State-Owned Enterprise Financial Governance: Dilemma of State Wealth Separation

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Abstract. State assets that are separated in a state-owned enterprise (SOE) business capital have become a paradigm since the amendments of the 1945 Constitution in Chapter VII and Chapter VIIA. The three packages of laws within the scope of State Finance become the main principle to regulate SOE’s. The principles inherent in the regulation of State Finance for SOE’s have been contested multiple times, but the Constitutional Court’s decision still reinforces the principle that the SOE’s fund remains as the State’s Finance. This research uses a normative juridical method. The results show that various unfavorable situations exist towards SOE’s as business entities because they are managed in the form of bureaucratic and controlled by the central policy of the government. The government tends to prioritize political control, which sacrifices company efficiency. This condition has potentially distracted SOE’s performance. The SOE’s as agents of development should be able to determine economic development. In Medan City, there are several SOE headquarters. SOEs in North Sumatra with the characteristics of producing typical commodity should contribute to the development of Medan City through CSR programs. In conclusion, the management of SOEs has not been made optimal due to political and bureaucratic influences. Thus, SOEs contribution has not been able to fully support Medan City development.

1. Introduction

Various economic expert analyses assume that the involvement of the state in the economy is due to the failure of the market mechanism, especially in macroeconomics [1]. In Indonesia, this can be seen through the management of SOEs as an implementation of the constitutional mandate. SOEs are located in almost all parts of Indonesia, including Medan. The SOE existence in Medan should be able to support the city development by providing foreign exchange income, levies, and CSR programs.

SOEs were established for the prosperity of the people. This goal is then elaborated in Article 2 Paragraph (1) of Law No. 19 of 2003 concerning SOE. It plays two main roles, namely: as a state company that seeks profits to increase foreign exchange of the country (agent of business) and as a government agent to provide services to the public (public service obligation or PSO). The double role is implemented by developing various types of SOE into public companies (Perum) and limited liability companies (Persero). SOEs are defined as business entities in which all or part of its capital is owned by the state through direct participation derived from separated state assets [2].

Separated state asset means that SOEs are independent legal entities whose responsibilities and wealth are separate from its owner (State). There are several laws and regulations in Indonesia categorizing SOEs as public entities and part of State Finance. Law No. 17 of 2003 concerning State
Finance and Law No. 1 of 2004 concerning State Treasury affirm that the wealth of SOEs is part of the wealth or finances of the state, even though it is separated. According to the two regulations, the procedure for the use of SOE assets is carried out by the procedures for the use of State Finance.

SOEs in Indonesia are managed as private entities [3]. However, they exist partly as public entities because they are formed from separated state assets. This provision has un-optimally impacted their performance, although the purpose of their establishment is to support the development. This paper discusses the performance of SOEs on the implementation of the principles of separated state wealth management in implementing their functions as agents of development to support Medan City development.

2. Method

The study uses a normative juridical [4] review by analyzing legal materials in the form of four laws of the Republic of Indonesia, namely: Law No. 17 of 2003 concerning State Finance, Law No. 19 of 2003 concerning SOE, Law No. 1 of 2004 concerning State Treasury, and Law No. 40 of 2007 concerning Limited Liability Companies. Furthermore, the four laws are observed on managing SOEs within their functions as agents of development.

3. Results and Discussions

3.1. SOEs as Agents of Development

SOEs play a significant role in national economic development [5]. Regional development is an integral part of the national development, as stated in the Regional and National Medium-Term Development Plans. The function of SOEs as agents of development provides an opportunity in realizing the development of Medan City as one of the SOE operational territories. This condition can be adjusted by the performance of SOEs that contribute to state revenues, provide motivation, and innovation for all economic sectors and foster new business start-ups.

Several SOEs in Medan are PT Perkebunan Nusantara III, PT Perkebunan Nusantara IV, PT Pertamina, PT Jasa Raharja, PT Kereta Api Indonesia, PT Pelabuhan Indonesia I, and PT Perusahaan Listrik Negara. As icons of the development of Indonesia, SOEs with their various fields of work are expected to collaborate and support the government in realizing a metropolitan Medan City. One type of business that supports the economy in North Sumatra is the plantation sector. PT Perkebunan Nusantara III (PTPN III) is a representation of an SOE Plantation managed under a holding company mechanism since 2014 [6].

PTPN III is a limited liability company that serves as an example of a modern, environmentally sound company and transforms itself into an institution that is socially responsible for the environment and society. In such efforts, as a social institution, PTPN III distributes rights and obligations and determines the distribution of benefits of such social cooperation. Through this institution, the application of economic principles and social order was also implemented [7]. The business activities of SOEs are not concentrated on profit alone, but also consider the prosperity, progress, and welfare of the community and its environment. Thus, the business policies of SOEs should benefit the community by supporting the development.

3.2. Separated State Assets in SOEs

In carrying out its functions, SOEs are also related to financial governance, which is part of the State Finance. The legal impacts of State Finance started with changes to the 1945 Constitution in Chapter VII and Chapter VIIA, as well as a law package that regulates the definition of the scope of the State Finance. Discussions related to the definition of State Finance are always debatable; there are different interpretations of Article 23 of the 1945 Constitution concerning State Finance.

Some of the regulations in the State Finance Law affirm the position of separated state assets in SOEs as state enterprises, among others: Article 2 letter g emphasizes that State Finance includes assets separated from the State enterprises; Article 24 Paragraph 3 states that the Minister of Finance
conducts guidance and supervision of State enterprises; Article 30 concerning the accountability report for the implementation of the State Budget states that the President submits the financial statements of state companies and other bodies to the House of Representatives. Furthermore, the State Treasury Law, in Article 55 Paragraph 2 letter d states that the Minister of Finance as the representative of the Central Government in the ownership of separated state assets compiles an overview of the financial statements of state companies.

Due to the multiple interpretations of the regulations mentioned above, the Center for Strategic Studies of the University of Indonesia (CSSUI) submitted a request for a judicial review to the Constitutional Court (CC) regarding Management of State wealth. The review was recorded in the Constitutional Court in case Number 48/PUU-XI/2013, and the article requested to be reviewed is Article 2 letter g and letter i of Law No. 17 of 2003 concerning State Finance. Another petition for a judicial review was submitted by the State-Owned Enterprise Legal Forum and registered with Number 62/PUU-XI/2013. The article requested for review is Article 2 letter g and letter i of Law Number 17 of 2003 concerning State Finance and Article 6 Paragraph (1), Article 9 Paragraph (1) letter b, Article 10 Paragraph (1) and Paragraph (3) letter b, and Article 11 letter a of Law No. 15 of 2006 concerning the Audit Board of the Republic of Indonesia. The petition for the judicial review states that SOE assets are not included in the scope of State Finance; and the Audit Board of the Republic of Indonesia cannot examine to the SOEs.

The Constitutional Court rejected the entire reviews because the definition of State Finance did not conflict with the Constitution. This definition cannot be interpreted only based on Article 23 of the 1945 Constitution but must be comprehensively understood by using other Articles such as Article 23C which regulates other matters concerning State Finance. The Constitutional Court emphasized the need to understand the concept of a welfare state which is explicitly adhered to in the Preamble of the 1945 Constitution and the Articles contained in it regarding the definition of State Finance.

The Constitutional Court decided that SOE finance is part of the State Finance and SOEs are considered as corporations. A national consensus of various parties is needed to accept that the management of SOEs is based on the Constitutional Court Decree. Therefore, Directors, Commissioners, AGM, and SOE employees will have legal certainty in managing SOEs. SOEs with good performance can increase their contribution to national and regional development [8].

3.3. Implementation of SOE Performance as Private Entities that Utilize State Wealth
In Indonesia, the formation of SOEs as a part of the State Finance gives authority to several state institutions such as the Minister of Finance, the Minister of SOE, technical ministers related to SOE jobs, House of Representative, Audit Board of the Republic of Indonesia, Finance and Development Auditor, and Corruption Eradication Commission to supervise and audit SOE performance and finance. Bureaucratic involvement in SOEs often makes it difficult for directors to act objectively. The government, as the owner of SOEs, may have different interests from the goals of the state in its role as a business actor. The real challenge is to find a proper balance between political influence and management performance [9]. This condition describes the complexity of the SOEs as a business actor that should have fulfilled two different objectives [10].

With an additional role as regulators, SOEs are trapped by bureaucratic procedures so that they cannot compete with other effective and efficient private companies [11]. Consequently, SOEs as business entities no longer prioritize good corporate governance. SOEs, as icons of the development of Indonesia, have not been able to give a significant impact on national and regional development. The professionalism of SOEs conflicts with the interests of the owner(s).

Hence, SOEs should be directed at the initial purpose of its formation, namely public benefits in addition to seeking profits. Medan, as the third largest city in Indonesia has PTPN III in its territory; the plantation sector with palm oil as its superior commodity has made PTPN III as a typical public company. One of the principles in public mechanisms is to target social goals for groups or communities. The principle describes that the government, as a public organizer, should consider the social objectives when establishing a business entity.
Law No. 40 of 2007 concerning Limited Liability Companies (Company Law) as a reference in the management of PTPN III demands a better relationship between the company and the public, known as Corporate Social Responsibility (CSR). The provisions of Article 74 Paragraph (2) of the Company Law confirms that CSR is an obligation of companies which is budgeted and calculated as company costs following propriety and fairness. This provision was initially rejected by businessmen, until a judicial review to the Constitutional Court was formally submitted by the Board of Indonesian Association of Young Businessmen, the Management of the Indonesian Chamber Of Commerce & Industry, and the Management of the Association of Indonesian Business Women on November 28, 2008, with register No. 53/PUU-VI/2008. In the end, the Decree of the Constitutional Court states that the requests of all applicants were not accepted and rejected; the Constitutional Court argued that the provisions of CSR did not conflict with Article 28 and Article 33 of the 1945 Constitution. Thus the concept of CSR remained as an inseparable part of a limited liability company management in Indonesia.

The contribution of PTPN III in the development of Medan City should be implemented through a CSR budgeting policy that synergizes with the concept of development programmed by the Government of Medan City. Therefore, the development of Medan City can be incorporated in the PTPN III CSR programs. This shows a good concern of a modern company that prioritizes stakeholder interests. However, the distribution of PTPN III CSR funds in 2017 and 2018 to stakeholders in Medan had not shown an optimal synergy between the two. The distribution of partnership and community development programs of PTPN III in Medan City is only for religious activities and certain social activities [12]. The PTPN III CSR programs have not touched the development of Medan City which should have a direct impact on the entire community, rather than only for certain groups. The dilemma of SOE financial governance has influenced the relationship between SOEs and their stakeholders so that they cannot contribute optimally to the people of Medan City.

4. Conclusions

The management of SOEs under the principles of the State Finance leads to a bureaucratic management system. This situation has negatively impacted the function of SOEs as agents of development. PTPN III is one of the SOEs in Medan that has not been able to synergize its existence with the development of Medan City due to a dilemma in its financial governance.

The policy of implementing PTPN III CSR program should be synergized with the Medan City development program to reach sustainable development.

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