

Transparency of Information Disclosure in the Management of State-Owned Enterprises

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ABSTRACT

A State-Owned Enterprise (SOE) is a company business entity in which all or most of its capital is owned by the state through direct participation from the separated state assets. The research method in the present study is normative juridical supported by library data. Violation of the principle of transparency in a State-Owned Enterprise is a criminal act of corruption. These violations include giving misleading statements that do not match the facts, submitting false statements relating to company internal data that can be misleading, as well as omission, i.e. eliminating information about actual facts. There is no other choice for State-Owned Enterprises except having to implement and comply with the principles of *Good Corporate Governance* (GCG). Adherence to the principles of good corporate governance must be carried out by directors and internal stakeholders to make SOEs healthy and resilient. It is expected that acts that violate the principle of transparency in SOEs must be accounted for legally.

Keywords: *SOE, transparency and disclosure, information, management*

1. INTRODUCTION

State-Owned Enterprises (SOEs) are companies owned by the Republic of Indonesia in the form of legal entities. SOEs can take the form of limited liability companies and public companies. All or a large portion of SOEs' capital is owned by the Republic of Indonesia through direct investment with funds originating from separated state assets. Thus, the management of SOEs must follow the corporate mechanism and principles of good corporate governance.

The principles of Good Corporate Governance (GCG) are professionalism, efficiency, transparency, independence, accountability, responsibility and fairness.[1] One of the principles in managing SOEs is the principle of transparency, namely openness in implementing the decision making process, and openness in disclosing material and relevant information about the company.[2]

In addition, SOEs as state companies are subject to the Law of the Republic of Indonesia No.19 / 2003 Concerning SOEs, Law of the Republic of Indonesia No.40 / 2007 concerning Limited Liability Companies (UU-PT), Law of the Republic of Indonesia No.17 / 2003 concerning State Finance (UU-KN), Law of the Republic of Indonesia No.1 / 2004 concerning State Treasury (UU-PN), and Law of the Republic of Indonesia No.31 / 1999 in conjunction with Law of the Republic of Indonesia No.20 / 2001 Concerning Eradication of Corruption (UU-PTPK). Thus, a violation of the obligation to implement

transparency in the management of SOEs is a criminal offense.

Law of SOEs (UU-BUMN) adheres to the corporate mechanism that must comply with the UU-PT. Although the Law of SOEs stipulates that all or a large portion of SOE capital is owned by the Republic of Indonesia through direct participation from separated state assets, the corporate mechanism does not apply in full to SOEs. This is UU-PTPK adheres to acts against formal and material law, which also applies to SOEs.

2. STATE-OWNED ENTERPRISES (SOEs)

State companies are generally called State-Owned Enterprises (SOEs),[3] which in Indonesia are referred to as BUMN (*Badan Usaha Milik Negara*).[4] Article 1 paragraph 1 of Law of SOEs stipulates that SOE is a business entity in which all or most of its capital is owned by the state through direct participation by funds originating from separated state assets.

The total number of SOEs in Indonesia currently stands at 115 (one hundred and fifteen) with various types of business activities.[5] The types of SOE business activities include, among others, mining, plantation, shipping, insurance, expedition, weaponry, housing, steel, food, chemical and medicine, fertilizer, tourism, telecommunications, hospitality, printing, cement, ports, transportation, property, banking, aviation, mutual funds, paper, etc.[6]

3. TRANSPARENCY PRINCIPLE IN GCG

One of the causes of companies being vulnerable to economic turmoil is the weak implementation of GCG in corporate management.[7] The Organization for Economic Cooperation and Development (OECD) establishes four general principles of GCG, namely the principles of fairness, openness, responsibility, and accountability.[8] The principles of GCG in Article 5 paragraph (3) of the Law of SOEs regulate professionalism, efficiency, transparency, independence, accountability, responsibility and fairness.

The principle of independence emphasizes the professional management of the company without any conflict of interest and influence / pressure from any party that is not in accordance with the laws and regulations and healthy corporate principles. The principle of accountability emphasizes the clarity of functions, implementation and accountability of the company's organs so that its management is effective. The principle of accountability and fairness confirms the compatibility of company management with the laws and regulations and healthy corporate principles.

The principle of transparency is the company's openness in carrying out the decision making process and openness in disclosing relevant material information and facts about the company.[9] Information is material and relevant facts about events or facts that can affect the prices and / or decisions of investors, potential investors, or other parties with an interest in the information or facts.[10]

Regarding this material information or facts, as long as they have not been determined as open information or facts or as long as they have not been announced by the Minister of State-Owned Enterprises, all parties involved are required to keep the information confidential. These material facts must be disclosed to stakeholders at the right time for transparency in the management of SOEs.

The principle of transparency is useful in terms of providing information about the financial situation and other information to investors or financiers, and allows the availability of material to be considered for stakeholders.[11] The aim of the principle of transparency in managing SOEs is to produce documents that explain various things that should be known by investors or stakeholders.

4. TRANSPARENCY AS AN OBLIGATION

The principle of transparency can anticipate the possibility of investors or stakeholders not obtaining information or material facts. The information also serves to prevent crime because the material facts can be used as material to eradicate fraud, collusion, corruption, nepotism,[12] false and misleading statements that do not

match the facts relating to company internal data, or omit information about facts actually.[13]

The loss of investor or stakeholder confidence in SOEs due to the provision of information or material facts that are not in accordance with the actual facts, may lead to the changes in investment policies and public trust in SOEs, thus SOE companies are no longer considered as a source of financing that is profitable for national economic development and for the welfare of the people.

The Law of SOEs stipulates an obligation to implement the GCG principles in the management of SOEs as specified in Article 5 paragraph (3) and Article 6 paragraph (3) of the Law of SOEs. Similarly, Regulation of the Minister of State-Owned Enterprises Number: Per-01 / MBU / 2011 regarding GCG Implementation require all SOEs to operate companies in accordance with GCG principles.

Article 5 paragraph (3) of Law of SOEs stipulates that members of the board of directors are the most responsible parties in managing SOEs, and they must implement the principles of professionalism, efficiency, transparency, independence, accountability, responsibility, and fairness. According to Article 6 paragraph (3) of Law of SOEs, the obligation to implement the principle of transparency, in addition to being required to members of the board of directors, is also required to the commissioners and the supervisory board.

5. TRANSPARENCY VIOLATIONS AS CRIMINAL ACTS

Fraud, misrepresentation, omission of material facts and information are closely related to the implementation of the obligation of transparency. Violations of the transparency obligation including committing fraud, making misleading statements or omitting information about actual facts (material facts) when an external audit is performed for the benefit of external audits of SOEs.

Article 71 of Law of SOEs stipulates that audits of the company's financial statements are carried out by external auditors determined by the GMS (General Meeting of Shareholders) for Limited Liability Companies and by the Minister for Public Corporation. In conducting this external inspection, the upreme Audit Board (BPK) has the authority to conduct audits of SOEs in accordance with statutory provisions.

Stakeholders in SOEs must disclose material information and facts to the external inspection team. If in the future it is found out that there is material information and facts that were not disclosed during an external inspection by the BPK, then those who did not submit this material information and facts could be charged with violating the transparency obligation under UU-PTPK.

Violation of transparency is making misleading statements that do not match the facts; submitting information that is done incorrectly in accordance with facts and there is a false picture received by investors or stakeholders; creating a condition that is different from the

actual situation, such as actions that give a false picture of the quality of production, management, economic potential, or other material facts.[14]

Misleading statements or misstatement also relates to an act that makes false statements, especially relating to internal data that can be misleading for investors or stakeholders.[15] Misleading statements can also arise due to omission, namely the act of omitting information or material facts, for example to company documents. Violations of the obligations of transparency must be held legally accountable.[16]

Article 5 paragraph (3) and Article 6 paragraph (3) of Law of SOEs requires the implementation of transparency in the management of SOEs, which if related to UU-PTPK, violations of the obligation of transparency resulting in state financial losses can be imposed as an act criminal of corruption. Members of the board of directors, board of commissioners, staff, management, employees, and other internal stakeholders, especially those who are examined by the BPK for the purpose of external audits, if not conveying material information and facts, they can be charged with accusing them of violating transparency obligations under UU-PTPK

SOEs as state companies based on corporate mechanisms are subject to the UU-BUMN and UU-PT. Both of these laws adhere to the corporate mechanism in the management of SOEs, meaning that if SOEs suffer losses it is considered a business loss, not a state financial loss. But based on the state financial mechanism (the mechanism of the State Budget for Revenue and Expenditure), the separated state assets are still regarded as state finances. If SOEs suffer losses, UU-PTPK can be used to ensnare the perpetrators on charges of corruption.

Although the Law of SOEs determines that all or a large portion of SOEs' capital is owned by the Republic of Indonesia through direct investments sourced from separated state assets, it does not apply in full to SOEs because UU-PTPK can reach state finances within SOEs and adhere to acts against formal and material law.[17] This provision applies to those in SOEs who violate transparency obligations which result in state financial losses.

This provision is also in accordance with the terminology of the formulation of state finance and state treasury in the formulation of Article 2 paragraph g of the Law of the Republic of Indonesia No.17 / 2003 concerning State Finance (UU-KN), and Article 1 paragraph 1 of Republic of Indonesia Law No.1 / 2004 concerning the State Treasury (UU-PN). Article 2 paragraph g of the UU-KN reads: "State finance includes: state assets / regional assets that are managed by themselves or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued by money, including assets separated at state / regional companies".

Article 1 paragraph 1 of UU-PN reads: "The state treasury is the management and accountability of state finances, including investments and assets that are separated, which are stipulated in the State Revenue and Expenditure Budget (APBN) and the Regional Revenue and Expenditure Budget (APBD)". The formulation of the

state finances and the state treasury are emphasized in the 3rd Paragraph of the general explanation in UU-PTPK. State finance referred to according to UU-PTPK is all state assets in any form, separated or not separated, including all parts of state assets and all rights and obligations arising from:

- (a) Being in the mastery, management, and accountability of state agency officials, both at the central and regional levels; and
- (b) Being in control, management and responsibility of State-Owned Enterprises / Regional-Owned Enterprises, foundations, legal entities, and companies that include state capital, or companies that include third party capital based on agreements with the state.

Formulation of state finance in Article 2 paragraph g of UU-KN, state treasury in Article 1 paragraph 1 of UU-PN, and Article 2 paragraph (1), Article 3 paragraph (1), and the 3rd paragraph of the UU-PTPK follows the mechanism of the State Budget and the Regional Budget. This means that if there is a loss due to violating transparency obligations to SOEs it can be accused of a criminal act of corruption which is detrimental to the country's finances based on UU-PTPK.

UU-PTPK can reach state finances in SOEs by adopting the concept of acts against formal and material law.[18] This is explained in paragraph 4 of the general explanation of UU-PTPK. Corruption is formulated in such a way as to encompass the act of enriching oneself or another person or a corporation in violation of formal and material law. The goal is to be able to reach various modus operandi of deviations of state finances or the state's economy which is getting more sophisticated and complicated.

With the adoption of acts against material law in UU-PTPK so that it can include despicable acts which according to the sense of justice the community must be prosecuted and convicted.[19] Materially, the loss of plantation SOEs due to violating transparency obligations such as fraud, making false and misleading statements, omitting information and material facts, is considered a loss of state finances, not a loss of company business.

6. CONCLUSIONS

Violation of the principle of transparency in SOEs is a criminal offense. Stakeholders in SOEs must disclose material information and facts (actual facts) to the external inspection team. Actions that give false and misleading statements that are not in accordance with material facts, are related to internal data of SOEs, including actions that omit information about the facts, which are required by the external audit team from the Supreme Audit Agency are a violation of the obligation of transparency and can be accused of violating Law of the Eradication of Corruption for criminal acts of corruption which results in state financial losses. Members of the board of directors, board

of commissioners, staff, management, employees, and other internal stakeholders, especially those examined by the Supreme Audit Board must submit material information and facts. If they do not carry out this transparency obligation, they can be charged with corruption.

There is no other choice for SOEs except they must implement transparency obligations and comply with GCG principles. It is hoped that acts that violate the principle of transparency in SOEs must be legally accounted for so that SOE management is sound and resilient and can reach the modus operandi and deviation of state finances or the state's economy which is increasingly sophisticated and complicated.

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