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State-Owned Enterprise Reconstruction to Achieve Legal Certainty in the Implementation of Good Corporate Governance

Dinar Karunia[1]; Dian Puji N. Simatupang[2]

[1] Graduate Student at Faculty of Law, Universitas Indonesia, Indonesia

Email: dinarkarunia12@gmail.com

[2] Lecturer at Faculty of Law, Universitas Indonesia, Indonesia

Email: diansimatupang21@gmail.com

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Abstract

State-Owned Enterprises (BUMN or SOE'S) is corporate entities with unique features due to their status as state-owned enterprises. In compliance with Article 33 paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia, state-owned enterprises (SOEs) have an economic function to create profits and a social function to promote public welfare. Nevertheless, the execution of these two functions will result in a contradiction in their implementation because the criteria for evaluating their success are significantly different. SOEs must be reconstructed by classifying them based on the boundaries of the state's jurisdiction to manage SOEs and the composition of their business orientation, so that their implementation follows the rules, objectives, and relevant functions. This study method is normative legal research. The research typology employed is a prescriptive legal research typology. The data utilized in this study are secondary data. The collecting of study was performed through library research. The method of data analysis employed is qualitative. The findings of the performed research are presented as analytical prescriptive research.

Keywords: *State-Owned Enterprises (SOEs); Management; State Authority*

Introduction

To ensure that management and performance run smoothly, state-owned enterprises (SOEs) must be reconstructed to achieve legal certainty in the adoption of Good Corporate Governance (GCG). Existing laws and regulations classify SOEs as part of the government, requiring them to perform public service commitments in order to enhance community welfare, while simultaneously requiring them to pursue profits in their capacity as economic actors. If these two tasks are combined into a single aim that

SOE'S must achieve, it will create a contradiction in its execution because the criteria for evaluating the two functions' achievement are extremely different. As a consequence, SOEs must be reconstructed by categorizing them based on the state's authority to manage them and the composition of their business orientation, so that their implementation follows the rules, objectives, and relevant functions.

The existence of state-owned enterprises (SOEs) is crucial to economic progress and community welfare. Article 33 paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) mandate the state to control and utilize production branches that are important for the state and control the livelihoods of a large number of people, as well as the wealth of nature to the greatest extent possible for the prosperity of the people. The article makes it clear that the state has a role in economic activity, hence in practice SOEs are founded as development agents to fulfill this job. SOEs are enterprises in which the state owns all or the majority of the capital through direct participation from the state's assets. The establishment of SOEs is also inextricable from the concept of a welfare state that defines Indonesia. This is reflected in Paragraph 4 of the Preamble to the Republic of Indonesia's 1945 Constitution, which declares that one of the state's functions is to promote public welfare. The essence of Article 33 paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia was the concept of the welfare state under governmental supervision. The branches of production that are vital to the state and manage the livelihood of the people are consistent with the concept of public goods, whose collective consumer segmentation is the entire population. The market cannot offer this public good due to the nature of this public benefit, which is utilized sustainably by the general public, and nothing can prevent the general public from utilizing such (Savas, 2002). As a consequence, the aim of state control is to prevent these production branches from being used solely for the profit of certain groups and to ensure that they are used for the general welfare.

The welfare state notion implies that the government is responsible for the people's well-being. One method to strengthen the country is for the people to prosper. People's prosperity can be attained if the economy is managed effectively. The development of the state can help to strengthen this country. State growth entails the establishment of new government institutions as well as the reinforcement of existing ones (Fukuyama, 2005). The state must also be able to offer order, security, law, and guarantees of property rights, all of which are required for the contemporary economic world to be conceived. In the modern economy, providing for public needs and promoting justice is one of the state's most basic functions. This function is economically viable. One of the state's supporting capacities in performing its tasks optimally is economic prosperity. Economic efficiency is a key to achieving financial success. When it comes to economic efficiency, however, there is a dilemma: whether to minimize the scope of the state, in this example by limiting the state's capacity to regulate the state economy, or to increase its power, which can be accomplished by strengthening the functions of state institutions. When it comes to a country's economic efficiency, meanwhile, the strength of its state institutions in general is more significant and dominant than the scope of its government's tasks. In the welfare state notion, the government is also responsible for providing goods and services to the entire community and ensuring their accessibility. The availability of consumer goods is determined by the presence of government- and private-sector-regulated markets. Likewise, the state is obligated to offer social services to all of its people in regard to welfare services, which are part of the public goods and welfare state. As a consequence, the government must make certain that everyone qualifies for the program. The government must assure that these social services are accessible to everyone in the community (Nugraha, 2002). Economic prosperity will almost likely support the funding of public activities to address the demands of a large number of people.

Due to this reason, the presence of SOEs as an institutional organization that performs state functions and economic functions is one approach to reinforce the state so that the desired objectives and functions can be accomplished. The increase in the long-term economic growth rate demonstrates that state power is more significant than the size of the country, therefore there is a significant positive

relationship between the percentage of income per capita and the percentage of revenue withdrawn by the government. Countries with high per capita incomes channel a greater share of their national wealth into the public sector. With the allocation of substantial funding to state sectors, it is able to assist state institutions in performing their functions to the greatest extent possible. If indeed the state can optimally accomplish its functions, it can enforce the regulations. State institutions can also provide public services in order to meet the needs of the general public.

In accordance with the provisions of Law No. 17 of 2003 concerning State Finance (State Finance Law), Law No. 1 of 2004 concerning State Treasury (State Treasury Law), as well as Law No. 15 of 2004 concerning Audit Management and Responsibility for State Finances, the establishment of SOEs is part of the state's responsibility to ensure that state control in the use of these production branches is used for the welfare of the people in relation to the aims of the country. The existence of this notion suggests that the state has a role in economic activity by managing the production branch in order to generate profits. The function of the state as a participant in economic activity through engaging in consumption, production, and distribution. In the notion of the welfare state, SOEs play a role in the production of goods and services necessary for the maximum prosperity of the people by controlling production branches, strategic natural resources, and the lives of numerous individuals. In consumption activities, the state also participates as a consumer who need products and services to fulfill his responsibilities. In addition, the state engages in distribution efforts to distribute items generated by SOEs to the general population. This reveals that SOEs play a major role in the Indonesian economy. State policies in the trade sector, such as export policies and import policies, are issued to grow overseas markets, boost competitiveness against foreign commodities, and offer goods that cannot be produced domestically. This demonstrates the state's regulatory and operational roles in the management of SOEs. Consequently, it is necessary to establish clear distinctions between the authority of these two responsibilities. Additionally, the administration and oversight of SOEs must adhere to GCG standards.

SOEs are a type of business entity that was created by combining the concepts of state ownership, public service implementation, and state business. As a practical matter, the idea of SOEs in Indonesia must be amended to conform to Article 33 of the Republic of Indonesia's Constitution of 1945, which specifies that SOEs can accommodate all functions. According to the welfare state concept, the state was established to meet demands, provide services, and ensure that the administration of all state assets is employed as much as possible for the people's prosperity. SOEs must produce profits as a result of their actions in order to sustain their operations. The integration of these two functions into a single purpose for SOE'S has resulted in a contradiction in the SOE'S blueprint's legislation and conceptions. To avoid problems in its implementation, it is necessary to reformulate the right SOE entity to carry out the state's duties and functions in accordance with Article 33 of the Republic of Indonesia's 1945 Constitution, which relates to the supervision of SOEs and the assessment of SOE management based on the Government Judgment Rule (GJR) paradigm, which differs from the assessment based on the Business Judgment Rule (BJR). The concepts of GCG in SOE'S cannot be adequately implemented due to the existence of two separate points of view in conducting the assessment. As a matter of fact, a classification is required to determine the limits of the role of the state in the management of SOEs, as well as the limitations of the sectors controlled by SOEs, in order to support their performance in accordance with their goals and functions as regulated by law, and to ensure efficiency and compliance with the law.

Research Methods

This research method is normative legal research or library law research, in which library materials or just secondary data are utilized (Soekanto, 2007). This legal research was done by researching and analyzing legal concerns using statutory rules, literature searches, and library materials pertaining to legal issues or legal sources. The research typology employed is a prescriptive legal research

typology. The objective of prescriptive research is to provide an insight or define an issue based on the existing circumstances/facts in order to obtain recommendations for resolving particular problems (Ishaq, 2017). This legal research classification utilizes secondary data collected by studying and analyzing legal issues through statute regulations, literature searches, and library materials pertaining to legal concerns or legal sources. Legal materials utilized include both primary and secondary legal materials. Primary legal materials are legal materials that have authority and are authoritative (Marzuki, 2013). This research use statutes as its principal legal source material. In addition, secondary legal materials are those that explain main legal materials, such as drafts of laws, research results, and legal expert opinions.

Data collection was carried out using library research. This is done by searching for and collecting laws or topics or collecting laws and regulations that have been recorded on the internet. Then read, create a framework for thinking, map out, compose the primary legal material in an integrated manner. Sources of legal material can be obtained by studying literature originating from various sources. The research approach used is a statutory approach and an analytical approach. The statutory approach is used in reviewing and analyzing the provisions regulated in legislation and regulations (Marzuki, 2013). Meanwhile, the analytical approach is carried out by analyzing legal materials to find out the meaning contained in the legislation and knowing its practical application. The data analysis method used is a qualitative method. Qualitative methods are carried out by analyzing and processing data based on an understanding of the data or information obtained which is then narrated to obtain research conclusions. Data analysis is carried out by describing quality data in the form of regular, coherent, logical, non-overlapping, and effective sentences, thus facilitating data interpretation and understanding of data analysis results sourced from legal materials based on concepts, theories, laws and regulations, doctrines, legal principles, expert opinions, or the views of the researchers themselves (Ishaq, 2017). The form of the results of the research carried out is in the form of analytical prescriptive research by providing an overview or formulating the problem according to the existing conditions/facts based on a review of the legislation and literature to seek meaning and provide suggestions for existing problems.

Discussion

1.State Authority Paradigm on SOEs in the Legislative System

The provisions of SOEs are governed by Law No. 19 of 2003 on State-Owned Enterprises (SOE'S Law). SOEs are state-owned enterprises (SOEs) with capital derived from state assets (Asyhadie & Sutrisno, 2012). SOEs are enterprises in which the government owns all or most of the capital through direct equity participation derived from the country's assets. The separated countries assets are the wealth of the country derived from the state budget (APBN), which is invested in the Company as well as Public Company as state capital. According to the concept above, the state enters its capital through direct equity involvement in SOEs, with no intervention (through the outside). The management of SOE'S is established with the purpose of GCG, in line with its status as a company (Supramono, 2016).

The SOE’s Law recognizes two forms of SOE’s, namely Public Company (*Perum*) and Limited Liability Company (*Persero*). However, there are some differences related to the function of the two, including:

a. Public Company (*Perum*)

A public company is a state-owned enterprise (SOE) whose entire capital is owned by the government and is not divided into shares, and which seeks to benefit the public by delivering high-quality goods and/or services while also pursuing profits based on corporate management standards. The conditional of Public Company capital must come entirely from the state and cannot be divided into

shares. This demonstrates that the state acts alone in forming public companies because it is unable to foster capital with the help of other (private) parties. Apart from that, since the principal is under management, a public company with all of its capital originating from the state cannot be administered as a state agency/government with a state financial system. As a consequence, public companies are exempt from the Company Law (also known as UU PT) and are solely subject to the SOE's Law, which regulates public companies explicitly (Supramono, 2016).

b. Limited Liability Company (***Persero***)

Limited Liability Company or Limited Company is a SOE’s in the form of a limited liability company whose capital is divided into shares of which all or at least 51% (fifty one percent) of which is owned by the state and its main destination. By confirming that the Company is in the form of a Limited Liability Company, the consequence is that the Limited Compaby is subject to the Company Law. This is also confirmed in Article 11 of the SOE’s Law which states that all provisions and principles that apply to Limited Liability Companies are applicable to Limited Liability Company Laws (Supramono, 2016).

Basically, the construction of SOEs strives to contribute to the development of the national economy by prioritizing the needs of the people, harmony, and employee satisfaction in the pursuit of a just and peaceful society (Ilmar, 2012). Based on the description above, it can be concluded that basically the state of Indonesia established a state-owned enterprise with two main objectives, namely the objective of being economic. In terms of an economic nature, SOE’s is meant to manage strategic business sectors so that they are not controlled and monopolized for the benefit of certain parties. In addition to generating profits from the management, SOEs must also ensure that their management allocation is used for the prosperity of the people. In addition to economic purposes, SOEs are also established for social purposes, namely by providing public services from the management of strategic business sectors so that the community can feel the benefits. In managing the government, the state can act as a regulator, a corporation, or a protector of the people. Regarding the corporate function, SOEs are created with the following goals in mind: (Supramono, 2016)

a. Seeking profit;
b. Creating employment opportunities;
c. Managing state assets; and
d. Protecting the people's and others' interests.

As for the aims of establishing SOE’S according to the provisions of Article 2 of the SOE’s Law, there are 5 (five) kinds as follows: (Asyhadie & Sutrisno, 2012)

a. Contribute to the development of the national economy in general and state revenue. SOEs are expected to be able to improve the quality of service to the community while at the same time contributing to increasing national economic growth and assisting state financial revenues.

b. Seeking profit. Although the goal and objective of the Company is to pursue profit, in certain cases to perform general services, the Company may be assigned a special task by observing the principles of GCG. Accordingly, the government assignment must be accompanied by financing (compensation) based on business and commercial calculations, while for the Company the goal is to provide balance and support.

c. Organizing general benefits in the form of providing high-quality and adequate goods and/or services for the fulfillment of the lives of many people.

d. Become a pioneer in business activities that have not been carried out by the private sector and cooperatives. Pioneering activities are an effort activity to provide goods and/or services needed by the community, but these activities have not been carried out by the Cooperative. Therefore, this task can be carried out through assignments to SOEs.

e. Also actively providing guidance and assistance to entrepreneurs of weak economic groups, cooperatives and the community.

The SOE's capital comes from state assets which are separated from the state budget, so that SOE management is not bound by the state budget system or the state financial system. With its position as a company, SOE’S can carry out their duties independently and professionally. State assets deposited as SOE capital become the property of SOEs, because as a legal entity, SOEs have their own assets. The wealth of SOEs is separate from their own wealth and that of the SOE management (Asyhadie & Sutrisno, 2012). SOE’S capital according to article 4 paragraph (2) of the SOE’S Law consists of 3 (three) types, namely State Budget, reserve capitalization, and other sources. From these three sources, it can be seen that SOE's capital does not always come from SOEs. For funds sourced from State Budget, the scope is broad, covering state budget projects managed by SOEs and/or state receivables from SOEs that serve as co-funders. While what is meant by reserve capitalization is the addition of paid-in capital originating from reserves. For SOE capital sourced from other sources, among others, is the asset revaluation advantage (Supramono, 2016). The segregation of state assets to be used as state capital participation into state-owned capital. Likewise, every change in state capital participation, either in the form of additions or subtractions, including changes to the state ownership structure of the limited liability company. This is done with the aim of making it easier to monitor and administer state assets embedded in SOEs and Limited Liability Companies. However, for additional state capital participation originating from reserve capitalization and other sources, it is not necessary to determine, with sufficient governance.

Even if it has been conceptually regulated in this manner, there is a controversy surrounding the segregated state assets that comprise the capital of SOEs, which impacts the assessment of authority in the administration of SOEs. Article 4, paragraph 1 of the SOE's Law specifies that the capital of SOEs is derived from segregated public assets. In the article's explanation, it is clarified that separation refers to the separation of state assets from the State Revenue and Expenditure Budget (APBN) to be used as state capital participation in SOEs for further development and management that is no longer based on the state budget system, but rather on the principles of a healthy company. This further conflicts with Article 2 letter g of the State Finance Law, which states that state assets/regional assets managed by themselves or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated from state/regional companies, must be valued in monetary terms. The Constitutional Court's ruling 62/PUU-XI/2013 further confirms that the separated state assets in SOEs are part of state finances, such that the Supreme Audit Agency (hereinafter referred to as BPK) continues to exercise supervision over SOEs based on the BJR paradigm and evaluation of the execution of GCG principles (Kasim, 2017). This decision is constructed on the transaction perspective, which holds that direct stock participation is not a right-transferring transaction. Consequently, separated state assets remain a component of state finances. As a practical matter, the Supreme Audit Agency (BPK) is authorized to investigate the administration and accountability of state finances within SOEs. The BPK is also authorized to analyze or establish the amount of loss caused by illegal activities undertaken by the institution's treasurer. Subsequently, it was enhanced by the Constitutional Court's decision number 48/PUU-XI/2013, which ruled that the finances of state-owned enterprises (SOEs) were included in the elements of state assets that were separated in state finances.

In principle, the value of state-owned enterprises (SOEs) is equivalent to the state assets that are privatized and invested as capital in those enterprises. This is done in accordance with the laws that govern a legal entity, which stipulate that asset must be kept distinct from their owners and that assets

must be converted from those of the owner into those of the legal entity once the owner is included. In the explanation of Article 4 of the SOE'S Law, the objective of the separation of state assets is characterized as being to provide clear boundaries between public or state responsibilities and private responsibilities. Because of the government's ownership stake in the limited liability company, the government is legally liable for any financial losses sustained by the enterprise it helped to finance. Therefore, it is not accurate to say that the government's position in SOEs represents the state as a public legal entity; rather, it represents the government as a private legal entity whose position is equivalent to that of other shareholders.

This is because when the government as a private legal entity decides that its capital investment is in the form of shares in a limited liability company, either in large part or in full, then at that moment the immunity of the public and the state is lost, and the public legal relationship with finance has been turned into shares. Likewise, the provisions on management, accountability and financial audit in the form of shares automatically apply and are guided by the Limited Company Law (UU PT). (Simatupang, 2011) In accordance with the explanation of Article 4 paragraph (1) of the SOE’s Law, the financial status of SOE’s is no longer subject to the state budget system as a form of state finance, but to the principles of good corporate governance (GCG). This means that laws and regulations regarding state finances cannot be applied and do not apply to the management and audit of SOE’s finances. Hence, SOE finances are not subject to the provisions of state finance law, but are under civil law attorney or *domaine prive* (Simatupang, 2011).

As a logical consequence of the government's equity participation in a limited liability company, the government also carries the risk and is liable for existing business losses. The government's position cannot be positioned as a public legal entity given this risk. This is due to the fact that the task of the government as a public legal entity is *bestuurzorg*, which encompasses all social spheres and is a modern legal concept that considers all of the people's interests. The public function cannot be carried out optimally if a public legal entity carries the risk and is responsible for the risk of losing the enterprise. Therefore, it cannot be stated that the government's position in SOEs represents the state as a public legal body. With the transition of state capital participation into shares, even the concept of state finances is not satisfied. Such conditions led to the collapse of state finances as a result of the transition from public to private SOE funding (Atmadja, 2005).

Even though the ruling of the Constitutional Court states as much, it will be difficult to determine the assessment mechanism to be used when evaluating the use of money by SOEs. This is based on the BPK's evaluation in assessing a loss in the use of money based on the Government Judgment Rule (GJR) paradigm, as SOEs are a government extension. This fundamental evaluation differs from the BJR model. Business Judgment Rule (BJR) is a code of conduct that defines what and how the board of directors must behave on behalf of the firm in specific circumstances or to make certain decisions in the management and control of the business (*beheer en beschikking daden*). The evaluation is conducted based on the review standard (assessment standard). The difficulty in implementing the BJR paradigm assessment emerges when evaluating the board of directors' decision-making, which poses a dilemma in identifying whether the loss is a state loss or a business loss alone. The GJR paradigm will see the board of directors' decisions that result in losses to the state-owned enterprise in question as an illegal act that causes state losses. In this regard, criminal legal action will be taken. While the BJR paradigm considers losses in every SOE's business activity, losses can qualify as business losses. In this context, a civil lawsuit may be filed.

In the management of a Limited Liability Company, the principle of piercing corporate veil is applied, which is an exception to the principle of a separate legal entity. The principle of a separate legal entity is reflected in Article 3 paragraph (1) of the Company Law which reads, "The shareholders of the

Company are not personally responsible for the engagements made on behalf of the Company and are not responsible for the loss of the Company in excess of the shares owned". However, this principle can be excluded by the principle of piercing corporate veil which is reflected in Article 3 paragraph (2) of the Limited Liability Company Law which reads, “The provisions as referred to in paragraph (1) do not apply if:

a. the requirements of the Company as a legal entity have not been or are not met;

b. the shareholder concerned either directly or indirectly in bad faith utilizes the Company for personal gain;

c. the shareholder concerned is involved in an unlawful act committed by the Company; or

d. the shareholders concerned either directly or indirectly unlawfully use the Company's assets, which results in the Company's assets being insufficient to pay off the Company's debts.

As previously discussed, one of the criteria of a legal entity is a separation of wealth from the owner. The wealth of the state that is separated and invested as capital in SOEs should become the wealth of the SOEs themselves. In practice, there is still uncertainty over the placement of the meaning of separated state assets in accordance with legal theories and laws, resulting in ambiguity regarding the legal standing of SOEs' finances. If there is no clear separation of wealth in the SOE's finances, profits or wealth will be shared between the shareholders (in this example, the state) and the SOE's. Consequently, in line with the Limited Liability Company Law, the principle of piercing the corporate veil can be applied because the principle of the provisions of this legal entity is not met, thereby removing the principle of a separate legal entity. The implementation of the principle of piercing the corporate veil results in the removal of the principle of limited responsibility stated in Article 3 paragraph (1) of the Company Law, according to which the Company is not liable for damages exceeding the value of its shares. In light of the preceding provisions, it is appropriate for a business entity, especially SOEs, to have their own assets that are separate from state assets to prevent the state's unlimited liability for all losses suffered by SOEs, as an implication of the application of the principle of piercing the corporate veil, which can disrupt economic state stability (state finances) to the point where it affects the state budget (Fuady, 2002).

This seems to be clear indication that when the state establishes a public legal company, public funds are legally transformed into private funds. In instances where the state is the owner of private property, the Government, as the state's representative, also takes private (civil) actions. As a private legal entity, the government enters into legal relationships (rechtsbetrekking) with other private law-based legal subjects. Separate state assets should not be stressed as state assets (*inbreng* principle), as the state only administers them and does not own them. Regarding governmental authority in SOEs, it is possible to say that their authority is restricted to that of SOE shareholders. The state budget mechanism and the GJR paradigm are no longer applicable to SOE asset management. The evaluation is based on the BJR element, which must adhere to the norms of fiduciary obligation and legal good faith (Lestari, 2015). With constant application of this approach, the implementation of BJR is anticipated to provide the highest benefits for state-owned enterprises (SOEs). Nevertheless, without sufficient oversight, there is a high probability that SOE directors may pursue business actions that are detrimental to the state's interests and result in financial losses. If the SOE holds a sector that is vital to the livelihoods of many people, the risk to the community will be extremely high.

Therefore, a clear formulation is required for the management and oversight of SOEs according with GCG principles. For this reason, it is essential to modify the SOE's Law, which further governs the legal elements of separated state assets, in order to explicitly limit the state's authority in relation to SOE's governance. In addition, it is required to classify the usage of segregated state assets so that their

management may be organized and accounted for. It must also be reaffirmed whether the state's role in the management of SOEs is limited to the SOE itself or encompasses the SOE's subsidiaries.

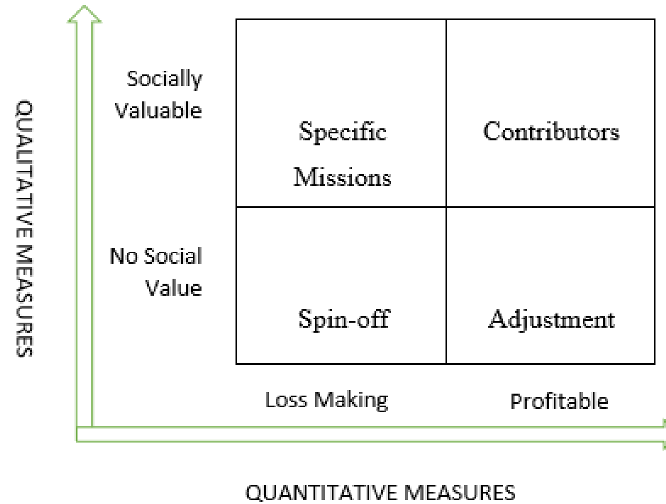
2. Legal Concept of the SOEs Ideal Form in Relation to Their Goal and Functions

According to the mandate of Article 33 paragraph (2) and paragraph (3) of the Republic of Indonesia's 1945 Constitution, the purpose of establishing SOE's is to contribute in the development of the national economy with two main objectives, namely economic goals and social goals. This is also governed by the SOE Law, which states that in addition to producing profits, SOEs must also fulfill public service commitments. However, in actuality, the operation of these two activities frequently causes issues, resulting in the performance of SOEs. According to Article 66 of the SOE's Law, the government shall bear all expenditures associated with the assignment of SOEs, plus a margin. If this provision is regularly applied, there will be no conflict between the SOEs getting subsidies and the SOEs performing the PSO role. However, the terms of the law have not been fully implemented thus far, producing challenges for the SOEs involved in the form of a loss burden to the SOEs that carry out the special service function. SOEs will rely on government compensation for costs incurred, particularly those that provide community subsidies and services. Meanwhile, compensation for these fees cannot be done fast due to the extensive bureaucracy involved.

Due to the nature of SOE's activity, there will always be issues between the economic function and the social function regarding positioning. Therefore, separating SOEs based on their business, aims, and functions is required so that SOEs can execute effectively. Ideally, SOEs would be divided into profit-seeking SOEs and those required to perform public service responsibilities. Public service obligations can be given to profit-seeking SOEs so long as they do not interfere with business processes and financial conditions. The division between SOEs responsible for fulfilling public service obligations and profit-making SOEs will make it easier for directors to carry out their responsibilities with the use of clear performance indicators. With more quantifiable performance indicators, The DPR will be more successful in carrying out its responsibilities from a monitoring standpoint. This functional separation may occur at the level of SOEs, subsidiaries, or work units. Separation arrangements at the SOE's level will define the functions of each SOE's by class. For state-owned enterprises tasked with generating profits, performance measures will be strongly tied to money, especially dividend and tax payments to the government. Meanwhile, for SOEs whose responsibility it is to fulfill public service commitments, performance measures will be tightly tied to the proportion of community needs fulfilled.

The government is also required to give subsidies for SOEs with an acceptable profit margin, as specified under Article 66 of the SOE's Law. This subsidy must also be provided in a timely and effective manner in order to avoid disrupting the SOE's activities. The community will benefit from public services provided by SOEs if there is a clear division of functions. Without being burdened with the responsibility of pursuing profits from their management, all SOE resources will be committed to public service responsibilities. This also applies to the inverse; when evaluated from the company's internal perspective, SOEs that focus on profit will be in better financial shape since they will not be burdened with subsidizing public service responsibilities. However, as there is an additional burden for paying subsidies for public service jobs performed by SOEs, this shift will increase the cost of the state budget. As a result, it is indeed critical to figure out and plan ahead of time who the SOEs are who handle strategic objects for public services, so that the community can reap the benefits. A table for mapping SOEs will be offered in the next section to help regulators determine strategic follow-up for SOEs in connection to policymaking (Pranoto, 2017).

Table 1. SOE's Mapping



According to the mapping table above, the mapping of SOEs is based on two assessments, namely quantitative parameters and qualitative factors. Financial indicators are used to measure quantitative factors. Essentially, the company has a foundation for profit in order to continue operating. This is not the case with SOEs, which are mandated not just to make a profit but also to contribute to society by delivering public services. These social variables are assessed using qualitative criteria based on PSO performance, company innovation, strategic value to the state, and the Partnership and Community Development Program. Based on these variables, the categories of SOEs are offered in accordance with the existing parameters, which include:

a. *Contributor*

The first category is an ideal position for SOE's because it has a good score from the financial side and social side.

b. *Specific Mission*

The second category is SOE's that has not very good financial aspects, but SOE's in this category has a special mission mandated by the state. Thus, the presence of SOEs in this quadrant is considered important. The requirement for SOE'S management in this category is to be able to run a business without losing money, even though it does not have good financial performance.

c. *Adjustments*

The third category is SOEs that have good financial performance, but have not focused on corporate social values. The aims of establishing SOE'S is not only profit-oriented, but also on intangible matters, such as business pioneering, environmental development partnership programs, and people's business loans. Therefore, the guidance that needs to be carried out for SOEs in this category is to encourage management to focus on the mandated PSO.

d. *Spin off*

SOEs in this category have poor financial performance and do not focus on building social values according to the purpose of establishing SOEs. This condition indicates that SOEs in this category are basically not right to be maintained as SOEs because they can burden the government. Therefore, if it is in this category, it is recommended that SOEs do a spin-off or management reform.

In addition to the assessment based on this, SOE'S can be seen from the composition of business orientation between public service and private motive, business entities formed by the government in Indonesia can be divided into 3 (three) groups, namely Limited Company (*Persero*), Public Company (*Perum*) and Public Service Agency (BLU). Limited Company is a business entity that is oriented towards corporate profits (private motive). Public company is a business entity that is engaged in public services and at the same time seeking profit. Meanwhile, Public Service Agency (BLU) is a business entity that is oriented towards public services, and the existence of BLU can be analogous to Perjan. The State Treasury Law states that BLU is an agency within the Government that was formed to provide services to the community in the form of providing goods or services that are sold without prioritizing seeking profit and in carrying out their activities based on the principles of efficiency and productivity. BLU aims to improve services to the community in order to promote general welfare and educate the nation's life by providing flexibility in financial management based on economic and productivity principles, and implementing GCG principles. BLU operates as a work unit of state ministries/agencies or local governments for the purpose of providing public services whose management is based on the authority delegated by the parent agency concerned. BLU is part of the instrument for achieving the goals of state ministries/institutions or local governments and therefore the legal status of BLUs is not separate from state ministries/agencies or local governments as parent agencies. The importance of this grouping is to ensure that SOEs can run according to their goals and functions without having to be burdened with burdensome functions. SOE's in the form of Limited company can be assigned to seek profit only, while Public company and BLU can be assigned to carry out public interest services.

In the public sector, these developments will almost probably encourage organizational and bureaucratic adjustments. Priorities for public budgeting must be set in light of economic demands in order to compensate for existing changes. It can also meet the requirements of a large number of people due to its tremendous economic power. Strong economic growth, as previously said, is able to sustain the operation of state institutions. If state institutions have a robust function, they will be able to carry out their responsibilities and enforce the laws. As a manifestation of state power, the presence of state institutions is still significant. Institutions of the state can act as regulators. State functions will be possible if there are powerful state institutions. If there is a fair arrangement and development, welfare and an even distribution of people's lives can be achieved. Hence, the aim of constructing an SOE is to be able to provide public services while also benefiting from its management. It will undoubtedly give effectiveness and efficiency in the performance of SOEs by determining the form of SOEs according to the desired entity as specified in the statutory system.

Conclusion

According to the mandate of Article 33 paragraph (2) and paragraph (3) of the Republic of Indonesia's Constitution of 1945, SOE'S have two functions, namely an economic function and a social function. This economic function necessitates profit-seeking by SOEs, whereas the social function necessitates the provision of public services by SOEs. There is a mismatch in the implementation of these two functions, especially when it comes to segregated state assets that are included in state budgets. When a loss occurs, determining the assessment system to be employed when assessing the expenditure of funds by SOEs is complicated. Furthermore, the state's authority in respect to the transition of public finances into private finance in SOEs must be stressed to the extent of the shares it owns.

SOEs can also be classified depending on their responsibilities in order to run more efficiently. SOEs that want to make a profit can become a Limited Company. Meanwhile, SOEs such as Public Company and BLU are primarily concerned with providing public services. This separation is required so

that SOEs may operate efficiently without being burdened with additional chores. In addition, from a financial standpoint, the company will be profitable. However, the result will be that the State Budget would provide greater funding to subsidize the role of SOEs in providing public services. Based on its performance, the SOE'S category is required for the subsidy to operate effectively.

Suggestion

Changes must be made to the applicable laws and regulations, namely the SOE's Law, in order to reformulate the boundaries of separated state assets, the limits on state authority in terms of governance of SOEs, and the classification of the use of separated state assets, so that their management can be accounted for in an orderly and accountable manner.

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