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The Importance of Transparency Principles in Management of State-Owned Plantation Enterprises

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Abstract.
The contribution of State-Owned Plantation Enterprises (SOPE) of has a strategic role as one of the economic institutions in Indonesia. This study discusses the importance of the transparency principle in the management of SOPE to anticipate various frauds. One of the factors that cause the SOPE inefficient is the company's management weakness. The principles of good corporate governance in the Republic of Indonesia Act No.19 / 2003 about State-Owned Company (SOC) stated that the SOC have obligations to implement the principles of professionalism, efficiency, transparency, independence, accountability, responsibility, and fairness. The research method is normative juridical and the study found there are violations of the transparency principle in the SOPE management. It can cause economic losses for the company, investors, and the state. In conclusion, violations of the transparency principle such as false and misleading statements that are not in accordance with facts are acts of fraud. The importance of application the principle of transparency in the SOPE management is to anticipate the various frauds intended. Therefore, the implementation of the transparency principle in the SOPE management must be implemented with a strict supervision system through due diligence. All fraudulent practices in SOPE must also be legally accounted for, without exception, because it can harm the company, investors, the state, and stakeholders.
Keywords: *principles of transparency, management of SOPE, fraud*

1. INTRODUCTION

One factor that cause companies to be economically inefficient is the weak implementation of a good corporate governance system.[1] A good corporate management system or the term Good Corporate Governance (GCG) gives hope to the people because it can make the management system of SOC better, professional, efficient and transparent. independent, accountable, responsible, and responsive to the public interest,

SOPE, as one of the state companies and state economic institutions and contributes financially to people's welfare apart from tax, non-tax revenue and other state-owned companies, must certainly be free from fraudulent acts (fraud) to minimize and prevent SOPE as well as state financial losses. In the context of GCG, SOPE needs to be managed with the principle of transparency to maintain and create healthy and resilient SOPE.

The problem of inefficiency, *CCN* (corruption, collusion, nepotism) and fraud in practice cannot be separated from violations of the transparency principle. Obligation to apply the transparency principle in SOPE can minimize these problems.[2] The problem of SOC management not optimal is also suspected due to the political nuance requirements, forced to go with the will of politicians who obscure the function of SOPE as profit oriented and / or PSO (Public Service Obligation). the application of GCG principles is often neglected so the movement towards efficiency is disrupted.[3]

Revamping corporate governance based on GCG principles must be an absolute requirement for efficiency and optimizing the role of SOCs. [4] Weak corporate governance systems within the SOPE can also be seen from the implementation of SOC regulations and various other regulations that have not been successfully implemented. There are various problems and obstacles which in turn make the SOC regulation ineffective.[5]

The focus problem that is discussed in this paper is; how important is the implementation of the transparency principle in the SOPE management as an obligation in order to maintain and create a good SOPE that is resilience and improve the welfare of the people?

2. STATE COMPANY

State companies are familiar concept to almost all countries in the world. The government of a country can conduct business activities and establish state enterprises. In Indonesia, the state company is now called a state-owned enterprise (BUMN). [6] State companies in the literature are called government enterprises or public enterprises.[7] The terms of state companies in various countries vary according to the interests of that country.

The government enterprise has the same meaning as the public service corporation. Understanding there are state companies that only conducting business activities (profit oriented), [8]and some are functioning as profit oriented as well as PSO. The term of public service corporation is the right term in referring to a SOC that has functions as a PSO.

The term state enterprise is generally called State Owned Enterprises (SOEs). [9] Many names to call it include government corporation, government business enterprises, government-linked companies, parastatals, public enterprises, or sector units or enterprises.[10]

SOEs in Indonesia are in the form of Public Corporation, having the purpose and function as PSO as well as profit oriented. There is also in the form of *Persero* (Firm) which has a pure purpose and function as profit oriented. [11] It is not uncommon for SOEs in Indonesia to vary according to their purpose and function. There are SOEs that have both functions, as PSOs and profit oriented, and SOEs that only have a function as profit oriented. [12]

3. CONDITIONS SOEs IN INDONESIA

Developing countries have several reasons for establishing state-owned companies or SOEs including to balance the existence of private companies, [13] to produce a higher investment ratio, increase investment capital, transfer technology, improve the employment sector, and produce goods.[14] This is done to increase the country's income and economy towards the people's welfare.

The total number of SOEs in Indonesia according to data from the Ministry of SOE at the end of 2017 is 115 (one hundred and fifteen). [15]Since 2014, all SOPEs starting from PTPN I to XIV are now under the leadership of PTPN III as the holding company.[16] Overall, the level of corruption in SOEs from 2003 to 2013 according to ICW data is 9 trillion rupiah. Corruption cases in 16 state-owned companies have the potential to cause state financial losses of Rp.2.63 trillion and US $ 9.97 million were submitted by the Ministry of SOE in March 2005.[17]

SOEs in the first period of 2013 has been reviewed its performance by the State Financial Accountability Board of the House of Representatives (BAKN-DPR). As a result, there are many cases of state financial irregularities in SOEs and most SOE do not yet have good governance (GCG). There are 21 objects of inspection, including three things, namely: the implementation of subsidies, public service obligations (PSO), the SOE's operation and the management of revenues, costs, investment, partnership program funds, and environmental development.

The results of the BAKN-DPR review and also the BPK report found 510 cases of state financial irregularities; 234 cases were related to weaknesses in the internal control system; 276 cases related to non-compliance with legislation. A total of 93 cases resulted in state losses worth Rp. 2.60 trillion. The report also found 28 cases of irregularities regarding the issue of ineffectiveness worth Rp. 44.75 trillion in several SOEs.

4. FRAUD IN THE SOPEs

Almost all companies have the potential to become victims of fraud. No company can avoid fraud. The types of fraud that commonly occur in State-Owned Enterprises include fraudulent statements, fraudulent asset misappropriation, corruption, and other fraud.[18]

Fraud can cause disastrous losses for the company regardless of the size or type of business. It can occur at all places and levels from the administrative level to the level of management or directors. However, companies generally do not realize and underestimate the threat and danger of fraud.

The losses on companies like SOPE including losses of state finances; loss of assets, both tangible and intangible,; reduce resilience; loss of sustainability of growth, and the company's reputation and credibility. [19]

Fraud that is conducted by management is more difficult to reveal than the employees do. For instance, mismatch between top management, immorality, high level of complaints against companies, unhealthy companies, declining profits, reduced assets, and increasing debt. The types of frauds at the employee level include expenses without supporting documents, incorrect recording, or double invoicing.

Fraud is a crime, misuse, abuse of authority, or condition to enrich himself or certain groups. [20] Includes all forms of coercion, tactics, cunning, hidden, dishonest, deception, fraud, disappearance, or other ways that violate the law.

The principles of GCG as a global mandate provides hope for the people of a nation to make the state's corporate governance system better and responsive to the public demand.[21] However, in reality the SOPE is economically inefficient and still has many fraud practices which is the potential problem for the state.

Fraud in SOPE often occurs in small and large scale and difficult to detect. For example, fraud on reports, including fictitious income, time differences, concealment of obligations and costs, improper disclosures, and improper valuation of assets regarding to asset misappropriation such as embezzlement on cash and assets. Corruption is also common practices such as conflicts of interest, gratification, and bribery.

The application of the transparency principle in companies has not been entirely satisfactory. Inefficiency, corruption, collusion, nepotism are still exist in various sector. The obscurity index published by the Economist in 2001about the unclear legal systems, regulations, macroeconomic policies, taxation, accounting practices, and corruption in various countries showed China, Russia and Indonesia were the most non-transparent countries.[22]

The embezzlement in the SOPE not only involves the people being supervised but also the insiders who oversee the company. There is an element of intent to not report the fraud acts because conspiracy between perpetrators involving people in the company.

This condition in SOPE raises the question what action should the government take to make SOPE effective and efficient in improving people's welfare through increasing financial income from the contribution. [23] The principle of transparency should be a serious concern for management so that the SOPE is protected from fraud or at least fraud can be prevented.

5. TRANSPARENCY OBLIGATIONS

The principles of GCG in SOPE have been regulated by referring to Law of Indonesia No.19 / 2003 concerning SOEs and Ministerial Regulation of SOE Number: Per-01/MBU/2011 regarding the Implementation of Good Corporate Governance in SOE. The SOPE condition in accordance with the GCG principles expectations is still questionable in achieving people's welfare. [24] The company is obliged to foster a good corporate culture and professionalism through the application of GCG principles.[25]

The Law mandate an obligation to implement the principles of professionalism, efficiency, transparency, independence, accountability, responsibility, and fairness. GCG principles can be used by corporate agency to increase business revenue while still taking into account the interests of stakeholders, the laws and regulations as well as business ethics.

The expectation of implementing GCG in SOE is no longer just awareness but more emphasis as an obligation (mandatory). Ministerial Regulation (Permen) of SOE No. Per-01 / MBU / 2011 Regarding GCG Implementation requires all SOEs to run companies in accordance with GCG principles which means applying GCG principles is an obligation and it must be implemented consistently and the operational basis.

GCG principles are an obligation for directors and all internal stakeholders to establish an internal control system to secure investment and company assets. [26] The assessment results of the GCG implementation in SOE show most of the achievement aspects of commitment are still very low. All internal company stakeholders should have commitment to implement the principle of good corporate governance not just write down the rules. [27]

Implementing transparency obligations can minimize corruption, collusion and nepotism [28] The principle of transparency is very important for SOPE to prevent fraud.[29] This relates to what information must be disclosed and to whom the information must be conveyed transparently. The need for a transparency system as an obligation, because inefficiency will be greater without the obligation of transparency, investors will incur excessive costs to pursue profits.

The application of transparency obligations in SOPE is useful in regulating the provision of information on financial conditions and other information to investors or stakeholders; facilitating the acquisition of documents containing various things that should be known by investors or stakeholders and to anticipate the possibility of those interested not getting information or facts. Furthermore, the management must commit to eradicating corruption, collusion, nepotism, fraud, and misleading statements.

Violation of the obligation to implement the transparency principle is an act of fraud. Misleading statements will occur if there are statements that do not match the facts. There is a misrepresentation received by the capital owner, namely the state, or stakeholders regarding conditions that are different from the actual situation, such as actions that give a false overview of the SOPE its management, economic potential, income, assets, shares or actual facts.

Actions that make false or misleading statements related to internal data from the SOPE are related to the actions of management or employees who omit information about actual facts, both document facts and conditions in the field of the accountability report and the audit interests of the SOPE.

If the company does not prevent this through due diligence, then it will appear to be a corporate culture that is reflected in the structure, policies, practices and procedures adopted by the corporation.[30] This reflects the structure of a modern corporation which generally considers crime to be less associated with individual acts or omissions but rather the failure of the corporate system to overcome its problems.

The principle of transparency can be used to prevent fraud is the oldest opinion.[31] However, even if a country has anti-fraud system it will be futile if it does not require companies to be transparent in a legal instrument. Thus it will harm investors and companies themselves. This obligation is important to be understood as a general anti-fraud provision.

The concept to overcome the system failure at SOPE must emphasize the concept of prevention to minimize potential loss and potential abuse of authority from the management of SOPE through the obligation to implement transparency for all internal stakeholders. This was conducted in order to improve the efficiency of SOPE so it will be in good condition and can improve people's welfare.

6. CONCLUSION

Violation of the obligation in implementing the principle of transparency is an act of fraud. To create and maintain the good condition, resilient and efficient SOPE and able to improve the welfare of the people, the SOPE management is required to implement the principle of transparency as mandated by the laws of SOEs and government regulations as an obligation. The importance of requiring the application of transparency the principle in the SOPE management is to anticipate the various frauds intended. The weak application of the transparency principle in the SOPE management is one of the main causes of the practice of fraud. The problem of inefficiency, corruption, collusion, nepotism, and other frauds can disrupt the movement of SOPE towards efficiency. It is expected that the principle of transparency in the SOPE management must be implemented with a strict supervision system through due diligence. All fraudulent practices in SOPEs must be legally accounted for without exception because it can harm investors, the state, and the people as a whole (stakeholders) besides the company itself.

REFERENCES

[1] Bismar N., “Menuju Sistem Pengelolaan BUMN Yang Efektif dan Efisien”, Makalah, Disampaikan Pada *Seminar Sistem Pembinaan dan Pengelolaan Badan Usaha Milik Negara*, Diselenggarakan oleh Kantor Kementerian Negara BUMN, Medan, 14 Desember 2005, hal. 1.

[2] Bismar N., “Aspek Hukum Dalam Transparansi Pengelolaan Perusahaan BUMN/BUMD Sebagai Upaya Memberantas KKN”, Makalah, Disampaikan pada: *Semiloka Peran Masyarakat (Stakeholder) Melalui Lembaga Pengawasan Pengelolaan Perusahaan Dalam Mendukung Pelaksanaan Good Corporate Governance*, di Sumatera Utara pada tanggal 30 April 2003, hal. 1-12. KKN adalah singkatan dari Korupsi, Kolusi, dan Nepotisme.

[3] Sugiharto, dkk., *BUMN Indonesia, Isu, Kebijakan, dan Strategis*, (Jakarta: Elex Media Komputindo Kelompok Gramedia, 2005), hal. 3 dan hal. 22.

[4]Yeti S., “Peranan BUMN dalam Pelaksanaan Tanggung Jawab Sosial Perusahaan Untuk Meningkatkan Kesejahteraan Rakyat”, *Jurnal Hukum Ius Quia Iustum*, No.3, Vol.20, Juli 2013, hal. 461.

[5] Bismar N., “Menuju Sistem Pengelolaan BUMN…*Op. cit*., hal. 1 dan hal. 28.

[6] Muhammad I.A., “Penugasan Pemerintah Pada Badan Usaha Milik Negara Sektor Ketenagalistrikan Dalam Perspektif Hukum Korporasi”, *PJIH*, Vol.4, No.3, Tahun 2017, hal. 556.

[7] Rudi P., *Kedudukan Mandiri Perseroan Terbatas: Disertasi Dengan Ulasan Menurut Undang-Undang Nomor 1 Tahun 1995*, (Bandung: Citra Aditya Bakti, 1995), hal. 90.

[8] Henry C.B., *Black’s Law Dictionary*, (St. Paul: West Publishing. Co, 1990), hal. 686.

[9]https://www.pwc.com/gx/en/psrc/publications/assets/pwc-state-owned-enterprise-psrc.pdf, diakses tanggal 22 Juli 2019, “State-Owned Enterprises Catalysts for Public Value Creation?”, April 2015, www.psrc.pwc.com.

[10] Hartini Binti M.N., “State-Owned Enterprises: A Comparison Between The Uk, Japan, and Malaysia”, *International Journal of Economics, Commerce and Management - United Kingdom*, Vol. V, Issue 2, February 2017, hal. 115.

[11] M. Rizal A., “Privatisasi BUMN dan Otonomi Daerah Dalam Pembangunan Ekonomi Indonesia”, *Jurnal Hukum dan Pembangunan*, Tahun ke-44, No.3 Juli-September 2014, hal. 411.

[12] Pasal 66 UU RI No.19/2003 Tentang BUMN.

[13] Bismar N., “Privatisasi BUMN Perkebunan Dalam Perspektif Hukum”, Makalah, Disampaikan Pada Seminar *Privatisasi BUMN Perkebunan Dalam Perspektif Ekonomi dan Hukum*, Diselenggarakan oleh Program Pascasarjana Universitas Sumatera Utara, Medan, Tanggal 5 Juni 2004, hal. 3.

[14] Bismar N., “Privatisasi: Menjual Atau Menyehatkan….*Op. cit*., hal. 1.

[15] http://bumn.go.id/halaman/0-Statistik-Jumlah-BUMN, diakses tanggal 22 Juli 2019, “Statistik Jumlah BUMN”, Dipublikasikan di Website bumn.go.id, Bulan Desember 2017.

[16] https://finance.detik.com/berita-ekonomi-bisnis/d-3740436/asal-usul-pembentukan-holding-bumn, diakses tanggal 22 Juli 2019, Artikel Ardan Adhi Chandra, “Asal-Usul Pembentukan Holding BUMN”, Dipublikasikan di Website finance.detik.com, Tanggal 24 November 2017.

[17]https://antikorupsi.org/sites/default/files/files/Berita/BUMN%20Dalam%20Angka%20-%20Hasil%20Penelusuran%20ICW%20Desember%202013.pdf, diakses tanggal 22 Juli 2019, Artikel, “BUMN Dalam Angka”, Dipublikasikan di Website ICW antikorupsi.org, Desember 2013.

[18] Bona P.P., *Fraud dan Korupsi*, *Pencegahan*, *Pendekatan*, *dan Pencegahannya*, (Jakarta: Lestari Kiranatama, 2015), hal. 11.
[19]http://ptpn1.co.id/artikel/hindari-fraud-kecurangan, diakses tanggal 22 Juli 2019, Artikel, "Hindari Fraud Kecurangan", Dipublikasikan di Website ptpn1.co.id, Tanggal 8 November 2018.
[20] Bona P.P., *Op. cit*., hal. 1.
[21] Bismar N., "Penerapan *Good Governance* Dalam Menyambut *Domestic Regulations* WTO", Makalah, Disampaikan Pada Acara Diskusi Mengenai Domestic Regulations-WTO, yang diadakan oleh Bank Indonesia, Tanggal 21 Juni 2007, Jakarta, hal. 1-9.
[22] Bismar N., "Menjaga Demokrasi Dengan Pemberantasan Korupsi", Makalah, Disampaikan Pada Seminar Nasional *Bersama Rakyat Membangun Demokrasi*, Dilaksanakan oleh Gerakan Rakyat Untuk Demokrasi, Hotel Asean International, Tanggal 13 Desember 2005, Medan, hal. 1-2.
[23] Bismar N., "Privatisasi: Menjual Atau Menyehatkan", Makalah, Disampaikan Pada Seminar Program dan Kebijakan Kementerian BUMN 2004, *Restrukturisasi dan Privatisasi BUMN, Manfaat dan Tantangannya Dalam Upaya Meningkatkan Kinerja BUMN*, Ruang IMTGT Biro Rektor Universitas Sumatera Utara, Medan, Tanggal 4 September 2004, hal. 2.
[24] Yeti Sumiyati, *Op. cit*., hal. 462.
[25] Pasal 5 ayat (3) UU RI No.19/2003 Tentang BUMN.
[26] Yeti Sumiyati, *Op. cit*., hal. 470.
[27]http://www.bpkp.go.id/berita/read/11834/0/BUMN-Bersih-Langkah-Strategis-CIptakan-Korporasi-Bebas-dari-Gratifikasi-Fraud-dan-KKN.bpkp, diakses tanggal 22 Juli 2019, Artikel, "BUMN Bersih: Langkah Strategis Ciptakan Korporasi Bebas dari Gratifikasi, Fraud, dan KKN", Dipublikasikan di Website www.bpkp.go.id.
[28] Bismar N., "Menjaga Demokrasi Dengan, *Op. cit*., hal. 2.
[29] Bismar N., "Aspek Hukum Dalam Transparansi...*Op. cit*., hal. 5.
[30] Bismar N., "Kejahatan Korporasi Dan Pertanggungjawabannya", Makalah, Disampaikan Dalam Ceramah di Jajaran Kepolisian Daerah Sumatera Utara, Tanjung Morawa, Medan, Tanggal 27 April 2006, hal. 15.
[31] Bismar N., "Keterbukaan Dalam Perdagangan Saham Di Pasar Modal", Makalah, Disampaikan Pada Seminar *Mengupas Serta Mencermati Fenomena Tindak Pidana di Pasar Modal*, Pada Bina Manajemen Bisnis dan Investasi Dharma Nusantara, Tanggal 8 Mei 2003, Jakarta, hal. 21.