

Role of Authorities in Supervision of Management of Privatized State Owned Enterprises through Capital Market

¹Dr (Cand). Marisi, SH, MH, ²Prof. Dr. Bismar Nasution, SH, MH,
³Prof. Dr. Hikmahanto Juwana, SH, LLM, ⁴Dr. Faisal Akbar Nasution, SH, M.Hum
^{1,2,3,4}(Legal science doctoral student, Faculty of Law, University of Sumatera Utara, Medan, Indonesia)
¹(Promotor) ²(Co Promotor) ³(Co Promotor)

Abstract: Privatization of State Owned Enterprises (SOEs) is believed to be potential to support to encourage SOEs to transform towards a more efficient management as per market demands. Basically, privatization of state enterprises through the capital market is defined as the transformation of state ownership to private ownership, that can also be interpreted as a transition of concentration of state supervision of SOEs to the market mechanism. At the time of SOEs privatized through capital markets, the ownership of state-owned shares will be publicly widespread, the existences of state-owned enterprises as a private entity need to be managed under the stipulations in force in the regulations of capital markets that do not treat private enterprises in different way from the state-owned enterprises. This condition is surely less effective for the authority to supervise the management of state enterprises that have been privatized, considering many regulations related to state-owned enterprises do not cover ideal supervision for SOEs to go public. In this stage of process, it will be difficult to direct the authorities' expected policy towards the survival of the state-owned enterprises. The target of public welfare carried by SOEs would very easily change when the role of authority is not implemented maximally in the supervision of SOEs.

Keywords: Privatization of State Owned Enterprises (SOEs), Capital Market, and Supervision of Authority.

I. Introduction

Privatization of State-Owned Enterprises (SOE) is part of a series of SOE restructuring policies conducted by the government to empower the SOE as a new locomotive in the development of national economy considering the power of national private businesses is no longer possible to play their role actively to the maximum due to economic crisis (Imanuddin Ilmar, 2012: 99).

Basically, SOEs in Indonesia play two principal roles, namely as a profit-oriented state enterprise aiming to raise and increase national income (the agent of the business), and as the government's means to provide public services regarding with achieving the national objective of settling the public welfare and prosperity. Bung Hatta stated that "public utilities" are arranged and implemented by the government. For the government side, public services such as electricity, gas, and water/watery sources, and variety of other natural resources, also other kinds of significant and substantial productions as well of principal industrial and minings, are "controlled" by the state authority (government). The term of "controlled" does not automatically refer to a direct management by the government since government is authorized to delegate to private parties under their supervision. (Deliar Noer, 1990: 546)

There are at least two important points from of the abovementioned issue reviewed by Mohammad Hatta. Firstly, that the state control over the substantial and significant productions which affects the public life in major levels do not always mean that the state is the definitive owner who controls the entire ownership of the enterprise (SOE). Secondly, private ownership is acknowledged as long as the authorities retain their rights to conduct the supervision. The first idea provides the opportunity for privatization while the second one suggests the requirement of authorities' supervision towards SOEs.

According to Savas, Privatization is the effort of diminishing the role of government and entrust the private parties in the economic system of a country to meet the public needs (Chainnur Arrasyid, 2000: 17). With regard to privatization method, Bismar Nasution (2009: 215) states that the implementation of privatization should be more focused on sales through the capital market rather than selling to strategic partners (strategic sales). The process of privatization through going public events (public offering) in the capital market will experience a transformation of the company originally controlled by the state then shifts to the public company owned by many people as shareholders. Through the capital market, selling of shares of SOEs will be distributed in society, and consequently it will build up and enhance public ownership.

From legal side, conflicts arise when SOEs have been privatized by and through IPO, the SOEs are then no longer 100% owned by the State. In such condition of ownership, a question comes up : does the

government through the authorities still have the right to conduct a state supervision to the SOE? Is it still enabled that the Ministry of SOEs imposes regulations that bind to the managers and board of directors of the privatized state enterprises, or restricted only to state power, namely the authorities in which the voting rights are already limited through annually general meeting of shareholders (AGM – Annual General meeting)? Is it still required to conduct a state supervision by Parliament, BPK and BPKP to state-owned enterprises? These conflicts are inevitable from dual status of SOEs. On the one hand, SOE is an independent legal entity separate from the state as the owner of the whole shares. But on the other hand, state legislation consider SOE as a public entity that constitutes part of the State finances.

In Indonesia, SOEs are conditioned and positioned as private legal entity. As limited liability company, SOE have following characteristics: (1) status as a private legal entity, (2). affairs and business are stipulated by civil law, (3) profit oriented business, and (4) the capital as a whole or in part is owned by the State, allocated from separated state assets (Herman Hidayat, & Harry Z. Soeratin: 2005). However, on the other position of role, a number of state legislation in Indonesia categorize SOE as a public entity and part of the state finances. Statute (UU) no. 17 of 2003 on State Finance and Statute (UU) no. 1 of 2004 on State Treasury still categorize the assets of SOEs as part of the state assets or finance, although they have been separated. The consequence according to both regulations above is that the procedure of utilizing the assets of SOEs must be carried out in accordance with the procedures of utilizing the State assets or finance.

Position SOEs as part of the State finance grant the authorities to the Parliament, Supreme Audit Board (BPK) and State Finance and Development Supervisory Board (BPKP) to conduct supervision and inspection of the performance and finance of SOE. What makes a problem then is when SOEs have been privatized through capital markets, SOEs are also subject to bind to legislation of capital markets and legislation of limited liability companies. Meanwhile, the associated legislation of capital markets neither recommend a financial audit by Audit Board (such as BPK and BPKP), nor the involvement of Parliament in the scrutiny of a listed company. In corporate issuer, internal supervision is conducted by the supervisory board (Board of Commissioners) and General Meeting of Shareholders, while external supervision is conducted by as well as Financial Services Authority (FSA / OJK).

Based on the description of the background above, then we shall enter to problem identification regarding with Role Of Authorities In Supervision Of Management Of Privatized State Owned Enterprises Through Capital Market.

II. Discussion

Delegating power to the state in the form of authority is something substantial in achieving the objectives of a country (JB Kristiadi, 1996: 4). In the Preamble of Constitution 1945, especially in the fourth paragraph, it is stated that one of the goals of the Republic of Indonesia is to promote and encourage the public welfare and prosperity and building up strongly educated people of the country. Furthermore, other objectives of the state declared in the Constitution 1945 are stipulated as the principal references and system of national economy which are justified in the Article 33 of the Constitution 1945.

The correlation between the objectives of the state and the control of the states towards principal and substantial productions is realized by establishing State-Owned Enterprises (SOEs) which is one of the executive implementer of economic activities in the development of national economy. The existence of state-owned enterprises in Indonesia is regulated by Statute No. 19 of 2003 on SOEs, the existence of state-owned enterprises can not be separated from historical heritage Dutch Colonial Government through nationalization program. Therefore, legislation of state-owned enterprises in Indonesia have been amended several times since the the National Government of Indonesia have taken over and continued carrying out the nationalization program for the Dutch companies in Indonesia and still continued the program until the era of recent regulations imposed today.

Privatization policies on the management of SOEs have been done in almost all countries, both in developed and developing countries since the 1980s. SOE privatization policies are implemented based on state policy in force at each country, not only to diminish the role of the state in the economy which is no longer relevant with the development and objectives of global economy, but also primarily intended to improve and increase the efficiency and productivity of SOEs. As a new locomotive in the national economy, the SOEs are expected to play their role more actively in accordance with the missions and objectives that have been outlined in at the time the SOEs were founded and established.

The existence of the privatization of the management of state-owned enterprises in Indonesia is a whole part that can not be separated from the existence of state-owned enterprises since the legislation has stipulated privatization as a step acceptable to be carried out in the implementation of state-owned companies. The provision of Article 1, Clause 12 of Statute No. 19 of 2003 on State-Owned Enterprises defines privatization as the selling of shares of Limited Liability Company, either in part or in whole, to any other parties in order to

improve the performance and value of the company, increase benefits to the state and people of the country, as well as enhance the share ownership by the community.

One of privatization method is the selling of shares under the provisions of Law of Capital Market. Capital Market Activities in Indonesia today are regulated in Law No. 8 In 1995, under the provisions of Article 1, Clause 13 states that the Capital Market is concerned with the activities of the public offering and trading of securities, and public companies relating to securities issuance, as well as institutions and professions related to the securities.

In privatization strategy through the capital market, the authorities can sell the whole or part of shares held at certain SOEs to the public through the capital market. The authorities generally sell only some part of the shares held on the SOE. This strategy will result in a company jointly owned by the authorities and the private parties, this gives consequence of decreasing proportion of authorities' ownership over SOEs (Purwoko, 2008: 12).

As a state enterprise that has a dual role, an SOE is expected to provide benefits for national income and fulfill the public needs. The authorities should take this condition in a particular consideration in undertaking the privatization policy. The initial concept or SOEs establishment with the objective to achieve public welfare and prosperity must consistently remain implemented in determining the privatization policy, so that the authorities still have the authority to supervise the sustainability of SOEs.

Supervision is frequently associated with unpleasant connotation since it will be regarded to threaten the independence and personal autonomy. Indeed, an organization considerably needs supervision to ensure the achievement of objectives. Therefore, it will be the duty of incumbent Leader to equalize the control of the organization and personal independence, or else seek for appropriate levels of supervision. Excessive supervision will lead to bureaucracy, deaden creativity, and so forth, which in turn will harm the organization itself. On contrary, inadequate supervision can lead to a waste of resources and make it difficult to achieve the desired objectives.

Centralized and bureaucratic SOEs management and strong political influence still interfere the implementation of SOEs in Indonesia, therefore deviation in the management is still very potential to occur. Thus, SOEs become very difficult to develop and the investors will have less trust. These conditions will finally result in failure to achieve the main objective in establishing the state enterprise, that is to realize society can be realized.

Independence of limited liability company as a business entity is an important thing that must be maintained in order to be professionally managed and well-developed in accordance with its business objectives. In case of SOEs management, financial relation inter-bureaucracy is not acceptable to conduct. Even though basically it is state executive board. This is due to financial needs of each government instances has been specifically stipulated in regulation. Therefore, government shall not then burden Limited with all forms of spending, and thus Limited is not allowed to provide budget for expenditure of government in their finance report (IG Ray Wijaya, 2005: 125)

World Bank has released prerequisites for privatization in order to be successfully carried out, one of such prerequisites is that the management of the enterprises have to be free from the influence of political interests (The World Bank: 2005). Furthermore, Jonathan states that the management of SOEs which is always under political control shall sacrifice the efficiency of the company. In order that business of SOEs function effectively, Jonathan concludes that state control over the SOEs should be loosened. However in this case, there'll be the question for the state whether likely to make such a policy as expected by public. In his research of SOEs in China, Jonathan revealed that one of senior executives of state-owned enterprises had stated that what actually had been expected by public didnot correspond in many ways to attitudes performed by the authorities since as a matter of fact, they hadn't been committed to relinquish their control over the state-owned enterprises (Jonathan GS Koppell, 2007: 261).

Peter Drucker, as quoted by Riant Nugroho, stated that the government should focus on government issues and affairs only, and not to be concerned with handling the other issues that are out of their core competences, or in other words to say is that government is only assigned to direct and supervise, not to stir. Thus the issues that are out of the competences of the government or that are not in the context of "stiring" (only) should be undone from the government. Furthermore Riant Nugroho states that the government running a business is an anomaly. This will in turn contribute more harms to the state-owned company rather than benefits. Principally, it is impossible that bureaucrats run the business well since bureaucrats have set a mission to conduct and fair and balanced public service. As their competence to conduct and provide fair and balanced public services, thus it will be impossible to undergo a business that is basically discriminatory, that is to serve those who are only able to afford it. (Ryant Nugroho Dwidjowijoto, 2003: 288).

Privatization of SOEs should be implemented continuously in which both government and public authorities shall no longer perform various intervention in any kind of actions towards the existing state-owned enterprises. Interventions, in any kinds of actions, shall only disarrange the privatization program towards the existing state-owned enterprises, as it has occurred in several countries that have already privatized their SOEs

(National Law Development Agency, 2011: 64). The real fact of SOEs management depicted above is sufficiently reasonable to accentuate the excellent and reliable supervision in achieving the expected objectives of privatization. Another substantial point is that the establishment of SOEs are supported with state finances in order to optimize the functions of SOEs as agent of development and cover the public needs towards the existences of the state-owned enterprises.

Regulations concerning with SOEs do not only enable the authorities to supervise the performance of SOEs. Moreover, besides internal management need to establish their own internal control systems, other government authorities can as well supervisor the performance of SOEs in certain areas, like BPK (Supreme Auditor Board), BPKP (State Finance and Development Supervisory Board), the House of Representatives and the FSA. Thus, all parties are authorized to supervision the performance of SOEs, both internally and externally. These conditions are in accordance with the consequence of the SOEs as a public company that have special characteristics.

Privatization of SOEs through the capital market will result in legal action against ineffective and inefficient control in the management of state-owned enterprises have been privatized. Existing regulations enforced as a reference regarding with capital markets do not cover the supervision by government authorities (DPR, BPK and BPKP). Supervision of the listed entities performed under internal supervision mechanism based on Statute of Limited Liability Company and Articles of Association, while external supervision is conducted by FSA which is a new institution replacing the role of supervision of the Capital Market Supervisory Board (Bapepam). This will lead to legal uncertainty concerning with supervision of state-owned enterprises as listed entities in the capital market.

The urgency of supervision of the authorities of SOEs privatized through the capital market should be put forward more intensely to realize ideal conditions of SOEs and beneficial for public welfare. System built in the regulations concerning with SOEs and Capital Markets still do not cover the effective supervision to support SOEs to be like the way expected by public. Management of SOEs that still do not ideally implement Good Corporate Governance (GCG) and market mechanisms applied in privatized SOEs need more serious attention and supervision from authorities by means of well-structured and systematic regulation. It is important to note that the government must be capable to establish an excellent system in the management of state enterprises privatized through the capital market, since Article 33 UUD 1945 as a juridical constitution for SOEs management mandate the sustainability of state-owned companies is aimed and intended for the optimal prosperity of the people. This is a strong foundation to be the references to impose regulation concerned with supervision that will be the authority in the management of state enterprises privatized through the capital market.

III. Conclusion

Policy of privatization through the capital markets should provide a special place for authorities to conduct sustainable supervision. Legislation concerning with supervision of authorities towards SOEs privatized through the capital market should be stipulated and arranged in a particularly separate regulation, considering the associated regulations of capital markets referenced by the issuer companies do not include the model of supervision that have been recently applied in the management of SOEs. BPK (Supreme Audit Board), BPKP (Finance and Development Supervisory Board) and House of Representative who used to supervise SOEs are not authorized as supervisory board of SOEs privatized through capital market. For the issuers company, internal supervisions are carried out by the supervisory board (BOC) and the AGM while external supervisions are conducted by the Financial Services Authority (FSA). This will lead to legal uncertainty regarding with supervision of state-owned enterprises as listed entities in the capital market.

The need of supervision by authorities towards the state-owned enterprises privatized through the capital market should be more intensely to achieve ideal conditions and beneficial to the development and public welfare as expected. The system established and stipulated in associated regulations of SOEs and Capital Markets should cover effective supervision to support SOEs growing and developing as expected. Management of SOEs that do not ideally implement Good Corporate Governance (GCG), and market mechanism applied in privatized SOEs indicate to require supervisions by authorities through well-structured and systematic regulations.

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