

Restrukturisasi badan usaha milik negara : privatisasi atau korporatisasi?

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Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=105570&lokasi=lokal>

Abstrak

This dissertation is a report of the result of a research on Restructuring State-Owned Enterprises (SOEs/ BUMN): An Option between Privatization or Corporatization? The aim of this research is to answer the following academic question: Could article 33 of the 1945. Constitution as the legal foundation of the national economic system absorb aspirations of the dynamics of economic globalization? Particularly in this case, could this be achieved by the restructuring process? Is it necessary to change the 1945 constitution in order to meet the demands of globalization? What are the problems relating to article 33 of the 1945. Constitution regarding such a change? Could the liberal economic system be applied in the national economic system based on the Pancasila, the State ideology (The Five Principles)? Which restructuring model would be in accordance with the state constitution? Are there guidelines for this restructuring? This research is based on literature on secondary data such as Pancasila, the 1945 Constitution, State regulations, textbooks, journals, encyclopedias and other written materials. Fieldwork was also conducted to gather some primary data. The fieldwork consisted of interviews and observations. This research is descriptive, historical and comparative. Here, Pancasila is used as a method and a way of life. Also, Pancasila and the 1945 Constitution are the foundations of thought. Among the theories implemented in this research are "the judicial philosophy" (rechtsidee) and the legal system theory. The legal system theory consists of substance, structure and legal culture.

The result of this research proved that article 33 of the 1945 Constitution could in principle afford to absorb the dynamics of economic globalization, although there are some weaknesses which need to be improved. There are two options about the 1945 Constitution regarding the dynamics and the spirit of economic globalization: first, it is not necessary to change the Constitution especially Article 33, and second, it is necessary to amend it, especially article 33. According to article 37 of the constitution, an amendment is possible. However, this would involve a great number of obstacles and risks from the constitutional, political, psychological and juridical technical aspects. Regarding the constitutional aspect: the 1945 Constitution is considered to be the integrating factor of the nation and is an integral part of the August 17, 1945 Declaration of Independence, therefore it cannot be changed. The main problem of Article 33 lies in its interpretation. What is needed is the character and attitude of government employees with responsibility and integrity. Such characteristics particularly must be possessed by the management of State-Owned Enterprises. What is needed is legal control by the people, in this case, The Peoples Representative Council (DPR) and the People Consultative Assembly (MPR). Therefore, the recruitment system for members of DPR and MPR should be changed. A legal culture which acknowledges the supremacy of law is a basic factor for good governance and for the realization of justice in the management of the national economic system. A liberal economic system could be applied in Indonesia based on Pancasila and the Constitution. As the model for restructuring State-Owned Enterprises, both privatization and corporatization could be implemented in Indonesia, since they are not contrary to Pancasila and the 1945 Constitution. Therefore, to

face economic globalization, it is necessary to develop national economic regulation which would interpret the principles and the purpose of article 33 of the 1945 Constitution, without altering or amending it. In order to develop good governance we need to develop criteria to select members of DPR and MPR. The same applies to the system of recruitment of The Board of Directors and the management SOEs. There must be clear guidelines in order for the restructuring of the SOEs to be transparent and to meet the demands of the people for social justice. What is also of the greatest importance is capable leaders with idealism and vision, integrity and dedication.