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# Legal Analysis of The Privacy of State-Owned Enterprises

Ahmad Fauzi<sup>1</sup>

<sup>1</sup> Faculty of Law, Universitas Muhammadiyah Sumatera Utara, Indonesia. E-mail: [ahmadfauzi@umsu.ac.id](mailto:ahmadfauzi@umsu.ac.id)

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## Article Info

**Keywords:**

Economic;  
Privacy, State-Owned  
Enterprises.

**How to cite (APA Citation Style):**

Fauzi, A. (2022). "Legal Analysis of The Privacy of State-Owned Enterprises". *Jambura Law Review*. JALREV 4 (1): 51-72

## Abstract

*The world's market economic system influences the management behavior of State-Owned Enterprises which has been lulled by the monopolistic system. The market economic system requires the community as the main actor and the state as the facilitator. Competition occurs in companies as well as in State-Owned Enterprises. To increase efficiency and productivity, must make changes to the management system by making structural adjustments which have been known as restructuring. The government formulates the direction of targets and policies for the management and supervision of State-Owned Enterprises Law Number 19 of 2003 concerning State-Owned Enterprises was made to fulfill the vision of future development; create a management and supervision system based on the principles of efficiency and productivity to improve performance and value in managing and confirming the role of government institutions and the position of government representatives as shareholders or capital owners to emphasize and clarify the relationship as an operator or business actor with a government institution as a regulator; to avoid acts of exploitation outside the corporate mechanism; to lay the foundations or principles of good corporate governance (Good Corporate Governance). The aim is to regulate operations, regulate restructuring, and privatization as a tool and method in State-Owned Enterprises.*

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## 1. Introduction

State-Owned Enterprises (SOEs) play an important and very strategic role in the national economic system. Such a position relates to production branches which are vital as their line of business. State-Owned Enterprises have a strategic role because of their function as agents of development, distribution of prosperity, an instrument of price guard, generating profit, and bulwark against global competition.

State-Owned Enterprises (SOEs) as one of the actors in the Indonesian economic system based on the provisions of Law no. 19 of 2003 is divided into three forms of business entities, each form has its function and characteristics. Public Companies serve the interests of the public at large, Limited Liability Companies are operationally subject to the provisions of Law Number 1 of 1995 concerning Limited Liability Companies. Thus, this business entity can operate commercially and generate profits by economic principles so it is expected to make a large contribution to development.

State-Owned Enterprises (SOEs) have the dominant form of Persero which plays a major role in contributing to development. Various facts of contributions made by State-Owned Enterprises are legally stated in the constitution (Article 33 of the 1945 Constitution). Thus, the touch through legal instruments for strengthening the position of State-Owned Enterprises (SOEs) in the national political arena in the end not only places SOEs as representatives of the state in the economy, especially in terms of the ability to accumulate giant capital but has also conditioned the position of SOEs as government instruments to achieve certain goals in the political and economic fields. Along with the position as a political tool for the government, the demands for privatization of many s have also strengthened. This privatization program is of course based on modern economic logic to make one of the economic actors who are expected to have competitive and comparative advantages in the domestic economy and the global economy.

The privatization of SOEs has also become a new problem in managing the Indonesian economy. In various protests expressed by the unions of workers and the legal and institutional controversies that accompanied the implementation of these actions, state officials seemed increasingly enthusiastic about accelerating the implementation of privatization by justifying all means.

State-Owned Enterprises to improve national efficiency, all economic actors, both State-Owned Enterprises and the private sector, must make improvements. State-Owned Enterprises are expected and believed to be able to increase efficiency and productivity. With the privatization of State-Owned Enterprises, government intervention, which has been considered one of the causes of inefficiency, will decrease, and the company's management will be more transparent.<sup>1</sup>

W Friedmann et al. stated that the presence of the State is expected to be limited to the function of regulation or regulator and the allocation and distribution of resources and is no longer in the capacity of an entrepreneur or entrepreneur.

Efforts to develop and improve the management are continuously carried out. Since the beginning of 1988, the government has issued several policies regarding improving the performance and efficiency of, namely through Presidential Instruction Number 5 of 1988. This policy gives the Minister of Finance the authority to further regulate the problem of restructuring.

Furthermore, the government through the Decree of the Minister of Finance Number 740/KMK.00/1989 concerning Increasing the Efficiency and Productivity of SOEs and the Decree of the Minister of Finance Number 741/KMK.00/1989 concerning Long-Term Plans, Work Plans, and Corporate Budgets show a strong desire to organize SOEs efficiently and productively. For the government, this policy is a solution and is the basis for the application of the concept of privatization. The two ministerial decisions have facilitated efforts to increase the efficiency and productivity of SOEs through corporate restructuring, including through: 1, Operational cooperation or management contracts with third parties. 2, Sale of shares through the capital market. 3. Selling shares directly (direct placement).<sup>2</sup>

The government's seriousness to continue the privatization program was also marked by the issuance of Government Regulation No. 55 of 1990 concerning Limited Liability Companies that Sell Their Shares to the Public Through the Capital Market. This

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<sup>1</sup> Baswir, R. (2003). Bahaya Privatisasi BUMN. *Jurnal Jentera*, 3., Pp. 72

<sup>2</sup> Garner, J. F., & Friedman, W. G. (1970). Government Enterprise. *A Comparative Study*, Stevens, London, Pp. 3

regulation has been amended several times and most recently with Government Regulation Number 12 of 1998. This change is inseparable from efforts to adjust to Law Number 8 of 1995 concerning the Capital Market.

Several legal regulations relating to the basis for the privatization of SOEs further strengthen the argument that legal penetration into economic problems is mandatory. This is in line with Satjipto Rahardjo's<sup>3</sup> opinion that the formation and implementation of the law are influenced by economic factors. On the other hand, no modern economic system can operate without law and order.

Although legal penetration of SOEs has had a positive impact under the goals desired by the government, among others, in the context of mobilizing unproductive public funds by stimulating investment in the capital market and stimulating the national economy. However, the conception of the privatization of SOEs does not yet have clear and definite standards.

Matters regarding the basic framework and direction of the privatization of SOEs, methods, and steps for privatization are still seen as issues that should require a legal touch to ensure certainty in doing business and guarantee justice in making decisions on privatization among some existing SOEs

## **2. Problem Statement**

State-Owned Enterprises as actors in the Indonesian economic system based on the provisions of Law no. 19 of 2003 have their functions and characteristics. The privatization of State-Owned Enterprises is also a new problem in managing the Indonesian economy. In various union protests and legal and institutional controversies, state officials seem to want to speed up the implementation of privatization by justifying any means.

## **3. Methods**

The method used in this study is a normative juridical approach, only examining norms so that it only examines library materials. Juridical norm research is understood to be only legal research that limits it to the norms contained in the legislation. The research

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<sup>3</sup> Oky Deviani Burhamzah, 2001, *Privatisasi PT. Semen Gresik*, PPs Univ. Hasanuddin, pp. 9

on juridical norms speaks of norms in a narrow sense, namely norms in-laws and regulations, and describes thoroughly and systematically from the subject matter.

## 4. Discussion

### 4.1. Privacy

Analysis of Legal Materials as Regulations for the Privatization of State-Owned Enterprises The definition of privatization according to the Big Indonesian Dictionary is the process, method, act of becoming private property (from state property). Meanwhile, privatization is another meaning of privatization.

Some privatization experts try to define privatization in a broad sense, among others by Kay et al<sup>4</sup>, as “... Means of changing relationship between in the developing world sector”. Then L Gray Cowan<sup>5</sup> argues that: Privatization using stock offerings provides an opportunity to introduce many thousands of new shareholders in the developing world to the financial operations that are part and parcel of a modern industrialized economy.

Meanwhile, the concept of privatization in a broad sense according to Felix O Soebagio<sup>6</sup> includes the following:

- a. Changes in the form of business from a state company to a company in the form of a limited liability company.
- b. The release of the part (large/small) or all shares of a company owned by the State to another party (private) either through a private placement or public offering.
- c. Release of rights to State assets or companies whose shares are owned by the State to other parties (private), either permanently (among others through buying and selling, grants or swaps) or temporary releases (including among others using BOT (Built, Operators and Transfers)).

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<sup>4</sup> Kay, J. A., & Thompson, D. J. (1986). Privatisation: a policy in search of a rationale. *The economic journal*, 96(381), 18-32.

<sup>5</sup> Bartlett, B. (1991). " Privatization in the Developing World" By L. Gray Cowan (Book Review). *The Journal of Developing Areas*, 26(1), 116.

<sup>6</sup> *Ibid*, Pp. 2

- d. Providing opportunities for other parties (private) to engage in certain business fields that were previously a government monopoly or government-owned company.
- e. Create joint ventures or other forms of cooperation by utilizing government assets or government-owned companies.

In general, experts argue that the definition of privatization is a transfer process in which the State relinquishes its property rights in the form of company shares either wholly or partially to private parties without any strict restrictions on the number of shares to be released to the private sector. Meanwhile, corporatization is a model for improving SOEs which is more like improving management by not questioning ownership issues, whether they are in the hands of the State or the private sector, but the most important thing is how the SOE behaves like a company.

Competition in the efficiency and reliability of a company's management is not entirely determined by whether ownership is in the hands of the government or the private sector, but is more influenced by its business environment. Therefore, allowing SOEs to behave like a company through the implementation of corporate culture will foster creativity, innovation, and corporate responsibility. In carrying out corporatization two things need to be addressed, namely how the relationship between the State as the owner and the relationship between and market conditions.

Marijana<sup>7</sup> argued that if the first relationship provided facilities for to become a commercial company, then the second relationship spurred to be ready to compete in the market. Success in improving the two linkages above will provide a guarantee of success in bringing into the private business environment. Privatization is one of the restructuring steps in the context of revamping SOEs. The objectives of the restructuring based on Article 72 paragraph (2) of the Law are to a. Improve company performance and value. b, Provide benefits in the form of dividends and taxes to the

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<sup>7</sup> Mardjana, L. K. (1994). Korporatisasi dan Privatisasi sebagai Alternatif Pembenahan BUMN. *Jurnal Keuangan dan Moneter, Jakarta. BPEK*, Pp. 16

State. c, Produce products and services at competitive prices to consumers. d. Facilitate the implementation of privatization.<sup>8</sup>

Meanwhile, the scope of the restructuring includes a. Sectoral restructuring. b. Company/corporate restructuring includes: 1) Increasing the intensity of business competition, especially in sectors where there are monopolies, both regulated and natural monopolies. Structuring functional relationships between the government as regulator and as business entities, including in 1) the depth of application of the principles of good corporate governance and setting the direction for the implementation of public service obligations. a. Internal restructuring. The privatization of SOEs is generally intended as an effort to empower SOEs. Article 74 paragraph (1) of the Law stipulates that the purpose of privatization is to: a) Improve company efficiency and productivity. c.) Creating a good/strong financial structure and financial management. d.) Creating a healthy and competitive industrial structure. e.) Creating a company that is competitive and globally oriented. f.) Fostering business climate, macro economy, and market capacity.<sup>9</sup>

Then the privatization was carried out to increase the company's performance added value and increase public participation in the ownership of shares of the company. In another article, it is stated that privatization is carried out by taking into account the principles of transparency, independence, accountability, responsibility, and fairness.<sup>10</sup>

Based on this, privatization is carried out in the following ways: a. The sale of shares is based on the provisions of the capital market. b. Selling shares directly to investors. c. Sale of shares to the management and or employees concerned.

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<sup>8</sup> Birdsall, N., & Nellis, J. (2003). Winners and losers: assessing the distributional impact of privatization. *World development*, 31(10), 1617-1633.

<sup>9</sup> Boyer, B., & Meidinger, E. (1985). Privatizing regulatory enforcement: a preliminary assessment of citizen suits under federal environmental laws. *Buff. L. Rev.*, 34, 833.

<sup>10</sup> O'rouke, D. (2006). Multi-stakeholder regulation: privatizing or socializing global labor standards? *World development*, 34(5), 899-918.

## 4.2. Analysis of Legal Materials as Regulations for the Privatization of State-Owned Enterprises (SOEs).

The privatization program implemented by the government is considered as one of the solutions to be able to help the government which is currently experiencing financial difficulties. The current privatization program is implemented by Law No. 19 of 2003.

The privatization program implemented by the government is considered as one of the solutions to be able to help the government which is currently experiencing financial difficulties.<sup>11</sup> The current privatization program is implemented by Law No. 19 of 2003. All or most of its capital comes from separated State assets, is one of the economic actors in the national economic system, in addition to private businesses and cooperatives. In carrying out their business activities, the private sector, and cooperatives carry out mutually supportive roles based on economic democracy.<sup>12</sup>

In the national economic system, SOEs play a role in producing goods and or services needed in realizing the greatest prosperity of the people. The role of is felt to be increasingly important as a pioneer and/or pioneer in business sectors that are not yet in demand by private businesses. In addition, SOEs also have a strategic role in the implementation of public services, balancing the strengths of the large private sector and helping the development of small businesses and cooperatives. SOEs are also a significant source of state revenue in the form of various types of taxes, dividends, and results of privatization. The implementation of the role of SOEs is manifested in business activities in almost all economic sectors, such as agriculture, fisheries, plantation, forestry, manufacturing, mining, finance, post and telecommunications, transportation, electricity, industry, trade, and construction.<sup>13</sup>

In reality, even though SOEs have achieved their initial goals as agents of development and the driving force behind the creation of corporations, these goals have been

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<sup>11</sup> Van de Walle, N. (1989). Privatization in developing countries: a review of the issues. *World Development*, 17(5), 601-615.

<sup>12</sup> Defourny, J. (2013). Third sector. In *Handbook on the economics of reciprocity and social enterprise*. Edward Elgar Publishing.

<sup>13</sup> Douglass, M. (2018). *A regional network strategy for reciprocal rural-urban linkages: an agenda for policy research with reference to Indonesia* (pp. 124-154). Routledge.



achieved at a relatively high cost. The company's performance is considered inadequate, as can be seen in the low profit earned compared to the invested capital. This is due to various obstacles, SOEs have not been able to fully provide high-quality goods and or services to the public at affordable prices and have not been able to compete in global business competition.

In addition, due to limited resources, the function of SOEs, both as a pioneer and as a counterweight to the power of the large private sector, has not yet been fully implemented.

On the other hand, the development of the world economy is very dynamic, especially about trade liberalization and globalization that have been agreed upon by the international community such as the agreement on the World Trade Organization (WTO), ASEAN Free Trade Area (AFTA), ASEAN Framework Agreement on Service (AFAS). and Asia Pacific Economic Cooperation (APEC).<sup>14</sup>To be able to optimize its role and be able to maintain its existence in the development of an increasingly open and competitive world economy, SOEs need to cultivate a corporate culture and professionalism, among others through improving the management and supervision of SOEs carried out based on the principles of good corporate governance as Decree of the Minister of SOEs number Kep-117/M-MBU/2002 concerning the Implementation of Good Corporate Governance Practices in SOEs.<sup>15</sup>

Increasing the efficiency and productivity of SOEs is carried out through restructuring and privatization measures. Sectoral privatization is carried out to create a conducive business climate to achieve efficiency and optimal service. Meanwhile, corporate restructuring includes restructuring the form of business entities, business activities, organization, management, and finance.

Privatization is not merely interpreted as a sale of the company but is a tool and method for improving SOEs to achieve several goals at once including increasing company

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<sup>14</sup> Kawai, M., & Wignaraja, G. (2008). EAFTA or CEPEA: Which way forward?. *ASEAN Economic Bulletin*, 113-139.

<sup>15</sup> Harahap, Rahmat Saleh. "Relationship between the effectiveness of Good Corporate Governance (GCG) policies with the occurrence of corruption cases in the State-Owned Enterprises environment." *Journal of Social Science* 1.3 (2020): 78-82.

performance and added value, improving financial and management structures, creating a healthy and competitive industrial structure, empowering SOEs that can compete and have a global orientation, the spread of ownership by the public and the development of the domestic capital market.

With the privatization of SOEs, it does not mean that the control or sovereignty of the State over the SOEs concerned will be reduced or lost because as stated above, the State continues to carry out the control function through sectoral regulations where the privatized SOEs carry out their business activities.

The importance of a sustainable arrangement for the implementation of the role of SOEs in the national economic system, especially efforts to improve the performance and value of companies, has been mandated by the People's Consultative Assembly through decree number IV/MPR/1999 concerning the Outlines of the State Policy 1999-2004. This decree outlines that SOEs, especially those whose businesses are related to the public interest, need to continue to be managed and rehabilitated through restructuring and that SOEs whose businesses are not related to the public interest and are in a competitive sector are encouraged to privatize.

The government has carried out the management and supervision of SOEs in the past and will continue to do so. One of the steps that have been taken is the arrangement of the laws governing SOEs. This law aims to fulfill the vision of developing in the future and lays down the foundations or principles of good corporate governance. The application of these principles is very important in managing and supervising SOEs.

Specifically, regarding privatization, it is expressly stated that privatization can only be carried out in the form of a Persero as long as it is possible based on the laws and regulations in the sector of activities carried out by Persero.

State-owned enterprises can be privatized because apart from being made possible by the provisions in the capital market sector, in general, state-owned enterprises are generally only state-owned enterprises that have been engaged in a competitive sector that pays attention to the benefits for the people.

The Decree of the Minister of SOEs number Kep-117/M-MBU/2002 calmly The application of Good Corporate Governance Practices in SOEs is intended as a rule or guideline for corporations that are needed in a healthy SOE management system.

Article 1 paragraph (a) stipulates that Good Corporate Governance is a process and structure used by organs to improve business success and corporate accountability to realize shareholder value in the long term while taking into account the interests of other stakeholders based on laws and ethical values. The intended principles of good corporate governance are:

- a. Transparency, namely openness in carrying out the decision-making process and openness in presenting material and relevant information about the company.
- b. Independence is a condition in which the company is managed professionally without conflict of interest and influence/pressure from any party that is not following applicable laws and regulations and sound corporate principles.
- c. Accountability, namely clarity of functions, implementation, and accountability of organs so that the management of the company is carried out effectively. Accountability, namely conformity in the management of the company to the applicable laws and regulations and sound corporate principles.
- d. Fairness, namely justice and equality in fulfilling the rights of stakeholders that arise based on agreements and applicable laws and regulations.

Meanwhile, the objectives of implementing the principles of good corporate governance for SOEs are.;

- a. Maximizing the value of by increasing the principles of openness, accountability, trustworthiness, responsibility, and fairness so that companies have strong competitiveness both nationally and internationally.;
- b. Encouraging the management of SOEs in a professional, transparent, and efficient manner as well as empowering functions and increasing the independence of organs.;
- c. Encouraging organs in making decisions and carrying out actions based on high moral values and compliance with applicable laws and regulations, as well as awareness of the existence of SOE social responsibility towards stakeholders and environmental sustainability around SOEs.;
- d. Increase the contribution of SOEs in the national economy. c. Improving the national investment climate.
- e. The success of the privatization program.

Among the two provisions as described above, there are still two more provisions, namely Government Regulation number 64 of 2001 concerning the Transfer of Position, duties, and authorities of the Minister of Finance in Limited Liability Companies (Persero), Public Companies (Perum, and Public Companies). Bureau (Perjan) to the Minister of and Decree of the Minister of No. Kep-236/MBU/2003 regarding the Partnership Program with Small Business and Environmental Development.

Transfer of SOE Shares Through Go Public. Article 78 of Law Number 19 of 2003 stipulates that privatization is carried out by selling shares based on the provisions of the capital market, selling shares directly to investors, and selling shares to the management and or employees concerned. Going public also known as the sale of shares through the capital market is an attractive option for companies that need cheap funds because the capital market is a gathering place for investors who will invest in companies that are considered prospective.

One of the reasons for investors to choose to invest in the capital market is because the capital market is a place for investment activities that can be trusted by investors. Investor confidence in the existence of the capital market is very important, for that capital market organizers try their best to maintain that trust by making a set of strict regulations, such as requirements for companies that will offer their shares (go public), must be companies that have a high level of fairly good health, which is the result of an audit from a public accountant that has been determined by the capital market as well as disclosure requirements. All of these requirements greatly affect the level of investor confidence to invest in the capital market.

To see how the capital market can synergize with the SOE privatization program in the empowerment of SOEs and economic development based on economic democracy, the following describes the actors in the capital market, the requirements for issuers to go public, and information disclosure. As a business that has a very broad impact, the capital market involves many people and many institutions. Each party has different roles and functions and supports each other's interests. The parties involved in the activities of the Indonesian capital market per Law Number 8 of 1995 concerning the Capital Market, namely:

Capital Market Supervisory Agency (Bapepam). Bapepam is a government institution that has the task of firstly following developments and regulating the capital market so that shares (securities) can be offered and traded regularly, fairly, and efficiently as well as protecting the interests of investors and the general public. Second, to provide guidance and supervision to institutions and related supporting professions in the capital market. Third, provide opinions to the Minister of Finance regarding the capital market and its operational policies. In addition, Bapepam has the authority to interpret laws and regulations regarding various matters within its jurisdiction and to make independent regulations and decisions for their implementation.

Bapepam's other authority is to issue business licenses for capital market players and the authority to examine and investigate each party in the event of a violation of capital market laws. In addition, Bapepam can also intervene in trading on the stock exchange, such as freezing or canceling the listing of securities, or stopping trading activities on the stock exchange in an emergency. This considerable authority is needed because activities in the capital market have a broad impact, especially if the community is harmed. Bapepam is also tasked with ensuring the provision of adequate information to investors to create transparency or openness in the capital market. Adequate information is very important for investors as a basis for analysis in making investment decisions. For this reason, all issuers are required to provide regular reports on various important events to Bapepam which include annual and semi-annual financial reports, reports on the use of funds obtained from the public, as well as corporate actions that significantly affect stock movements.

However, it should be emphasized that Bapepam does not assess the merits of the securities offered. The assessment is left entirely to investors based on the information provided by the issuer. Bapepam also does not guarantee the truth of the information because whether or not the information provided is the full responsibility of the issuer concerned and supporting institutions or related professions such as underwriters, public accountants, legal consultants, and appraisal companies. Several regulations have been made by Bapepam to support the development of the capital market, among others: the establishment of a securities rating agency, the removal of ownership restrictions in almost all public companies (except banks) for foreign investors, the establishment of mutual funds (open-end) and the establishment of bond trading

between securities traders. in the secondary market. Capital market supervision is carried out by a new institution, the Financial Services Authority (OJK), which is an independent institution and is free from interference from other parties, which has the functions, duties, and authorities of regulation, supervision, examination, and investigation as referred to in Law Number 21 of 2011 regarding the Financial Services Authority. The Financial Services Authority (OJK) was formed with the aim that all activities in the financial services sector:<sup>16</sup>

1. Organized regularly, fairly, transparently, and accountably,
2. Able to realize a financial system that grows sustainably and stably, and,
3. Able to protect the interests of consumers and society.

Although capital market activities are under the supervision of the Financial Services Authority (OJK), the transfer of authority for capital market supervision from Bapepam-LK to the Financial Services Authority, especially in the securities transaction sector. One of the important controls in the capital market is securities transactions because capital market violations often occur in the securities transaction section, such as:<sup>17</sup>

- a. insider trading, corruption, manipulation, and so on. So it is necessary to supervise so that securities transactions run regularly and efficiently.
- b. Exchange executive. Stock exchange according to Law number 8 of 1995 is a party that organizes and provides a system and/or means to bring together offers of buying and selling securities between them. The stock exchange executive body is responsible for running and operating the stock exchange. In Indonesia, there are two stock exchange management bodies, namely the Jakarta Stock Exchange and the Surabaya Stock Exchange, which operate as self-regulatory institutions. Both exchanges act as facilitators who provide all trading facilities and in carrying out their roles have considerable authority. This authority includes, among others, (1) conducting inspections on securities

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<sup>16</sup> Atikah, I. (2020). Consumer Protection and Fintech Companies In Indonesia: Innovations And Challenges Of The Financial Services Authority. *Jurnal Hukum dan Peradilan*, 9(1), 132-153.

<sup>17</sup> Christensen, H. B., Hail, L., & Leuz, C. (2016). Capital-market effects of securities regulation: Prior conditions, implementation, and enforcement. *The Review of Financial Studies*, 29(11), 2885-2924.

trading activities, (2) making requirements for public companies to disclose financial and other information, (3) having the authority to conduct supervision, take action and register stock exchange members, and (4) have authority to make timely and effective settlement of transactions. In addition, the stock exchange is also authorized to (5) regulate the listing and issuance of the stock exchange, (6) strengthen the business practices of stock exchange members, including supporting practices and accounting, and (7) make standard requirements for exchange membership.

- b. Companies that go public (issuers). Issuers are parties who issue or have made public offerings of securities. This party needs funds to finance operations and investment plans. Issuers obtain funds for various purposes, such as to finance business expansion, improve capital structure, or pay debts. These objectives must be explained in detail in the prospectus issued by the issuer to ensure there is transparency in the use of proceeds from the sale of securities.
- c. Investors. Investors have a central role in the capital market. It is they who supply funds to the capital market so that the progress of a capital market is highly dependent on the role used by investors. Investors consist of institutional investors (pension funds, insurance, mutual funds, and others) and individual or individual investors.
- d. Securities company. A securities company is a company that has obtained a business license for several activities as a securities underwriter, securities broker, investment manager, or investment advisor. Investors can only buy/sell shares or other securities (securities) through securities companies that are officially registered on the stock exchange. Brokers or brokers are parties who buy or sell securities on an exchange at the request of investors. For his services in selling or buying securities for investors, brokers get remuneration whose amount is determined between investors and brokers. Because of its function as an intermediary, in the sale and purchase of securities, the broker does not bear any risk due to changes in the price of securities. The risks and rights to the securities are entirely on the investor's side. However, generally securities companies through their investment advisors will provide advice to investors, every brokerage company must have professionals called investment advisors. This investment advisor helps

investors to identify investment instruments that are suitable for these investors. Regarding the determination of the appropriate type of investment, the investment advisor must know the prospective customer (potential investor) and need to seek as much information as possible about the prospective customer.

- e. Clearinghouse and deposit settlement. This institution is an institution that organizes clearing and settlement of transactions that occur on the stock exchange, depository of securities, and safekeeping of assets for other parties.
- f. Mutual Fund (Investment Fund). A mutual fund is a forum used to collect funds from the investor community which is then invested in the form of a securities portfolio by the investment manager. So a mutual fund company is a party whose main activities are investing, reinvesting, and trading securities.
- g. Capital market supporting institutions. Capital market supporting institutions include property custodians, securities administration bureaus, trustees, or insurers who provide their services. The place of safekeeping of assets is the party that organizes the safekeeping of assets and safekeeping for the benefit of other parties based on a contract without having ownership rights over the assets. A securities administration bureau is a party based on a contract with an issuer that regularly provides bookkeeping, transfer and recording services, payment of dividends, distribution of option rights, certification issuance, or the issuer's annual report. A trust agent is a party entrusted with representing all the interests of the bond or credit certificate holder. The guarantor (guarantor) is the party who bears back the principal and or interest on the issuance of bonds, or credit securities if the issuer defaults.
- h. Capital market support profession. Consists of accountants, notaries, appraisal companies (appraisals), and legal consultants. Accountants are parties who have expertise in the field of accounting and auditing. The function of the accountant is to give an opinion on the fairness of the financial statements of the issuer or prospective issuer. The notary is an official authorized to make an authentic deed. The role of a notary is to make agreements, draft articles of association and their amendments, change owners of capital, and others. The appraiser is the party who issues and signs the appraiser's report. includes an opinion on assets which is prepared based on an examination according to the



expertise of the appraiser. Legal consultants are legal experts who provide and sign legal opinions on the issuer or issuer. The main function of a legal consultant is to protect investors or prospective investors from a legal perspective, their duties include researching the deed of establishment, business licenses, and others.

Companies that will conduct public offerings in Indonesia go through several procedures. First, the issuer company with the help of professionals and existing capital market supporting institutions will prepare various documentation and requirements needed to go public. One of the capital market supporting professionals who play an important role is the underwriter. Underwriters or underwriters assist companies in the process of going public, starting from determining the initial price to marketing the securities offered to potential investors. Other professionals and institutions are public accountants, notaries, legal consultants, trustees, and guarantors. According to Indra Safitri that after the documents are complete, the issuer will submit a registration statement to the Capital Market Supervisory Agency (Bapepam). The registration report contains, among others, financial information and other information regarding the issuer, along with a prospectus that provides information on public offerings to prospective buyers. Bapepam will study the submitted documents and will evaluate the application from three aspects:<sup>18</sup>

1. Completeness of documents,
2. Clarity and adequacy of information and
3. Disclosure of management, financial, accounting, and legal aspects.

After the documentation is deemed appropriate, the registration statement is declared effective (effective statement), which means that the issuer can make a public offering. To ensure that there is no delay in processing if within 30 days Bapepam has not responded, the registration statement will automatically be considered valid. After that, the issuer with the help of supporting institutions and professionals will conduct a public offering in the primary market. Kostin stated regarding the initial sale of securities that the offering of securities to the public is carried out after receiving a

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<sup>18</sup> Ika, S. R., & Ghazali, N. A. M. (2012). Audit committee effectiveness and timeliness of reporting: Indonesian evidence. *Managerial Auditing Journal*.

statement of effectiveness by Bapepam, or if it has been more than 45 days from the date of submission without any decision from Bapepam. In selling securities to the public, the main underwriter will cooperate with other underwriters, assisted by securities brokers and or sales agents.

This selling process applies to a market called the primary market. The proceeds from the sale go to the company concerned. Based on Law Number 8 of 1995, the principle of openness is formally regulated in Article 1 number 25. The inclusion of the principle of openness as a very crucial part of the capital market is a demand of market participants because openness is a customary law in the capital market so that it is regulated in laws and regulations, or because of the will of the government because openness must become a habit in capital market activities. One part of the registration statement that is directly submitted by the issuer to the public as potential investors are the prospectus, which means any written information related to a public offering to get other parties to buy securities. Matters that are disclosed on the cover of the prospectus that is related to legal protection for investors in the capital market are: Bapepam does not provide a statement of approval or disapproval of these securities, nor does it state the truth or adequacy of the contents of this prospectus. Any statement that contradicts these matters is a violation of the law. Based on the statement above, it can be said that in this case, the issuer is fully responsible for the correctness of all information and the fairness of the opinions expressed in the prospectus. In addition, all institutions and supporting professions mentioned in the prospectus are fully responsible for the data presented and relevant to their functions by applicable laws and regulations as well as respective professional standards.

Meanwhile, the statement against the law as mentioned above can be seen from the provisions regarding unlawful acts as regulated in the provisions of Article 1365 of the Civil Code, namely every unlawful act that causes harm to another person, obliges the person who because of his mistake to issue the loss, compensates the loss, means that the responsible party is the party who causes the loss due to his actions or because of the actions of other people who are his dependents or because of goods under his control. The essence of civil sanctions is how the aggrieved party obtains compensation for both immaterial and material losses. The forms of material loss consist of, a. A real loss b. Loss due to not getting the expected profit. c. Losses due to

expenses to prevent other losses.

In addition, the registration statement may also be subject to sanctions as stipulated in Article 80 and Article 81 paragraph (1) of the Capital Market Law because the prospectus is part of the statement or Article 111 of the Capital Market Law. After all, the statement is a violation of the Capital Market Law. The provisions of Article 80 of the Capital Market Law stipulates that those responsible for such actions are (a) each party who announces the statement, or (b) the director and commissioner of the issuer at the time the statement is effective, (c) the implementing guarantor, or (d) capital market support, or (e) other parties who provide opinions or statements with their approval included in the statements, either individually or jointly.

Those who are responsible according to Article 81 of the Capital Market Law are parties who offer or sell securities, while Article 111 of the Capital Market Law are those who are detrimental. Some of the other important things with transparency are reporting after the company goes public. This is important to create integrity in the capital market. In this regard, Bapepam continues to follow the development of market players, either directly by conducting direct or indirect reviews through the reporting mechanism submitted by market participants to Bapepam. State-Owned Enterprises as actors in the Indonesian economic system based on the provisions of Law no. 19 of 2003 have their functions and characteristics. The privatization of State-Owned Enterprises is also a new problem in managing the Indonesian economy. In various union protests and legal and institutional controversies, state officials seem to want to speed up the implementation of privatization by justifying any means.

## **5. Conclusion**

The research process can be concluded that the existing laws and regulations in the context of privatization have accommodated the implementation of the privatization program following the issuance of Law Number 19 of 2003 which has an impact on the creation of a climate of justice and law. certainty.

The researcher suggests that going public is one of the privatization steps that best reflect the principles of economic democracy and is quite effective in empowering SOEs.

State-Owned Enterprises based on the provisions of Law no. 19 of 2003 have their functions and characteristics but have become a new problem in the management of the Indonesian economy. In various union protests and legal and institutional controversies, state officials seem to want to speed up the implementation of privatization by justifying any means. Researchers found that State-Owned Enterprises have not been able to adapt to current technological developments. This is evidenced by the high yield of palm oil products and coal mining, but SOEs have not been able to innovate to sell finished products. Findings in the field that raw material products are sold in the free market. If the finished product is marketed, our country is assumed to be able to reap high profits. The results of the explanation above show that no law regulates the mechanism in the field regarding operations for marketing finished products.

Suggestion, It would be nice if the State-Owned Enterprises Law was issued which regulates field mechanisms regarding operations in B State-Owned Enterprises marketing finished products and forming a business law development team in the Industry 4.0 era with all its sophistication and the entire series of industrialization. the process must be in line with the values of Pancasila and the 1945 Constitution.

## 6. Acknowledgments

The researcher would like to thank all parties involved in the process of completing this article. This research was supported by the University Muhammadiyah Sumatera Utara.

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