



Challenges Facing Soes and Soe Subsidiaries Toward Business Tranformation Law Enforcement and Human Rights Protection (Post Constitutional Court Decision Number 01/PHPU-PRES/XVII/2019)

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Abstract - Business transformation, law enforcement and human rights protection are strategic and or universal issues that applies to countries and nations in the world including and in particular become a challenge and dilemma for SOEs and or SOE's Subsidiaries. The research aims to know how do State-Owned Enterprises/SOE subsidiaries anticipate and business transformation the threat of corporate criminal acts related to law enforcement and human rights protection and to know business transformation law enforcement officers and relevant institutions anticipate post Decision of the Constitutional Court Number 01/PHPU-PRES/XVII 2019 towards SOEs/SOES subsidiaries. The method used of this research is normative juridical legal research. The result shows that SOEs/SOE subsidiaries have a central role in supporting for business transformation and law enforcement and protection of human rights both internal and external matters of the corporation. Post Constitutional Court's Decision Number 01/PHPU-PRES/XVII/2019 becomes a legal source that can inspire Law Enforcement Officials and related institutions/agencies to make appropriate adjustments to laws and regulations governing SOEs and or SOE subsidiaries.

Keywords: Keywords: Business Transformation, Law Enforcement, Human Rights, SOEs and SOE Subsidiaries.

II. INTRODUCTION

The dynamics and issues in implementing business transformation, law enforcement, and human rights protection provide inspiration to be studied in Indonesia, including for SOEs and SOE subsidiaries. This is indicated by the increasing demands of stakeholders and communities (both individually and collectively) toward implementing law enforcement and human rights protection. SOEs remain a critical source of employment, public service provision, and socioeconomic development in most developing Asian countries (Kim et al., 2017).

SOE reforms have long been the focus of developed and developing countries alike. Beginning in the 1970s, member countries of the Organisation for Economic Co-operation and Development (OECD), such as France, Spain, and the United Kingdom, began to seriously examine the causes of poorly performing SOEs amid the mounting fiscal constraints they faced to control their public spending and debt. State-owned enterprises (SOEs) are classified as those enterprises in which the state exerts significant control through full, majority, or significant minority ownership. This definition includes SOEs that are owned by the central or federal government as well as the ones owned by regional and local governments (Sturesson et al., 2015).

Over the subsequent two decades, partial or complete privatization of SOEs became a key source of economic reforms initiated, at first, by OECD countries and later by most developing countries in the last 25 years. Evidence from OECD countries also strongly suggests that privatization leads to a “significant” increase in profitability, actual output, and efficiency of privatized firms, primarily when the privatized firm operates in a competitive market where deregulation levels converge with those of the private sector (OECD, 2003). The United Nations Convention on civil and political rights was enacted in 1966, stating that human rights were fundamental in their implementation. It is essential so that humans can develop according to their talents, ideals, and friends. This also applies universally, meaning that there are inherently owned by humans without differences based on nation, race, religion, or gender (Arief, 1993).

Given that the governance system of the Republic of Indonesia is based on the law as explicitly stated in the 1945 Constitution, then the law is the highest rule that must be adhered to and implemented by all parties without exception. When viewed from various angles of study, the complexity of the issues surrounding law enforcement and the protection of human rights requires various parties to correct each other because various factors influence law enforcement. Meanwhile, the purpose of law enforcement is to create peace in society. Law enforcement is said to be functional if the goal has been achieved. As a result, when taken as a whole, law enforcement is a legal system. Rahardjo (1980) argues that if we speak about law enforcement as a field with a unique attractiveness. The issue of human rights without referring to humans/corporations that carry out law enforcement is a strategic conversation. The research aims to know how do State-Owned Enterprises/SOE subsidiaries anticipate and business transformation the threat of corporate criminal acts related to law enforcement and human rights protection and to know business transformation law enforcement officers and relevant institutions anticipate post Decision of the Constitutional Court Number 01/PHPU-PRES/XVII 2019 towards SOEs/SOES subsidiaries.

II. METHOD

The method used of this research is normative juridical legal research, with the data being examined namely secondary data that include primary legal materials such as the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999 concerning Human Rights, Law on State Owned Enterprises No. 19 of 2003, Law on Limited Liability Company No. 40 of 2006 and Post Decision of the Constitutional Court Number 01/PHPU-PRES/XVII/2019, secondary legal materials such as books, philosophy and theory of law, legal journals, scientific research, the websites, and other legal materials and the latest are tertiary legal materials such as legal dictionaries, encyclopedias, and so forth.

III. RESULT AND DISCUSSION

Regulation of Business Transformation and Law Enforcement and Human Rights in the Legal System in Indonesia

Business Transformation and Law enforcement and Protection of Human Rights in Indonesia have universal and socio-cultural dimensions, so that law Enforcement and Human Rights in its realization must be related to the stability of the Indonesian State itself and the heterogeneous unity of the Indonesian nation. And to what extent the Indonesian state’s positive legal system contains human rights statements, among others can be seen in:

1. Preamble of the 1945 Constitution. The statements contained in the preamble of 1945 Constitution contain many declarations and recognition that uphold the dignity, self-esteem and human values that are noble and very basic. And the statements in the preamble of the 1945 Constitution which contain the mind and spirit are not much different from the statements that are in the Universal Declaration of Human Right (UDHR). For example, a statement stating “That in fact Independence is the right of

all nations and therefore the occupation in the world must be abolished because it is not in accordance with humanity and justice”, identical to first paragraph of the UDHR Preamble which states:

- “Whereas” recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.
2. The body of the 1945 Constitution includes the provisions of Article 27 (1) of the 1945 Constitution, that all citizens are equal before the law and government with no exceptions almost the same as Article 6 of UDHR (recognition as a person before the law), Pasal 7 (equal protection of the law), Article 21 Paragraph 3 (equal access to public service in one’s country), Article 1 (equal in dignity and rights), Article 2 (entitled to all rights and freedoms without distinction).
 3. Guarantee for human rights in the development of the legal system in Indonesia has increasingly shown its confirmation since the enactment of Law Number 39 Tahun 1999 concerning Human Rights on 23 September 1999. Human rights in this Law are juxtaposed with basic human freedoms and are regulated in Chapter III with the following systematics: first part regulates family rights and continues to govern, third part regulates self-development rights, fourth part regulates rights to justice, fifth part regulates rights to personal freedom, sixth section regulates rights to security, seventh part regulates rights, welfare eighth rights to participate in government, the ninth part regulates women’s right, the tenth part regulates children’s rights.

Those rights of independence are as follows:

1. To know the basics or reasons for arrest, detention or imposition of a sentence against him and obtain rehabilitation or compensation if the arrest, detention or imposition of a sentence is not based on applicable law;
2. To get treatment and rights in accordance with applicable regulations during the period of arrest, detention or conviction over him.

Furthermore, another very fundamental aspect of humanity from the point of view of criminal law is that a person must be considered innocent before a court decision with permanent legal force and someone cannot be convicted (including being subject to an action) without any mistake. The first is referred to as “presumption of innocence” and the second is with the principle of culpability (*nulla poena sine culpa* or no punishment without guilt/fault).

Challenge facing SOE/SOE Subsidiaries Managements in Law Enforcement and Human Rights Protection

In order to realize law enforcement and the protection of human rights according to the ideals and objectives of protecting human dignity, it requires the support of law enforcers who have high quality and dedication. Conceptually, law enforcement is a process for turning legal wishes into reality. The law’s desire exists because law enforcement does not merely implement legislation. There is a possibility that law enforcers who carry out the law do not reflect law enforcement but instead disturb the peace and order in the community.

Soekanto (1996) argues that the elements of the role are:

1. The ideal role and the role that should be (expected role)
2. Perceived role and actual role.

Legal Obligation of SOE/SOE Subsidiaries Management in the Application of Law Enforcement and Human Rights Protection

Business transformation, law enforcement, and protecting human rights are always related to interferences with human rights. Forms of human rights violations can be found in the provisions of Criminal Law. SOE/SOE Subsidiaries Managements (board of commissioners and board of directors) have the authority and role in preventing the potential for corporate actions that have an impact on corporate criminal acts in the form of observing applicable laws and regulations and including paying attention to consideration and opinion in Post Decision of the Constitutional Court Number 01/PHPU-PRES/XVII/2019 in particular which states in principle legally that SOE subsidiaries are not SOEs so that SOE subsidiaries fully comply with Law No. 40 of 2007 concerning Limited Liability Companies (Decision of the Constitutional, 2019).

CONCLUSION

Based on the above description, what can be concluded is that SOEs/SOE subsidiaries have a central role in supporting for business transformation and law enforcement and protection of human rights both internal and external matters of the corporation. Post Constitutional Court's Decision Number 01/PHPU-PRES/XVII/2019 becomes a legal source that can inspire Law Enforcement Officials and related institutions/agencies to make appropriate adjustments to laws and regulations governing SOEs and or SOE subsidiaries.

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LEGISLATION

- 1945 Constitution of the Republic of Indonesia;
- Law Number 8 of 1981 concerning Criminal Law Procedure Code;
- Law Number 39 of 1999 concerning Human Rights;
- Law Number 40 Known 2007 concerning Limited Liability Companies;
- Law Number 19 of 2003 concerning State-Owned Enterprises;
- Decision of the Constitutional Court Number 01/PHPU-PRES/XVII/2019;
- Supreme Court Regulation Number 13 of 2016 concerning Procedures in Handling of Criminal Cases by Corporations;
- Government Regulation Number 72 of 2016 concerning Amendment of Government Regulation Number 44 of 2005 concerning Procedures in Participation and Administration of State Capital in SOEs.
- Decision Minister of Stated Owned Enterprises Number 01/MBU/2011 concerning implementation of Good Corporate Government (GCG).

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