

BUMN (State-Owned Enterprises) As a Corporation: A Reflection from Indonesia

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Abstract

This paper describes the role of BUMN (State-Owned Enterprises) as a corporation based on experience in Indonesia. In this context, this paper explains that various studies on the factors of legal certainty and legal relations and growth show that law enforcement is especially important for companies, including BUMN (State-Owned Enterprises). In this case, an independent court is the central institution for upholding the law. Likewise, laws and regulations, for example in the field of capital market law, which prohibit insider trading, for example, lead to the development of the capital market. Likewise, the study of the role of banking law where regulations that encourage and facilitate private monitoring of banks tend to strengthen the appearance of banks, reduce bad loans and strengthen bank stability. In sum, BUMN as one of the actors of economic activity in the national economy has an important role in realizing the welfare of the community. For this reason, the BUMN Law wants to optimize the implementation of the role of BUMN in the national economy in order to realize public welfare. Optimizing the role of SOEs is carried out professionally.

Keywords

BUMN; SOEs; indonesia, dutch; new order; state-owned enterprises



I. Introduction

The establishment of a state company (BUMN or State-Owned Enterprises) as a forum and tool for the state to carry out its duties to provide welfare to the people is carried out in a hasty atmosphere or not with careful preparation. The state company structure that was formed in 1957-1959 was an ad hoc response or reaction to the nationalization of Dutch companies. Most of the newly formed state enterprises, especially those in the trade and plantation sectors, were taken over and controlled by the military to prevent control by the trade unions and secure new sources of economic power. The nationalization of Dutch companies was a good opportunity for the establishment and development of the state enterprise sector. However, at that time a problem arose because the authorities thought that everything should be handled by the state, including trade and banking issues which were not categorized as affecting the lives of many people. So that the role of the private sector is also weakened. Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

The condition of state enterprises as described above was then inherited by the New Order regime. According to Hal Hill, as a result, the New Order government at that time accepted the company's condition to enter fields that could create and require monopolies such as sugar, tobacco, salt, cloves and even enter certain industries. The aim could be to control production or distribution, it can also be used to benefit from the state. While the third pattern views positively the role of the state. The state and the private sector are seen as being able to carry out the role of carrying out the mission of development and economic development.

In this regard, the relationship between democracy and economic growth is also important. Jenny Minier said that every time the regime changes there is instability and the need for new institutions, which are generally good for economic growth. But he found that the new democracy did not suffer from sluggish growth, but in fact the regime was economically good. Minner's study shows persuasive evidence that democratic governance promotes growth. Democracy seems to be a legal structure that contributes to the creation of welfare in society.

II. Review of Literature

In connection with the post-independence nationalization of Dutch companies, taking into account that very few companies existed to stimulate the economy at that time, Hatta also supported the formation of state companies in many fields, including those that did not affect the livelihoods of many people, provided that it was only temporary. When the national private sector is able to grow and move the economy, the state must retreat and concentrate only on a few areas that are truly vital and strategic.

State companies are large but dilapidated, their level of performance and efficiency is poor and these companies make up a major portion of the state budget. This makes reforming the state-owned enterprise sector an urgency to control the state budget deficit, increase efficiency and to restore Indonesia's commercial credibility abroad.

In the mid-1960s the government established urea fertilizer factories, starting from South Sumatra, West Java, East Kalimantan, East Java, and Aceh. The government took over Indosat as the home-base for the ownership and management of the Palapa Satellite. The government also established electricity industries as national energy fuel and aircraft industry with the aim of becoming a regional business actor in the field of medium and small transport aircraft. Related to this industrial sector for military purposes, the government builds the weapons industry; Pindad, money printing material; Peruri, food stock management.

Based on the various backgrounds of the presence of these SOEs, before 1960 SOEs were regulated by different legal foundations. At that time BUMN could be classified into four types, namely BUMN which were: (1) subject to the Indonesische Bedrijven Wet (IBW) or the State Company Law, (2) subject to the Indonesische Comptabiliteits Wet (ICW) or the State Treasury Law, (3) subject to certain laws, and (4) subject to civil law, especially commercial law.

III. Result and Discussion

State involvement in the economy, among others, in the field of public utilities or public benefits; Statutory Public Corporations, namely state companies with more autonomous management than department government enterprises but still engaged in

public utilities; and Commercial companies, namely state companies which are mixed with private capital and are treated as private companies.

In the development of the division in the 3 fields of business forms, it was then thought of to classify state-owned companies according to Friedmann and Garner above in accordance with the provisions of Law Number 9 of 1969 concerning Stipulation of Government Regulations in lieu of Law Number 1 of 1969 concerning forms of State Enterprises which stipulates three forms, namely: Service Company (Perjan), Public Company (Perum), Limited Liability Company (Persero). However, State-Owned Enterprises are now regulated in Law No. 19 of 2003 concerning State-Owned Enterprises.

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Law Number 19 of 2003 was born because the various laws and regulations that existed previously did not provide a strong legal basis in terms of developing state enterprises in line with the development of the corporate world. Furthermore, in the general explanation of the Law on State-Owned Enterprises, it is said that the issuance of the said law is expected to optimize the role of BUMN and maintain its existence in the development of an increasingly open and competitive world economy. For SOEs, it is necessary to cultivate a corporate culture and professionalism, among others through improving management and supervision based on the principles of good corporate governance.

Based on Law Number 19 of 2003, SOEs are simplified into only two forms, namely Limited Liability Companies (Persero) and Public Companies (Perum). Persero was formed with the aim of fostering profits. Its management fully complies with the provisions of Law Number 40 of 2007 concerning Limited Liability Companies. Meanwhile, Perum was formed by the government to carry out the government's obligation to provide certain goods and services to meet the needs of the community.

BUMN in the history of its birth is known as the State Company. The term BUMN only emerged in 1983 through Government Regulation No. 3 of 1983 which regulates the model for fostering and supervising BUMN. The birth of BUMN in Indonesia was motivated by several main reasons, namely to accommodate nationalized foreign assets and businesses, this happened in the 1950s era. Another reason is to develop industries that are needed by the community, but due to various reasons (high investment or business risk) it is difficult for the private sector to enter the industry or to establish the industry. Another reason is the government's awareness of the strategic characteristics of industries, namely industries whose establishment and management cannot simply be left to the private sector. The industry is considered strategic because it has an important position in the survival and security of the country.

If examined further, the reasons stated above are quite appropriate, considering that BUMN in Indonesia actually existed before Indonesia's independence, namely when the Dutch East Indies government established Gomeenschappelijke Mijnbouw maatschappij Bliton (GMB) which is a tin company in Belitung, Pegadaian, Spoorswagen (SS). It was this company which, after Indonesia's independence, was nationalized by the government into a state-owned company which at that time had the status of a service, the Indonesian Motor Transport Service, the Railway Bureau, the Pegadaian Service and others.

The background of the establishment of SOEs at that time was also felt to be inseparable from the ideals of the Indonesian Government in realizing Article 33 of the 1945 Constitution. The presence of SOEs such as PT Pupuk Sriwijaya and PT Semen Gresik (manufacturing sector), Jakarta Lloyd, Garuda, Pelni (transportation sector), BIN and BNI in the banking sector are evidence of the government's efforts to apply the spirit of the 1945 Constitution in the national economy. The development of the number of state-owned enterprises that were nationalized was even fantastic in the period 1958-1965 which reached 630 state-owned enterprises as a result of the implementation of nationalization based on Government Regulation No. 23/1958 regarding the liberation of West Irian. Another important moment was when the government also nationalized foreign companies other than those owned by the Dutch East Indies as a result of Indonesia's confrontation with Malaysia. These foreign companies are companies owned by Singapore, England, and Malaysia. Another fact that is no less interesting is the number of SOEs in Indonesia which reached 826 companies at the end of 1965.

Since Indonesia's independence, the function and role of state enterprises has become a debate among the founding fathers, especially on the word controlled by the state. Bung Karno interpreted that because the economic condition was still weak after independence, the state had to control most of the business fields that could stimulate economic activity. Meanwhile, Bung Hatta opposed this opinion and viewed that the state only had enough control over companies that really controlled the basic needs of the people, such as electricity and transportation. Hatta's view is then more in line with modern economic understanding, where the position of the state is only sufficient to provide infrastructure that supports the development process.

After independence, Indonesia had to build its economy amidst the efforts of imperialist countries to re-colonize Indonesia. Wars and rebellions that occurred in various

regions continued without stopping until the 1959 Presidential Decree. In the early 1950s, the establishment of the state was limited to several vital sectors according to the Hatta economic, but the establishment of state enterprises was still ineffective due to security and political disturbances/ shocks . At the end of 1957, the government began to nationalize almost all sectors in accordance with Soekarno's conception.

According to Bung Karno, the purpose of establishing state companies and nationalization is to encourage the national economy, especially state companies engaged in infrastructure. A number of Dutch companies were nationalized, such as PT Kereta Api or Djawatan Kereta Api (UU 71/1957), PT Pos (Djawatan Pos), PT Garuda Indonesia Airways, and at the end of his reign, Soekarno had established the State Company (PN) Telecommunications. However, some of the companies nationalized by the Soekarno government caused a lot of loss to the state because the Dutch had already transferred their company assets to the Netherlands.

In the early years of the formation of BUMN until 1960, the government had not implemented specific regulations related to BUMN. Therefore, it is not surprising that at that time the legal basis governing SOEs was different. This difference in legal basis caused at that time SOEs in Indonesia were classified into four types of SOEs, namely regulated by the Indonesische Bedrijven Wet (IBW)/State Company Law, regulated by the Indonesische Comptabiliteits Wet (ICW)/State Treasury Law, BUMN regulated by certain laws. and BUMN which are regulated by civil law, especially commercial law.

In 1960 with the aim of reorganizing the means of production and distribution in line with Article 33 of the 1945 Constitution and in the implementation of a guided economy towards the implementation of Indonesian socialism, the Indonesian government issued Government Regulation in Lieu of Law (Perpu) Number 19 of 1960 about state enterprises. Since then, state companies, which are defined as all companies in any form whose capital is wholly the assets of the Republic of Indonesia, unless otherwise stipulated by or based on law, have the same legal basis for all BUMN.

The existence of SOEs in various countries shows conceptual differences, including the existence of SOEs in Indonesia. Although in general the existence of BUMN is related to the understanding of the welfare state (social service state, welfare state), where the government has broad responsibilities in various aspects of the lives of its citizens in order to realize the welfare of the people. The government's responsibility in realizing the people's welfare is in the people's economy. In a complex economic system, the role of economic actors is not only limited to the private sector, but the government plays a role in regulating so that the economic system runs well. The government appears as a good regulator (regulator), so that the economic system develops harmoniously in accordance with social realities. However, it turns out that the government does not feel it is enough just to be a regulator of the economic system, where the government is also directly involved in the economy. The state (government) participates in becoming entrepreneurs in addition to private persons/entities. The implementation of the government as an entrepreneur is manifested in the form of a State Company or what is now more popularly called "State Owned Enterprises (BUMN)".

In Indonesia, the growth of SOEs during the independence period was in part a reaction to the colonial situation. After independence, Dutch and other foreign companies continued their operations in Indonesia until the nationalization act was carried out in 1957. This was the situation behind why Indonesian leaders took a national and socialist position.

Without setting aside the phenomenon of direct government participation in the economy, the notion of BUMN itself undergoes a change in conception from time to time.

In the school of economic thought, there are 2 (two) poles of thought that are in extreme opposition to each other, namely the command economy system, where the economy is fully controlled by the government and the free market economic system which rejects government intervention. Each school has a philosophical foundation of thought that has been built by its thinkers, Adam Smith from the pro-free market group and Karl Marx from the counter-free market group.

In the era of the 1930s the world experienced a massive economic crisis (malaise) and it turned out that the market at that time could not show its performance (according to the free market doctrine), and the crisis was even worse. To overcome the crisis, John Maynard Keynes, who did not believe that when the economy was hit by a crisis, it would automatically reach a point of balance again, encouraging the British Government's active role in economic activities to be limited and as a result the British economy was heading for improvement. Keynes's thinking tries to find a middle ground between 2 (two) opposite poles of thought. This policy was eventually followed by other countries for a period of three decades. It was only around the 1970s that this thought received criticism from survivalists (neo-liberals), which was the new face of the thought pioneered by Adam Smith.

The influence of Keynes's thinking more or less inspired the economic thought of the founding fathers. Bung Hatta was the most instrumental figure in formulating Indonesia's national economic system as stated in Article 33 of the 1945 Constitution and its explanations. Keynes's theory spawned the need for economic policy intervention in the era of the "Great Depression" of the 1930s. Keynes's economic theory is based on the cyclical money flow hypothesis, which refers to the idea that an increase in spending (consumption) in an economy, will increase income, which in turn will lead to further increases in spending and income. According to Keynes's theory, consumption by one person in the economy will become income for others in the same economy. So when a person spends his money, he helps increase the income of others. This cycle continues and allows the economy to run normally. When the Great Depression hit, people naturally reacted by withholding spending and tending to hoard their money. This is based on Keynes's Theory will result in the cessation of the money cycle and subsequently paralyze the economy. Keynes's solution to break through this economic barrier was the intervention of the public sector and government. He argues that the government should intervene in increasing public spending, either by increasing the money supply or by purchasing goods and services by the government itself. During the Great Depression, however, this was an unpopular solution. However, the government's defense spending launched by the President Franklin Delano Roosevelt.

The economic system of our country is economic democracy or in Bung Hatta's terminology, it is called socio-economic. Our economic system is not socialist (command economy system) nor is it capitalist (free market economy system). In this system the state has the authority to control natural resources. But on the other hand the private sector or individuals also have the right to own and manage assets for economic activities within certain limits.

This system basically has the same frequency as Keynes' currents of thought, but there are some parts of the system that are explored based on the spirit of the Indonesian nation which prioritizes kinship and mutual cooperation. So this system cannot be said to be the same as the economic system desired by Keynesians. In this system all economic endeavors aim for the common good.

BUMN has special characteristics that are not owned by other business entities which are formulated as: ""A corporation clothed with the power of government but

possessed the flexibility an initiative of a private enterprise" . This is where the efficacy of BUMN institutions lies.

The manifestation of the economic system is the existence of three business entities that support the Indonesian economy, namely cooperatives, BUMN and the private sector. So the existence of SOEs in our country is constitutionally recognized, and this means that the government's role in the economy is constitutionally legitimate. Based on article 33 of the 1945 Constitution, especially paragraphs (1) and (2), the characteristics of assets that are currently controlled by the state are important and strategic production branches, earth, water, and the natural resources contained therein. Beyond that, the private sector has the right to control it. In theory, the government must manage assets in the form of public goods that the private sector cannot afford. Furthermore, it is specifically regulated in laws such as the Oil and Gas Law, the Electricity Law and so on.

From this the question arises, why currently many SOEs that do not fall into the above categories are still controlled by the state, such as insurance companies, mutual funds, pawnshops, banking and plantations. The answer to this question is closely related to the historical aspect. Because the emergence of SOEs was not only motivated by policies to implement the constitutional mandate, but there were some SOEs that emerged because of the mandate of the revolution during the war of independence. At that time, many Dutch companies were taken over by the Indonesian people as Indonesia's sovereignty became stronger politically and militarily. Deutch Bank, for example, was taken over and became Bank Indonesia.

The definition of BUMN given by the above laws and regulations substantively shows that there is a reform. If before Law Number 19 of 1960 there were various forms of state enterprises, after the enactment of Law Number 19 of 1960 all state-owned enterprises that existed at that time were named State Companies. In this context, Law Number 19 of 1960 is not so concerned with the forms of state enterprises, but what is more important is the position of the legal entity which is obtained by Government Regulation (PP). Then there was control of state-owned enterprises based on Presidential Instruction No. 17/1967, whereby for a business entity that is considered no longer able to continue its existence because it does not meet the requirements as a healthy business entity or its function is not in accordance with the circumstances, it is attempted to dissolve it. For weak business entities operating in the same field, efforts are made to improve them by means of mergers.

For state-owned enterprises that are considered to still have prospects, they are directed to change their form into one of the three new forms of BUMN, namely Bureaucratic Companies (Perjan), Public Companies (Perum) and Limited Liability Companies (Persero). To provide the legal basis for the three forms of BUMN, Law no. 9 of 1969. Thus the State-Owned Enterprises which previously were all named State Enterprises which did not question their form, since 1969 there have only been three forms of BUMN, namely; Perjan, Perum and Persero. Both Perjan and Perum all of their capital are separated state assets and are not divided into shares. Meanwhile, state enterprises in the form of Persero, according to the conception of Law No. 9 of 1969 are in the form of state enterprises whose capital is not wholly owned by the state. The conception of a State Company in the form of a Persero shows a different face from the conception of a State Company as regulated in Law No.19 of 1960.

The three forms of state enterprises (excluding state enterprises in the form of Government-Owned Commercial Banks and Pertamina), the main task of Perjan is to carry out corporate duties as well as government duties which are reflected in the organizational structure of the Department, with the nature of its business being public services. services).

The goods or services produced by Perjan are the government's obligations in the context of public service because the goods and services are large and important for the lives of many people. Its line of business is a government monopoly and does not attract the interest of the private sector, because its business has a small rate of return while the investment and risk are large. .

Meanwhile, Perum is tasked with serving the public interest and at the same time generating profits and engaging in fields deemed vital by the government. Perum generally carry out company duties but can be burdened with government duties, in the Department there are no more organizational units that carry out government duties that have been handed over to Perum. This is different from the Persero, because the Persero conducts corporate business that can be carried out by the private sector and is not solely the duty of the government. In this context, the goods and services produced by the company (Persero) are not the state's obligation to produce them. The business sector must be able to provide financial benefits to the state, both in the long term and in the short term. Persero in principle are not given monopoly rights or other special treatment by the government.

Some of the main differences in the duties, functions and nature of the business of the three forms of BUMN above, when compared with the role of BUMN in Indonesia based on Government Regulation Number 3 of 1983 as amended by Government Regulation Number 28 of 1983, the role of BUMN is as follows;

- a. contribute to developing the country's economy in addition to increasing the country's economy;
- b. cultivating profit/income;
- c. provide public use in the form of goods and services to the general public;
- d. become a pioneer in terms of business activities that the private sector and cooperatives cannot yet undertake;
- e. complement private and cooperative activities in terms of providing goods and services needed by the community at large;
- f. provide guidance to the private sector, especially small-capital entrepreneurs and the cooperative sector;
- g. implement and support the implementation of government programs in the field of economy and development in general.

Meanwhile, compare the duties of SOEs as stated in Presidential Instruction Number 5 of 1988, which include:

- a. procure goods which due to security and confidentiality considerations must be controlled by the state;
- b. established on the basis of consideration to implement certain government policies and or strategic;
- c. established with the aim of protecting the safety and welfare of the public;
- d. established based on the prevailing laws and regulations must be owned and managed by the government;
- e. commercial businesses such as those carried out by the private sector.

Observing the role, duties, functions and nature of the BUMN business and its development, in principle, the presence of BUMN in Indonesia is not only a facet of the country's economy, but also acts as an ordinary company seeking maximum profit. Even SOEs have a wider range of motion and reach than private companies. Substantively and based on the authority to determine the economic fields that control or concern the public/public interest, in addition to carrying out commercial businesses such as those carried out by the private sector.

IV. Conclusion

The presence of SOEs in Indonesia is actually not only complementing private and cooperative activities and the role of SOEs is more than ordinary companies. This raises the question, is it true that in a complex economic system, the government appears as a good regulator, so that the economic system develops harmoniously in accordance with social reality. Accountability and transparency have not been created in the management of BUMN or the management of BUMN has not been based on Good Corporate Governance. On the other hand, in the case of SOEs living "unhealthy" can not be separated from the magnitude of government intervention in the management of SOEs and SOEs are used as "cash cows" for political parties. The BUMN management mechanism is not left to the market mechanism. That way it can be understood why the role of SOEs has not been optimal in order to realize the welfare of the people.

The inevitability that has happened to SOEs in Indonesia so far seems to be over if Law No. 19 of 2003 concerning State-Owned Enterprises is truly implemented and the hopes and aspirations of the establishment of this Law are not "betrayed". BUMN as one of the actors of economic activity in the national economy has an important role in realizing the welfare of the community. For this reason, the BUMN Law wants to optimize the implementation of the role of BUMN in the national economy in order to realize public welfare. Optimizing the role of SOEs is carried out professionally. Despite its imperfections, what is clear is that the enactment of the BUMN Law gave birth to a number of fundamental changes to the existence of BUMN in Indonesia, including:

First, Law No. 19 of 2003 only recognizes two forms of BUMN, namely a Limited Liability Company (Persero) and a Public Company (Perum). Thus, SOEs in the form of a Service Company (Perjan) will be dissolved which will be determined through a Government Regulation. In this connection, the general utility function (service) which has been the task of Perjan, will be given a special assignment by the government to Persero or Perum. The granting of a special assignment for the general benefit function to a Persero or Perum must first obtain the approval of the GMS/Minister.

Second, if in the previous statutory regulations, the position and task of Perum was to serve the public interest while at the same time fostering profits and engaging in fields deemed vital by the government. And besides carrying out company duties, Perum can also be burdened with government duties. This is not the case with the BUMN Law, the purpose and objective of Perum is to carry out a business aimed at the public benefit in the form of providing quality goods and/or services at affordable prices by the public based on the principles of sound corporate management. From the conception of the BUMN Law regarding the aims and objectives of Perum, the business fields managed by Perum are no longer limited by the existence of a vital nature of the fields that are their business. The space for Perum is to become more flexible, provided that the origin of the provision of goods and services by Perum is affordable by the community, but still based on the principles of sound corporate management.

Third, if in the previous laws and regulations the Persero did a company business that could be carried out by the private sector and was not solely a government task, then the goods produced by the company were not the state's obligation to produce them. Based on the BUMN Law, the aims and objectives of BUMN are no longer formulated in the perspective of government and private thinking. Persero in the perspective of the BUMN Law is like a private company. Persero is projected to be able to compete with privately owned companies. Persero must be able to provide goods/services of high quality and strong competitiveness. This goal certainly cannot be separated from the company's aims

and objectives to pursue profits in order to increase the value of the company as it is a privately owned company. The BUMN Law also stipulates that all provisions and principles that apply to limited liability companies apply to BUMN companies as regulated in Law No.1 of 1995 concerning Limited Liability Companies.

Fourth, if in the previous laws and regulations, the Board of Directors of Perum was appointed and dismissed by the President at the proposal of the minister concerned, then based on the SOE Law the appointment and dismissal of the Board of Directors of Perum is determined by the Minister in accordance with the mechanisms and laws and regulations. As for Persero, in the previous legislation the appointment and dismissal of the President Director and Director of the Persero by the Minister of Finance as the GMS based on the minister's proposal. Meanwhile, according to the SOE Law, the appointment and dismissal of the Board of Directors is carried out by the GMS and in the case of the Minister acting as the GMS, the appointment and dismissal of the Board of Directors is determined by the Minister.

Fifth, based on the provisions of the previous laws and regulations, members of the Board of Directors of Perum and Persero are appointed based on the requirements of ability and expertise in the field of management (management) of the company, fulfill other requirements needed to support the progress of the company they lead and in accordance with the applicable laws and regulations. On the other hand, in the event that the Minister is of the opinion that the proposed candidates for the board of directors of the Company do not meet the stipulated requirements, the Minister of Finance shall ask the Technical Minister to propose other candidates. In contrast to the BUMN Law, the appointment of members of the Board of Directors of Persero and Perum is carried out through a fit and proper test mechanism. This pattern of appointment of directors is not found in previous laws and regulations. Candidates for members of the Board of Directors who are declared to have passed the fit and proper test by the SOE Law are required to sign a management contract prior to their appointment as members of the Board of Directors. This mechanism is also not found in previous laws and regulations.

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