

Urgency of Changing Paradigm for Manpower-based State Owned Enterprises

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Abstract: Manpower as the front line of the company has placed it as one of the important elements in the company. State-Owned Enterprise of Limited Liability Company (Ltd SOEs as one of business established by the State has significant role in national economic development. The harmonious relationship between Employees and Employer (Ltd SOE) becomes an important parameter in achieving the objectives of the establishment of these SOEs. Research methodology in this writing is normative juridical. The result of the research shows that state-owned corporation in carrying out its corporate action has not yet placed manpower as one of stakeholder or strategic partner. The various rules of the company regulating the existence of manpower still make it as a variable that must be controlled. In conclusion, that both UUK and various rules related to the management of state-owned enterprises must change the management paradigm to makes the workforce as a base of corporate power in achieving the SOE's objectives which are admittedly complex.

1 INTRODUCTION

In the national economic system, SOEs play a role in producing goods and / or services needed in order to realize the maximum public welfare. The role of SOEs is considered increasingly important as a starting point and / or pioneer in business sectors which are still not yet in demand due to lack of interest in private business. Besides, SOEs also have strategic roles as implementers of public services, balancing great powerful business sectors, and assisting in the development of small businesses/cooperative. Thus the achievement of public welfare will be closely related with the existence of a SOE. The SOEs become a tool to enable to achieve the purpose of the State.

Process of establishment of a Country cannot be separated from the factors of desire and interests of a group of people who grow due to mutual relationship between human beings to build the country. Therefore, the country that has been established constitutes an organization consisting of a group of people having their own patterns to achieve certain goals, including efforts to realize and ensure happiness or welfare both spiritually and materially for members of the organization or its

people. According to Sjahrir, the establishment of a state business in the form of state enterprises is based on the common assumptions that there are always sectors or fields considered significant, vital, and strategic for the state and control the livelihood of the people so that the management or sustainability of these sectors cannot be just handed over to private business (Sjahrir and Ikhsan, 1994).

The sustainability of SOEs is currently regulated by Law no. 19 Year 2003 concerning about State-Owned Enterprises. One of the considerations that this Law is enacted is that SOEs have important role in the implementation of national economy in order to realize the public welfare. However on its journey, the role of SOEs in the national economy to realize public welfare is not yet optimal. In their business activities, SOEs have two business models, namely the Limited Liability Company (Persero) and Public Corporation (Perum). Both of these business models have different business mechanisms. In SOEs of Limited Liability Company (Persero), shares from external parties are welcome, but State has the authority to have the majority of shares with minimum 51% shares of all company shares. Meanwhile, for the SOEs of Public

Corporation (Perum), all shares are entirely owned by Corporation.

SOE of Limited Liability Company (Persero) is business entities that produces goods or services and have a component of manpower which cannot be separated in business activities. Quality relationship between Employers, in this case is the management of the company, and employees will create a conducive situation and a synergistic that will improve the performance of company (Sutedi, 2009). Convenience of work is the main parameter in achieving the goal of creating a conducive company. Thus it is not difficult for a company to achieve its goals if the relationship between employees and Management running harmoniously.

The position of employees/ workers in industrial relationship play the main role, namely when the employees / workers are absence in a production process, it will cause the production process will neither run well and smoothly nor achieve its goals (Farianto, 2014). However, the mutual needs between employers and workers will not meet in harmony due to disharmony when each party facing each other and claiming that each party has plaid the most important role and giving the most contribution for the success of the company (Priambodo, 2004).

The nature of relation between employee / workers and employer itself is basically contradictory, where on the one hand it needs collaborative relations, but on the other hand there are potential tendencies that can lead to conflict (adversarial relations). At the time of the signing of an individual contract, both employees / workers and employers are legally equal before the law in accordance with the principle of equality before the law, but sociologically the employer stands on a higher socioeconomic position than the employees / workers (Rajagukguk, 2000).

The above description confirms the existence of a legal relationship between the Employer (SOEs of Limited Liability Company) and the employees / workers as a consequence of business activities undertaken by SOE Persero in its capacity as a private legal entity and public dimensioned as well. [9]The relationship is supposed to have a paradigm that is able to build the strength of the Indonesian economy, because the establishment of SOEs is managed to be a locomotive of the State economy.

The problem in this research is how the paradigm of SOEs (Persero) Management can make Manpower (Employees / Workers) and strategic partner of company?

2 RESEARCH METHODOLOGY

Research done for this writing constitutes normative (Ibrahim, 2006) legal research (Soemitro, 1988) which analyzes legal materials (Soekanto dan Mamudji, 2011) and then conducts library research that in return, all of these are connected to one-another in such a way to determine and solve the problem that have been formularized.

3 RESULT AND DISCUSSION

3.1 SOE of Limited Liability Company (Persero) is a Legal Entity

SOEs in performing corporate action put forward the principles applicable to limited liability companies as stipulated in the Law on Limited Liability Company (PT). PT is a Legal Entity, which is a stand-alone legal entity (persona standi in judicio) which has natures and characteristics that are different from other businesses. Rudhi Prasetya points out that the term Limited Liability Company used in Indonesia today is previously known as Naamlooze Vennotschap, abbreviated as NV. How come the term "Limited Liability Company" is then used and abbreviated to PT but the origin cannot be traced clearly? (Prasetya, 1996). Ridwan Khairandy confirms that the term has become standard in the community and even has been standardized as well in various laws and regulations, such as Law no. 40 Year 2007 concerning about Limited Liability Companies (previously regulated in Law No. 1 Year 1995) as well as Law no. 8 Year 1995 concerning about Capital Market (Khairandy, 2009).

As a legal entity, Limited Liability Company can perform legal acts in the form of authorization, make agreements, issue regulations to be applied internally in the company, and can even violate the law. From this legal Limited Liability Company bear a legal responsibility, not just responsibility for civil liability but also criminal liability done by company.

Legal Entity which constitutes a partnership of capital, where the authorized capital is divided into shares of limited liability companyas a legal entity, has its own property. This separate property is a treasure of a unity which can be registered in its own name. Ownership is managed in the form of shares that can be transferred to anyone.

Authentic definition of Limited Liability Company can be seen in Article 1 number (1) of Law No. 40 Year 2007 concerning about Limited

Liability Company (UUPT), it is mentioned that Limited Liability Company, hereinafter referred to as the company, is a legal entity which constitutes capital alliance, established under the agreement, conducting business with the authorized capital wholly divided into shares and fulfilling the requirements stipulated in law and implementing regulations. Elements attached to the Limited Liability Company can be described based on definition, namely: (1) Limited Liability Company is a legal entity; (2) Consists of capital alliance; (3) Established by an agreement; (4) Conducting business activities; (5) Capital consists of shares.

Yahya Harahap states that the Company as a legal entity is a creature of the law, which has power and its capacity since the law is given to it, and is authorized to act and perform in accordance with the authority granted in Articles of Association. Besides, it also has a regulated power (express power) such as to own property, to sue and to be sued on behalf of the company. Nevertheless, there is also an implicit power, which is authorized to do whatever it takes as long as still reasonable and important for the company, such as taking control and transferring, lending money, giving donations, and so forth (Harahap, 2011).

Basically a legal entity is a body that can have the rights and duties to commit an act like human beings do, such as to have its own wealth, to sue and to be sued in front of the court. These legal entities are human effort in such a way made up to found bodies that have the same status, position, authority as human beings. Therefore, since this body is a made-up effort of human beings, then this body is referred to as an artificial person (Harahap, 2011). In the law, the term "person" includes a personal creature, namely human being (natuurlijk person) and legal entity (persona moralis, legal person, legal entity, rechtsperson). Both are the subject of law, therefore both bear rights and legal obligations. In other words they have legal rights / and / or obligations recognized by law (Satrio, 1999).

The management of state-owned enterprises in Indonesia places its position as a private legal entity. As a business entity in the form of a Limited Liability Company, BUMN has characteristics as follow: (1) the status is as a private legal entity; (2) the relationship of business is arranged and managed by civil law; (3) the meaning of his business is to foster profits; and (4) the capital as a whole or partly belongs to the state from separated state property (Hidayat and Soeratin, 2005).

In the perspective of legal theory, the meaning of "separated state property" refers to interpretation that

SOE is a legal stand-alone / independent entity whose responsibility and wealth are separate from the owner (in this case is the State). It is generally accepted that a legal entity has the following characteristics: (Ali, 1999)

- association of people (organizations);
- may perform legal acts (rechtshandeling) in legal relationships;
- has its own property separated from the wealth of its founder (owner);
- has board of Management / administrators / caretakers;
- have rights and obligations; and
- may sue or be sued before the court.

3.2 Legal Relations and Employees Enterprises (SOE Persero)

The role of SOEs is still very significant for the development of national economy (Sulaiman, 2011). This includes carrying out the development of undeveloped and untapped sectors by private companies. Thus many assignments from government are given to SOEs to implement pioneering development projects that finally bring out and raise the term "BUMN/ SOE" as a development agency with all its strength and weak points as well as the various controversies following after (Yasin, 2012).

As a company organization, the aspect of manpower cannot be separated in the management of SOEs Persero. Manpower is the front line of a company in achieving the ideals of the company. Manpower is a supporting factor in economy of a country. To promote the economy of a country, quality relationship between Employer (board of Management) and Employees is required. A quality relationship will create a conducive situation and a synergicity that will improve the company's performance. Convenience of work is the main parameter in creating a conducive company, so it is not difficult for a company to achieve its goals if the relationship between Employer and Employees running harmoniously.

Employees / Workers are interpreted as everyone capable of doing work to produce goods and / or services either to meet their own needs or for the community. Employee/Workers any person who works by receiving wages or other forms of remuneration. Meanwhile, an employer is an individual, management, a legal entity, or other entity that employs employees / workers by paying wages or other forms of remuneration.

Meanwhile, the enterprise is any form of business which is legal entity or not, owned by individuals, owned by partnership, or owned by a legal entity, whether private or state-owned, employing workers / labors by paying wages or other forms of remuneration, thus SOEs of Limited Liability Company (Persero) is included in the category of companies based on Manpower Act (UUK), while manpower employed by the state-owned enterprises Persero in business management are categorized as workers.

The definition of the first employment agreement is mentioned in the provisions of Article 1601 a Civil Code which reads the Working Agreement is an agreement whereby one party is the worker, binds himself to under the command of the other party who is the employer, for a certain time, performs the work by receiving wages. The phrase "under the command of the other party" states that there is a relationship between the worker and the employer that is the relationship between the subordinate and the superior, the employer gives the order to the worker to do certain work. The authority to manage / instruct distinguishes the employment agreement from the other agreement. According to R. Imam Soepomo, the employment agreement is an agreement in which the first party, the laborer, binds himself to work to the other party by receiving wages the employer, binding himself to hire the laborer by paying wages (Soepomo, 1968)

Subekti, meanwhile, has his opinion that the employment agreement is an agreement between a worker and an employer, in which the agreement is marked by the characteristics; including certain fixed wage or salary and confirming the working relation the pervert (Dutch "dierstverhanding") that is a relationship based on which one party (the employer) is entitled to give orders that must be obeyed by the other party (Subekti, 1977). The principle that stands out in the employment agreement is the relationship between a worker to another (employer) to work under orders by receiving wages. In the principle of an employment agreement there is an element of a work agreement that can be considered valid and the consequence has been regarded as the Law for those who make it, in each agreement there are two kinds of treaty subject, namely: (Halim et al., 2001) (1) A human being or a legal entity that has the responsibility of obligation to for something; (2) A human being or legal entity that obtains the right to the performance of that obligation

Manpower Act is at the top position concerning with relations between employers and workers, in

this regulation the employment relationship occurs because of an employment agreement between employers and workers (Peranginangin, 2017). In Manpower Regulation, the employment relationship is defined as the relationship between employers and workers/ laborers based on employment agreements, which have elements of work, wages, and orders (Nedeng, 2003).

3.2.1 Work

In employment agreement, there must be the Work granted and performed by the worker him / herself. Which work is the work done by the work itself, must be based on and referred to the employment agreement. Workers who carry out work on the basis of the employment agreement are basically obliged to carry out their own works since if this party is free to carry out the work by themselves or to impose the work on others, it will be difficult to say as the implementation of the employment agreement. This is already stipulated in Article 1603 of the Indonesian Civil Code which reads that Labor must perform its own work; only with the employer's permission he can have a third person replacing him.

3.2.2 Wages

Wages constitute workers' rights received and confirmed in the form of money as compensation from employers to workers stipulated and paid referring to a contract of employment, agreement or statute, including allowances to workers and their families for the work and / or service that has been and / or will be done. According to Edwin B. Filippo in the paper entitled "Principles of Personal Management" he states that wage is the price for services that have been received or given by others for the benefit of a person or legal entity (Nedeng, 2003).

3.2.3 Orders / Instructions

In the working agreement, this element of command holds the main role, because without any element of command, it is not a work agreement. With the element of the command in the employment agreement, the positions of both parties are not equal, namely one party is on higher above (the instructing party) while the other is on the lower position (the instructed). This unequal position is called a subordinate relationship and some call it official relations. Therefore, if the positions of both parties are not the same, or it can be said that there is subordination, there is a working agreement. On the

other hand, if the positions of both parties are equal or there is coordination, than there is no employment agreement, but the other agreement (Khakim, 2014).

The legal relationship between employers and the workforce is essentially unequal if we review its arrangements in the Civil Code governing their relationship. Of the 32 Articles contained in Book III in Chapter-7A, there are 27 Articles containing employers' obligations that limit the dominance of their powers. While the labor obligations are only regulated in 5 articles (Khakim A 2014). In other words, in an employment relationship the employer has more authority than the right possessed by the workforce (Uwiyono, 2001).

The above description can be interpreted that the workers have the authority only to what has been arranged in the agreement. As we know that the employment agreement contains more about the rights and obligations of labor in terms of income and how to perform disciplinary deeds in work. However with regard to company policy, permanent workers are excluded from reaching an acceptable decision for all elements of the company, including workers (Moeljono, 2004).

3.3 Regulation Has Not Placed Employment as a Strategic Partner Company

As an organization, SOEs do have unique natures. On the one hand, as a development agency, it is mandated to implement government policies and programs, while on the other hand it must continue to function as a commercial business unit operating on the basis of healthy business principles. In some ways the "ambivalence" of the two functions is often less able to walk in harmony, even if there is a possibility of confusion of perceptions for the Board of SOE management. This can cause in the difficulty of management in determining strategic and operational measures.

In the context of a company, there are some opinions that assume that the workforce is only an external factor and has the same position as the customer of the supplier or the customer of the buyer that serves as a supporter of the company's continuity, not as an internal part of the company which is an inseparable part or as a constructive element making the company.

The Law on Limited Liability Company as a reference for state-owned companies in managing SOEs has not placed the workforce as a strategic partner in the management of the business of the country. Although the Law on State-Owned

Enterprise (BUMN) has provided space for the management of SOEs to refer to Manpower Act no. 13 Year 2003 dealing with matters relating to employees (read: labor) as a worker of SOEs. The provisions of Article 87 paragraph 1 of the SOE Act stipulates that SOEs employees are state-owned workers whose appointments, dismissals, positions, rights and obligations are stipulated under a mutual work agreement in accordance with the provisions of manpower legislation.

Other provisions in the SOE Act and Limited Liability Companies only regulate the consequences arising from the company in the event of a merger, consolidation, acquisition or separation. Article 126 of the Limited Liability Company Law provides that the legal act of Merger, Consolidation, Takeover or Separation shall take into account the interests of the Company's employees. Likewise with the Law on SOEs, Article 65 stipulates that in conducting mergers, consolidations, acquisitions, and dissolution of state-owned enterprises SOE interests should consistently be taken into concern. In addition to some of these provisions there are several other matters involving labor, but not strategic matters of policy making, such as the sale of shares that are prioritized to the workforce, authorization to deal with third parties.

Some of the arrangements relating to the existence of the workforce above do not provide a deeply sufficient space for the workforce as a strategic asset of the company. Manpower is only the last object that makes it "downstream" to company policies, without knowing the origin or the basis for thinking of a policy enacted. This condition becomes an obstacle for companies, especially state-owned limited company in achieving company goals, limited liability SOEs mandate the constitution to be able to become a beneficial company and profitable for the realization of public welfare.

The State-Owned Enterprises Act allow the employees to establish Labor Union. Article 87 paragraph 2 and 3 of the SOE Act states that State-Owned Enterprises can form unions in accordance with the provisions of legislation. And with the existence of such unions, employees are obliged to maintain security and orderly condition at workplace, and improve the discipline of work. In this provision, it is not mentioned that the existence of unions to protect the rights of employees, but it is understood that the provisions of the Labor Union Act is based on freedom of association.

Law no. Law No. 21 Year 2000 on Labor Unions is based on the consideration that Labor unions are a

means to propose and make their best efforts, protect and defend the interests and welfare of workers and their families, and to create harmonious, dynamic and fair as well as equitable industrial relations. Through the union, employees / workers like to have vehicle to gather and express opinions more open and guaranteed. Workers are protected by an institution under the Law to become a strategic partner of the company.

In Explanatory Notes, the Labor Union Act explains that Workers are very important business partners in the production process in order to improve the welfare of workers and their families, to ensure the sustainability of the company, and to improve the welfare of Indonesian society in general. In this regard, trade / labor unions are a means of striving for the interests of the workers and establishing harmonious, dynamic, and equitably fair industrial relation. Therefore, Labor / Worker Unions must have responsibility for the sustainability of the company and on the other hand, Employer / management must treat and place workers / labors as partners with human dignity.

The right to associate in organization for workers / laborers, as stipulated in the International Labor Organization (ILO) Convention No. 87 concerning Freedom of Association and Protection of the Right to Establish Organization, and ILO Convention No. 98 concerning with Application of Fundamentals of Rights to Interrelate has been ratified by Indonesia become part of national legislation. This became a reference for the government to make a special regulation for the workers to found union.

The existence of Labor / Worker Unions instead of protecting the rights of members within the company, it also constitutes as a means of creating harmonious, dynamic, and equitably fair industrial relations in accordance with applicable legislation. This arrangement at least opens opportunities for unions to create quality relationships between Employers / Management and Workforce. However, this arrangement does not firmly stipulate that unions are one of the institutions invited to negotiate by employers to make company policies, especially with regard to the labor they are striving for.

As a company owned by the State, SOEs have become a company managed under the regulations of Limited Liability Companies. But in certain limits the management is still regulated by SOEs regulation as the regulation that raise SOEs. However, arrangement related to manpower and how it relates to decision making in companies are not expressly regulated in both laws.

The Employment Regulation which constitute the reference in the relationship between the company and the SOEs employees also does not provide more space for the workforce to get a place in the company to express their opinions and feedback for the application of company policies, especially those concerning with future of the workforce. Labor unions as a vehicle to gather and express opinions and to protect the rights of employees have been imposed regulation and every activity is protected by law, but the substance also does not provide more in terms of coordination of policy making. Harmonious industrial relation is one of the reasons that Union is established, but actual technical implementation does not indicate such a right. If the right to strike has been regulated in its regulations, it can be interpreted that the Law has predicted earlier that such a situation will often occur. It should be more preventive arrangement if in the early phase of policy making this condition is taken into consideration. This way, "Preventive Actions are better rather than Curative Treatments" becomes a principle that should be applied in the enforcement of this arrangement.

Company policies concerning the existence of manpower and / or that related to its existence often become obstacles in the management of the company. State-owned Company is a legal entity in the form of legal entity and has rights and obligations and legal responsibility. It will be difficult to achieve the best performance if employing unskilled workers and without high dedication to the company, even the problems of industrial relations between workers and corporations that many state-owned companies have given a special lesson in realizing the purpose of the establishment of the SOE. Because as a legal entity, it is the right for stakeholders and shareholders to be able to demand those subject to their rights.

Rights and duties are not a collection of rules or systems, but are a balance of power in the form of individual rights on the one side that are reflected as the obligations on the other side. Rights and obligations are the powers granted to a person by law (Priambodo, 2004). For the occurrence of rights and obligations, there must be the occurrences of events by law connected as cause and effect. Events that have legal consequences are legal events.

Rawls states that the original position is the beginning of an unchanging state of affairs where there is a guarantee that a fundamental agreement has been reached in it is truth. This fact leads to the term fairness as openness. This becomes clearer than a concept of justice is more clear than others, or it

can be justified by respecting it, if the rational person in the beginning of this situation is allowed to choose his principle above all else in the game of justice. The concept of justice can be leveled with the ability to accept people, and so do the symptoms. Understanding this path through a question of justice is fixed by working with consideration of the problem: we must ascertain which principle that might be reasonable to adopt by the contractual situation. It connects to the theory of justice with unfettered rational theory (Mertokusumo, 2005).

Internal issues arising in the body of the company has become a matter that distracts the focus of company to become better in the future. It is difficult for state-owned companies to be able to become a pillar of the Indonesian economy if internally; there are still many problems that should not have happened. And let us not ignore to mention that the external issues that are already parts of the business dynamics of a company may happen as well, because the business is not free from the risks that will always haunt the company.

SOEs are the national economic Implementers that take part to determine the direction of Indonesia's economic development in the future, including being a prime mover of national economic recovery ((Rawls, 1971). Therefore, policies related to SOEs must actually and accurately give values in order to ensure as the most possible as to establish national-interests oriented SOEs management.

4 CONCLUSION

BUMN Persero runs its business on the field that controls the livelihood of most people. SOEs producing both goods and services have a component of man power which constitutes an integral part of its business activities. Quality relationship between Employer, in this case the Management of the company, and employees / workers will create a conducive and synergic situation that will improve the company's performance.

Limited liability state-owned companies have very such complex objectives that the issues of manpower become critical matter that should get more attention. Discussions on manpower issues done so far tend highlight the implications for employment and employer relations. This is due to the lack of disharmony between the two, a different perspective as a cause of misunderstandings that lead to declining corporate performance. This situation is the impact caused when the company

only makes the workforce as a variable that must be controlled, without being involved in the decision-making company policies.

Limited Liability State-Owned Enterprise as an incorporated company is not only considered to have organs as it has been regulated in the Limited Liability Company Act. In carrying out the activities of the company, manpower has a leading role in the implementation of company policies. On its journey of implementation, manpower is the matter that Limited Liability SOEs has less reference of regulation to shelter it. Thus, SOEs need to change the existing paradigm that has been putting the manpower as controlled variables (factors of production) to be a stakeholder or strategic partners in achieving the objective to be Limited Liability State-Owned Enterprise applying Manpower-Oriented Management.

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