike the illustration of state capital in the parties that have been described previously, INA's capital originating from state equity participation is no longer state finance but has been transformed into INA's private finance itself. This is based on the provisions of Article 158 paragraph (4) of PERPPU 2/2022 which states that the profits or losses suffered by INA in carrying out investments are INA's profits or losses. Then in the explanation of the Article, it is expressly stated that INA's equity belongs to INA and any losses experienced by INA are not state losses. Such a matter is fundamentally at odds with the concept of state finance as applied in Indonesia, as stipulated in the regulations concerning the management of state finance, namely: the State Finance Law, the State Treasury Law, the Law on Audit and Management of State Financial Accountability, and the Law on the Eradication of Corruption.

Losses incurred by INA that are not classified as state losses imply that INA's finances do not qualify as state finances. Since state losses pertain to state funds, if INA experiences a financial loss, it is considered an INA loss. Consequently, auditing INA's financial management falls outside the purview of state responsibility, as outlined in the Law on Audit of State Financial Management and Accountability, and instead, adheres solely to corporate mechanisms grounded in the principle of good corporate governance (GCG).

This creates legal ambiguity, as INA was established by law, fully owned by the Indonesian Government, and funded entirely by state capital, meaning its equity should remain state-owned. Despite INA's management adhering to the GCG principle, this should not exempt the entity from state financial accountability mechanisms. These mechanisms of supervision and accountability are essential to ensure that state finances are managed according to the intended objectives and in compliance with applicable laws and regulations, given that state finances fundamentally originate from the people.<sup>19</sup> This leads to legal ambiguity, as the INA itself is established by law and fully owned by the Indonesian government, with all its capital originating from the state. Therefore, the capital and assets of the INA should indeed remain state assets. Although the management of the INA is based on the GCG principle, this should not eliminate the mechanism of state financial accountability as a form of state oversight.

This problem is also emphasized by the existence of Article 164 paragraph (2) of PERPPU 2/2022 as a derogatory norm that eliminates all laws and regulations regarding the management of state finances, state assets, and/or BUMN as long as they are regulated in PERPPU 2/2022. In fact, the derogatory norm is intended to resolve conflicts of norms

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<sup>18</sup> Constitutional Court Decision Number 62/PUU-XI/2013, 233

<sup>19</sup> Sabrina Hidayat et al., "Kewenangan Badan Pemeriksa Keuangan (BPK) Dan Badan Pemeriksa Keuangan Dan Pembangunan (BPKP) Dalam Menentukan Kerugian Keuangan Negara," *Halu Oleo Legal Research* 5, no. 2 (2023), <https://doi.org/10.33772/holresch.v5i2.551>.



between laws. According to Hans Kelsen, in legal practice, the conflict of rules is something real and can only be resolved through "derogation" of the conflicting rules.<sup>20</sup> However, the existence of this norm does not clearly confirm the intended laws and increasingly creates problems that do not realize the objectives of the law itself, namely the principle of legal certainty. In fact, the provisions of Article 164 paragraph (2) of PERPPU 2/2022 tend to be aimed at avoiding accountability for state finances as regulated in-laws on the management of state finances, namely: the State Finance Law, the State Treasury Law, the Law on Audit and Management of State Financial Accountability, and the Law on the Eradication of Corruption.

According to Article 9 PP 74/2020, It has been regulated that there is an organ authorized to supervise the INA, namely the Supervisory Board, which consists of the Minister of Finance, the Minister of BUMN, and three professionals. Although it involves ministries, it should be understood that the Supervisory Board is an internal entity of the INA, regardless of whether its members are from the ministries. Therefore, internal supervision is not enough. There should be external supervision in supervising the management of INA through mechanisms of state financial accountability as regulated by the applicable provisions.

Basically, external supervision of state financial management is conducted by the Audit Board of Indonesia (BPK). The Constitution has established status of BPK as a high state institution, equivalent to the President, the House of Representatives (DPR), and the Regional Representative Council (DPD). Therefore, it is clear that BPK is an external supervision body, structurally independent from the government.<sup>21</sup> Consequently, this institution, which is specifically established to oversee financial matters (functional oversight), is logically capable of producing more objective findings.<sup>22</sup> However, due to the existence of the derogation norm, it can be interpreted that the authority of BPK to audit the management of state finances against INA has been eliminated.

There is a welfare state concept adopted by the Constitutional Court in the Constitutional Court's decision. The Constitutional Court views the expansion of state finances as based on the welfare state concept adopted by the 1945 Constitution, specifically in the fourth paragraph of the Preamble and articles that aspire to the formation of a Government that protects and advances the welfare of the nation. Indonesia adopts a fresh, more dynamic model of a legal state, often referred to as a welfare state or a substantive legal

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<sup>20</sup> Kristian Vincent Gunawan and Raden Mas Gatot Prasetyo Soemartono, "Penggunaan Asas Derogasi Dalam Penyelesaian Disharmonisasi Inventarisasi Ekspresi Budaya Tradisional," *Kertha Patrika* 45, no. 2 (2023), <https://doi.org/10.24843/KP.2023.v45.i02.13>

<sup>21</sup> Nawang Xalma Kaldera, Muthi Aulia, and Adila Hani Faza, "Peran Bpk Sebagai Lembaga Pengawas Eksternal Pengelolaan Keuangan Negara," *Jurnal Fundamental Justice* 1, no. 2 (2020), <https://doi.org/10.30812/fundamental.v1i1.21>

<sup>22</sup> Kaldera, Aulia, and Faza.

state.<sup>23</sup> In this welfare state, the government is entrusted with "bestuurzorg" which means the administration of public welfare.<sup>24</sup>

The concept of the welfare state adopted by the Constitutional Court Decision refers to the term "well being" which is described as a good life.<sup>25</sup> The welfare state is a concept that positions the role of government in protecting and introducing the economic and social welfare of its citizens.<sup>26</sup> Soekanto, as cited in W. Riawan Tjandra, articulates that the state, initially viewed solely as an instrument of power, is increasingly being regarded as an agency of service. This shift has given rise to the welfare state concept, which primarily perceives individuals not only as autonomous entities but also as members of a collective. It asserts that individuals are not merely tools for collective interests but also have intrinsic personal purposes.<sup>27</sup> According to Bagir Manan, in a welfare state, beyond being a guarantor of security or public order, the government is obligated to ensure social justice, general welfare, and the utmost prosperity of its citizens.<sup>28</sup> This means that there is a fairly big role for the government in managing the government which is based on the spirit of prospering the people.

In a welfare state conception, certain priorities are emphasized: Firstly, the protection of the socio-economic human rights of the populace. Secondly, efficiency and management considerations take precedence over politically motivated power divisions, resulting in a more prominent role for the executive compared to the legislature. Thirdly, property rights are not regarded as absolute. Fourthly, administrative law encompasses socio-economic regulations. Fifthly, public law tends to dominate over private law. Lastly, the state also prioritizes material social justice.<sup>29</sup> Based on this description, it can be described how strong the position of the state is in the concept of a welfare state. Every action of the government or state must be based on law and the state plays a role in improving the welfare of the people.<sup>30</sup> "With the adoption of the welfare state concept in Indonesian law, lawmakers should implement this concept in the legal products they create. Specifically, the status of state finances within the INA should remain part of state finances. However, the rules that were made actually deviated from this concept.

Considering this, the position of INA's equity does not align with the national financial system constructed on the welfare state concept as outlined in the 1945 Constitution and the Constitutional Court Decision. As per Article 158 paragraph (4) of

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<sup>23</sup> Rizky Novian Hartono, Sriwati, and Wafia Silvi Dhesinta Rini, "Kerugian Keuangan Negara Pada Badan Usaha Milik Negara (BUMN) Dalam Perspektif Doktrin Business Judgement Rule," *Keluwih Jurnal Sosial Dan Humaniora* 2, no. 1 (2021), <https://doi.org/10.24123/soshum.v2i1.4392>.

<sup>24</sup> W. Riawan Tjandra, *Hukum Administrasi Negara* (Jakarta: Sinar Grafika, 2019).

<sup>25</sup> Budi Setiyono, *Model Dan Desain Negara Kesejahteraan* (Bandung: Nuansa Cendekia, 2019). 25

<sup>26</sup> Setiyono. 28

<sup>27</sup> Tjandra, *Hukum Administrasi Negara*. 9

<sup>28</sup> Elviandri, Dimiyati Khuzdalifah, and Absori, "Quo Vadis Negara Kesejahteraan Meneguhkan Ideologi Welfare State Negara Hukum Kesejahteraan Indonesia," *Mimbar Hukum* 31, no. 2 (2019), <https://doi.org/10.22146/jmh.32986>. 259

<sup>29</sup> Elviandri, Khuzdalifah, and Absori. 260

<sup>30</sup> Melisa et al., "Kedudukan Hukum Dalam Mewujudkan Keadilan Dan Kesejahteraan Di Indonesia," *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 1 (2023), <https://doi.org/10.0.147.48/almanhaj.v5i1.2084>.

PERPPU 2/2022, INA's equity is no longer regarded as state finance. The Central Government's investment through INA is intended not only for profit but also to provide public benefits and support national economic development, which aligns with the welfare state concept. In fact, in the construction of laws, a norm must not conflict with another norm. The rule of non-contradiction ensures that one regulation does not contradict another, maintaining harmony and integrity among all regulations.<sup>31</sup>

INA governance is regulated in PP 74/2020 which is adopted from the GCG principle. The purpose of the GCG principle is to establish a system that prevents any form of abuse within a company while simultaneously stimulating its growth. Moreover, the implementation of GCG is expected to enhance the company's competitiveness in securing capital in the global market. The GCG principle can mitigate the risk of sudden changes and promote long-term investment. Additionally, GCG can strengthen the financial sector and foster responsible management and robust financial performance.<sup>32</sup>

According to the General Guidelines of GCG in Indonesia, there are general principles contained in the GCG principle, namely transparency, accountability, responsibility, independence, and fairness. Every company must ensure that the principles of GCG are applied to every aspect of the business and at all levels of the company. The principles of GCG are needed to achieve the sustainability of the company's business by considering stakeholders.

As an illustration, GCG is also implemented in BUMN. These are as regulated in Regulation of The Minister of State-Owned Enterprises Number PER-2/MBU/03/2023 on Guidelines for Governance and Significant Corporate Activities Of State-Owned Enterprises. In fact, although BUMN in their company management has been regulated to apply this principle, there are still BUMN that commit corruption crimes that harm state finances. This is reflected in the 2023 Indonesian Corruption Perception Index (CPI) which has a score of 34/100 and is ranked 115th out of 180 countries surveyed.

Despite the regulation requiring BUMN to implement these principles in their management, instances of corruption that adversely affect state finances still occur within BUMN. This is evidenced by Indonesia's 2023 Corruption Perception Index (CPI), which stands at 34/100, ranking 115th out of 180 countries surveyed.<sup>33</sup> The prevalence of corruption cases within BUMN, including major scandals like those involving PT Asuransi Jiwasraya (Persero) and PT Asuransi Sosial Angkatan Bersenjata Republik Indonesia (ASABRI) Persero, supports this data. This suggests that Indonesia is not yet prepared to transition state finances into private finances within corporations such as INA. Continued state oversight of both separated and unseparated state finances remains essential to foster a clean investment environment and prevent Corruption, Collusion, and Nepotism (KKN).

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<sup>31</sup> Munir Fuady, *Teori-Teori Besar (Grand Theory) Dalam Hukum* (Jakarta: Kencana, 2023).

<sup>32</sup> M. Sadi Is, *Hukum Perusahaan Di Indonesia* (Jakarta: Kencana, 2022).

<sup>33</sup> Transparency International, "Corruption Perception Index 2023," n.d.

Reflecting on the discussion above, the government needs to draw lessons from past errors in managing BUMN. It is crucial to recognize that flawed legislation can affect the delivery of justice, particularly in terms of ensuring a prosperous life for society.<sup>34</sup> Although the GCG principle is the foundation or guideline for the management of BUMN, it is not a guarantee that the company's management acts in accordance with the principle. In fact, there are still parties who cause state losses due to criminal acts committed. It means that the application of the GCG principle in managing a BUMN must be accompanied by government supervision. These losses not only affect the state but also affect parties who are directly or indirectly related to the BUMN. Therefore, the transformation of state finances will potentially create loopholes in state financial robbery.

The huge authority and wealth of INA must be accompanied by provisions that prevent any deviations in its management. There needs to be an adjustment to the formulation of the PERPPU 2/2022 on the position of state assets separated in the INA which should remain part of state finances as a consequence of the welfare state principle adopted by the 1945 Constitution and several Constitutional Court Decisions.<sup>35</sup> The private finances owned by INA which are implicitly regulated in Article 158 paragraph 4 PERPPU 2/2022 should be replaced so that INA's finances are still interpreted as state finances. In addition, the derogation norm in Article 164 paragraph 2 PERPPU 2/2022 is vague and does not mention specific laws that should be adjusted so as not to cause implementation problems in the future. With that formulation, automatically the BPK as an external supervisor can also supervise and audit the management of state finances at INA.

#### **4. CONCLUSION**

This research aims to examine the position of state finances as state capital participation in the INA. It was found that, due to the Explanation of Article 158 paragraph (4) and Article 164 paragraph (2) of PERPPU 2/2022, INA's equity from state equity participation has been converted into private finances, aligning with the doctrine of a separate legal entity. However, Constitutional Court Decisions affirm that state finances remain state assets when allocated to other parties. This indicates that INA's private finances conflict with the national financial system based on the welfare state principle. Corruption in BUMN shows that Indonesia is not ready for this transformation. INA's management should follow GCG principles, and Article 164 paragraph (2) of PERPPU 2/2022, which eliminates the authority of BPK to audit state financial management, should not be enacted. Legislative adjustments to PERPPU 2/2022 are necessary to ensure INA's finances remain state finances and are subject to BPK's external supervision and auditing.

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<sup>34</sup> Andreas Hari Susanto Marbun, Suryaningsi, and Rosmini, "Analisis Lembaga Pengelola Investasi Terhadap Pengelolaan Keuangan Negara," *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum* 3, no. 4 (2024): 390–97, <https://doi.org/10.55681/seikat.v3i4.1434>. 393

<sup>35</sup> M. Rafi Al Farizy, "Pertanggungjawaban Pidana Lembaga Pengelola Investasi Terhadap Kerugian Keuangan Negara" (University of Jember, 2022).

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