

CHAPTER IV

CONCLUSION AND RECOMMENDATION

A. Conclusions

Based on problem statements and analysis as provided on precious chapters, the conclusions are explained as follows:

1. Even though Public Service Agency has been autonomous and given the discretion from Law Number 1/2004 and further in Government Regulation Number 23 of 2005 concerning the Financial Management of Public Service Agency as it is changed with Government Regulation Number 74 of 2012 there are problems that they can not avoid because of the consequences from but still has the constraints on mechanism and deliberation process of State Budget (APBN) where the role of executive and Commission/Budget Agency of House of Representatives (DPR) in State Budget (APBN) that stipulated in Law Number 17 of 2003 on State Budget and Law Number 27/2009 concerning The People's Consultative Assembly of the Republic of Indonesia (Majelis Permusyawaratan Rakyat Republik Indonesia / MPR RI), The People's Representative Council, sometimes referred to as the House of Representatives (Dewan Perwakilan Rakyat Republik Indonesia / DPR RI), The Regional Representative Council (Indonesian: Dewan Perwakilan Daerah, DPD), and Regional House of People's Representatives (Dewan Perwakilan Rakyat Daerah, DPRD).

One of the case that had happened towards Indonesia Investment Agency in the investment activity was the case of Divestment of 7 percent of share PT NNT, where the nuance of intervention and politics was very viscous, as the consequence of Indonesia Investment Agency (PIP) at that time still not separated from government entity. Because of that, Indonesia Investment Agency (PIP) need to be more independent and less politics interference, and it is not Public Service Agency (BLU) form that suitable for SWF.

2. Government should consider these, in order to make a better concept of Indonesia Sovereign Wealth Fund:

a.) Bankruptcy-remote for Indonesian Infrastructure Financing Agency or locally known as Lembaga Pembiayaan Pembangunan Indonesia (LPPPI) is a fallacy. Indonesia should be careful in issuing new Law or regulation related to State commercial and investment activities. Because when the State and/or Local Government as legal entity “sui generis” conducting private legal action with the third party, at that moment State or Local Government as Public legal entity should abide the private legal norms or civil law. Where at the same time occurred transformation of the function and the legal status on legal action that have been done by State and Local Government.

The immunity according to International law, will not be a possible to use in “private law” acts (acta jure gestionis). International law obviously

limits the legal ability of states to determine the scope of sovereign immunity within their legal orders: states may not award immunity for acts iure gestionis. Therefore Government should rethink to approve the request of PT SMI to be immune from bankruptcy law. Since when the States became involved in commercial activities, national courts began to apply a restrictive law of immunity.

b.) Researcher agree with the transformation of Indonesia Investment Agency and PT SMI to be a special finance institution of infrastructure development or infrastructure bank, because it is really crucial for Sovereign Wealth Fund to be more independent and less interfered by politics and the most important thing is for the sake of investment and infrastructure development in Indonesia. Almost all Sovereign Wealth Funds are attracted to invest in the infrastructure asset class because of the benefit from the long-term and relatively stable returns that infrastructure assets can provide. Infrastructure investment is also an important factor in stimulating the domestic economy while developing their internal structures. Those are key objectives of most sovereign wealth funds.

B. Recommendations

1. Based on conclusion above, in order to make a better format of Sovereign Wealth Fund, Government together with House of Representatives (DPR) should reformulate the structure, discretion, and liability towards the new Agency which

is Indonesian Infrastructure Financing Agency (Lembaga Pembiayaan Pembangunan Indonesia/ LPPI). It is better for them to look Santiago principles as the guidelines to reformulate the SWF in Indonesia because Indonesian Infrastructure Financing Agency (LPPI) can be the new life for Indonesia SWF. Do not let this LPPI be useless and be liquidated like Indonesia Investment Agency (PIP), simply because they do not see the result in short-term, because Sovereign Wealth Fund oriented for long-term investment.

2. Indonesian Infrastructure Financing Agency (LPPI) as one of Indonesia Indonesia investment vehicle in infrastructure suppose to be fill in the market gap. If Government can see the opportunities from SWF just like what Singapore sees in the Temasek as SWF and Norway with their own SWF, and Indonesia government can overcome the challenges and barriers, it is not impossible for Indonesia to be one of leading state in world economic. Because according to PWC report World in 2050, they indicate that the aggregate purchasing power of the 'E7' emerging economies – Brazil, China, India, Indonesia, Mexico, Russia and Turkey – will overtake that of the G7 by 2030. China will clearly be the largest economy by 2030, while India could challenge US for second place by 2050. Indonesia, Mexico and Nigeria could also push UK and France out of top ten global economies. These changes absolutely something that highly-desired by Indonesian people but of course it is not a thing that automatically happen without a fight, hard work, and strategy to make it happen.