The legal risk to sustainable role of State-Owned Enterprises management in Indonesia

Isharyanto¹,²,³, J A Husodo¹,² and M Madalina¹

¹Department of Constitutional Law, Faculty of Law, Sebelas Maret University, Jl. Ir. Sutami 36A, Keningan, Jebres, Surakarta, 57126, Indonesia
²Research Group of Constitution and Development, Faculty of Law, Sebelas Maret University, Jl. Ir. Sutami 36A, Keningan, Jebres, Surakarta, 57126, Indonesia
³Correspondent author: isharyanto_fth@staff.uns.ac.id

ABSTRACT. This article explained the legal risk as a part of good governance due to risk mitigation agency will be reviewed and then described descriptively with the role of State-Owned Enterprises related to climate change issues. State-Owned Enterprises should have a unit to hire risk management included the legal risk. The standard risk significant to guarantee the sustainable role of State-Owned Enterprises as a legal entity that gets the capital from the State and will require climate change issues. By doctrinal legal research, this article described the main problems for the implementation due to the category of risk State-Owned Enterprises. This article concluded: (i) State-Owned Enterprises already has mitigation that can respond to internal risks but are not sufficient to adapt to the issue of climate change; and (ii) the role of State-Owned Enterprises in responding to climate change needs support from the government.

1. Introduction

State-Owned Enterprises is one of the important economic activity actors in Indonesia's national economy, together with other economic actors, namely the private sector (large-small, domestic-foreign) and cooperatives. State-Owned Enterprises makes a positive contribution to the Indonesian economy. In a populist financial system, State-Owned Enterprises is the embodiment of a form of economic democracy that will continue to develop gradually and sustainably [1].

The roles carried by State-Owned Enterprises are huge and heavy, especially when they must comply with the underlying regulations compared to the private sector when investing. The many parts that State-Owned Enterprises must play simultaneously reflect that the State does not have clarity on what role to play in optimizing public services [2]. The main problems faced by State-Owned Enterprises today lie in issues (governance) and professionalism. State-Owned Enterprises' performance is demanded professionally as well as in the private sector. As an economic actor, State-Owned Enterprises are no different from the private sector. Only the owner is mostly by the State [3]. The principle of prudence must always be prioritized in such professionalism because many conditions affect the performance of State-Owned Enterprises, which differentiate them from the private sector [4]. Therefore, State-Owned Enterprises must comply with laws and regulations. Meanwhile, from an institutional point of view, State-Owned Enterprises have more potential for intervention from stakeholders than the private sector [3]. It has led to demands for equal treatment between State-Owned Enterprises and the private sector to grow better and be competitive [5].

At the company's State-Owned Enterprises, the public perception attaches that work culture in State-Owned Enterprises is deemed not conducive, is waiting, not creative, do not think global, is
highly bureaucratic, and highly centralized. The structures are not arranged based on competence, and the business process of State-Owned Enterprises has mostly not been regular and well organized [6]. To reorganize State-Owned Enterprises to become better, the government issued rules on good corporate governance [7].

State-Owned Enterprises legally occupied exact position, from aspect the dominant work of the State as the Majority Shareholder [8] so that the state authority in directing the policies of each State-Owned Enterprises is firm [9], as well as from the aspect of a clear separation of responsibilities between State-Owned Enterprises with the State itself [2]. The clarity of functions, status/legal position, and duties of State-Owned Enterprises has been justified by the promulgation of Law Number 19 of 2003 concerning State-Owned Enterprises.

Among the expected roles of these State-Owned Enterprises are related to climate change issues [10]. In 2015, Indonesia joined a global wave of countries that submitted their post-2020 climate pledges to the United Nations Framework Convention on Climate Change (UNFCCC), known as intended nationally determined contributions (INDCs) [11]. Since then, it has signed and ratified the Paris Agreement, and later formally submitted its first nationally determined contribution (NDC) in 2016, reiterating its commitment to a low-carbon, climate-resilient future [12]. The achievement of Indonesia's mitigation targets and those of over 190 other countries—will determine whether the increase in global average temperature will hold below 2°C, and limited even further to 1.5°C above preindustrial levels, as proposed in the Paris Agreement [13].

In this context, State-Owned Enterprises are expected to have risk mitigation that plays a role in adaptation to climate change problems [14]. The dynamics of business and, in particular, State-Owned Enterprises' engagement in environmental management are captured by the corporate responsibility and sustainability entrepreneurship literature [15]. These bodies of knowledge overlap in stressing the heterogeneity of State-Owned Enterprises businesses, and their varying attitudes toward corporate social responsibility and environmental or climate change [16]. In this paper, governance risk mitigation is limited to legal risk management, oriented towards the expected position concerning climate change issues [17]. Therefore, the risk mitigation agency will be reviewed and then described descriptively with the role of State-Owned Enterprises related to climate change issues.

2. Risk mitigation in State-Owned Enterprises

Apart from health threats, State-Owned Enterprises are also faced with significant financial and business risks [18]. Angkasa Pura Co. Ltd. (AP) II, for example, manages Soekarno Hatta Airport and 17 other airports in Indonesia. For a corporation, COVID-19 created an impact on the lack of passengers and a significant decrease in flight traffic of 5%-9% (YoY) per month. Not only that, but the company also received a further impact in the form of weakening performance from the non-core business side, such as reduced revenue from cargo, parking, rental, and throughput fees. Apart from AP II, many other State-Owned Enterprises have the same fate as AP I, AirNav, Garuda Indonesia Co. Ltd., Damri Co. Ltd., ASDP Co. Ltd., KAI Co. Ltd., Pelindo I-IV Co. Ltd., Pertamina Co. Ltd., and PLN Co. Ltd.

Most of these State-Owned Enterprises felt the implications directly, but some were indirectly affected by the postponement of business contracts or investment projects' termination [19]. For public State-Owned Enterprises, the impact experienced is even more severe, reflected in the sharp correction incorporate share prices due to the panic selling trend on the stock exchange [20]. The consolidation loss increases when children and business grandchildren also suffer losses.

Because the risk of State-Owned Enterprises is also the risk of the State Budget, it is necessary to have a quick policy response so that the sustainability of State-Owned Enterprises is maintained [21]. For policy response, apart from general policies from the government and the General Meeting of Shareholders (Rapat Umum Pemegang Saham in Bahasa), State-Owned Enterprises need to carry out more technical systems strengthening risk management, especially for risk mitigation protocols.

For State-Owned Enterprises as a corporation, the implementation of risk mitigation has been regulated in the Minister of State-Owned Enterprises Regulation Number PER-01/MBU/2011.
essence, risk mitigation is part of acceptable corporate governance practices to increase value creation while supporting performance targets' achievement. It means that the implementation of risk mitigation is crucial because, with higher value creation, State-Owned Enterprises can contribute more to the nation, state, and society. In practice, many State-Owned Enterprises in Indonesia are implementing ISO 31000, both the 2009 and 2018 versions, as risk mitigation standards [22]. Line best-practice standard has been implemented in more than 30 countries and hundreds of companies in the world. ISO 31000 introduces the risk assessment approach as a mitigation process whose elements consist of risk identification, analysis, and evaluation [23].

ISO 31000 also describes the concept of mitigation, which does not mean eliminating absolute risk. However, more to control efforts through policy choices such as avoiding risks, accepting and transferring them into opportunities, eliminating the source, changing the impact, sharing with other parties, or getting risks with individual decisions based on the best information. When the control has been carried out optimally, and risks still occur, this must be accepted by the risk owner as residual risk.

Under normal conditions, the implementation of risk mitigation in State-Owned Enterprises is generally quite effective. Problems arise when State-Owned Enterprises are faced with new external risks, such as climate change. Mitigation practices in some State-Owned Enterprises are not ready to detect, identify, analyze, and prepare for this strategic risk. Apart from being influenced by limited information and a relatively low level of risk maturity, this condition is also caused by risk sources that are far beyond the company's control. Another factor, because ISO 31000 as a risk mitigation standard also does not explain in detail the early detection formula and adjustments in the mitigation process when new risks arrive, especially for threats outside the company's control.

In connection with the above matters, it is necessary to recommend mitigation such as ISO31000 as part of legal risk management. In this case, the following should be done: (i) determination of legal risk and how it affects the organization; (ii) precise application of responsibility for identification of legal risk management funds; (iii) prioritize the most critical legal risks; (iv) analyze levels of exposure and root causes of risk and take proportionate mitigation actions; and (v) report the materiality of legal risks to relevant stakeholders.

3. The role of State-Owned Enterprises in climate change

State-Owned Enterprises to immediately strengthen risk mitigation in the context of adaptation to the issue of climate change. First, State-Owned Enterprises and their children and grandchildren need to transform by implementing a risk culture. Second, the risk mitigation unit as a coach must improve coordination and communication with all risk owners so that strengthening risk mitigation can be structured, systematic, and productive. Third, for risk mitigation preparation, the policy begins with sharing ideas, thoughts, and breakthroughs from the directors and commissioners as owners of critical risks in the company. To obtain the best images, the company's management needs to actively communicate with domestic and global stakeholders to refresh information and strategies. The boards of directors and commissioners must also be involved in literacy enrichment, comparative studies, benchmarking, and historical reviews.

Having flexibility in operating, State-Owned Enterprises, under the State Asset Manager's supervision, can become a catalyst in applying green business and sustainable development principles. For example, Sarana Multi Infrastruktur Co. Ltd., a state-owned company under the Ministry of Finance, has a business sector in environmentally sound, such as non-fossil power generation projects (gas, water, garbage, and solar). These public transportation projects can reduce carbon emissions (MRT, LRT, and Electric Train), and clean water treatment projects.

With the financing assistance from SMI Co. Ltd., the success rate of environmental project implementation in central and local government has increased. To optimize the role of PT SMI as a Special Vehicle Mission, especially regarding preventing the impact of climate change, the Minister of Finance can set targets for increasing the financing portfolio composition. It is environmentally oriented (green business) in the Company's Work Plan and Budget. State-Owned
Enterprises/institutions directly under the Ministry of Finance, include Penjamanan Infrastruktur Indonesia (PII) Co. Ltd., Sarana Multigriya Financial (SMF) Co. Ltd., Geo Dipa Energi Co. Ltd., and LPEI Co. Ltd. (Indonesian Export Financing Agency), can be collaborated in supporting government programs.

The role of State-Owned Enterprises requires government support, especially the Ministry of Finance. It was caused by most State-Owned Enterprises still held the government's original socio-political objectives concerning industrialization and national economic development. The provision of public goods and services was still the main government-stated objective, as more than 50 percent of State-Owned Enterprises in each group had the purpose. The requirement to support national economic activities was also one of the government's main concerns. The condition for State-Owned Enterprises to improve or stabilize national economic activities was shown in this objective, which was found in the majority of publicly listed SOEs and those without privatization restrictions [2].

This ministry can conduct behavioral engineering of public sector organizations to manage state-owned goods in inventories and fixed assets. Management policies related to purchases must encourage ministries/agencies to be more optimal and efficient as users of goods. In implementing the asset management cycle in the context of saving the state budget, in which results can be reallocated to other priority programs. Asset management policies must also be able to encourage changes in ministries/institutions' behavior to take part in adapting to the impacts of climate change. Such as options for procurement of green assets/infrastructures, planning for optimal asset requirements/zero waste (reduce, reuse, recycle), and increase asset resilience in supporting public services sustainability.

Increased funding support through government capital participation in State-Owned Enterprises engaged in renewable energy and expansion of access to finance for environmentally friendly infrastructure projects at the central and regional levels are examples of the Ministry of Finance's significance in supporting government programs to achieve climate change policy targets. However, this is a challenge for the Ministry of Finance because the motivation for additional government capital participation may vary. Fulfilling the need for capital participation for State-Owned Enterprises that are healthy and with the right momentum can increase the ability of State-Owned Enterprises to generate economic benefits in the economy.

4. Conclusion
State-Owned Enterprises already have mitigation in the form of management standards that can respond to internal risks but are not sufficiently implementable when facing external risks, including climate change. The role of State-Owned Enterprises in responding to climate change needs support from the government.

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