

# BUSINESS ETHICS AND LEGAL LIABILITY IN THE MANAGEMENT OF STATE-OWNED ENTERPRISES

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# **BUSINESS ETHICS AND LEGAL LIABILITY IN THE MANAGEMENT OF STATE-OWNED ENTERPRISES**

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**ABSTRACT:** State-owned enterprises are the embodiment of the purpose of the country's implementation namely the welfare of the nation's life as mandated the opening of the Constitution article 33, the state-owned enterprises are a company whose shares consist 51% of the country's ownership and has business governance by involving its management from state institutions i.e. the Ministry of State-owned enterprises. The purpose of this research is to know how business ethics must be held in the management of state-owned enterprises as well as of business ethics so that the objectives of the Constitution can be achieved. This method of research methods uses the focus of the Judicial Case Study. Research type of Library Research. The research approach uses a normative approach. The data source used is secondary data. Data collection methods are pursued through a library study, a qualitative descriptive data analysis method. Business ethics in the management of state-owned enterprises is through the principle of good corporate governance with the spirit of conducting transparent corporate governance and accountability. Implementation of business ethics through good corporate governance can be done by the government through the Ministry of State BUMN has taken strategic steps since the year 2002 began with the decree issued Ministry of State BUMN Number 117 Year 2002, which requires companies to apply Good Corporate Governance principles and practices.

**KEYWORD:** State-Owned Enterprise, Business Ethic, Law Liability

## **I. INTRODUCTION**

State-owned enterprises (BUMN) is one of the economic drivers in Indonesia, which is expected to boost people's welfare improvement efforts. BUMN, as a corporation, plays a central role in the economic system in Indonesia. The constitutional foundation is the basis of the existence of BUMN Constitution 1945 article 33 that places BUMN as one of the actors State economy in addition to private and cooperative. In his role, BUMN not only Performs production functions but performs the functions of the Distribution of goods and services. BUMN also has an important role because it is involved in the Resource allocation process which is economical for the community. Nevertheless, it seems that BUMN contributions to increasing growth [1].

The country's economy and welfare are not fully realized. The performance of BUMN is expected to boost the economy, until now Still assessed has not achieved the expected results. In contrast, in a few years last, the state is assessed as a burden for the country and society. Management the less professional BUMN caused the government to be one of the shareholders more stocks suffer losses than on obtaining profits. Statistics of 158 Enterprises which have assets of IDR 1163.64 trillion, profit Obtained before tax in the year 2004 only IDR 49.82 trillion. Meanwhile, the Contribution through a variety of taxes to be paid to reach IDR 25 trillion per in 2003. This condition is exacerbated by corrupt practices, which, based on research conducted by the Center for Research and Development of surveillance systems BPKP, one of the most common institutions of corruption practices in it Is BUMN [2].

The government on the other hand is the state administrative machinery utilizing governance to ensure effective service delivery, see corporate governance as a model of rules governing mechanisms of the decision-making process, and the mechanisms of control and liability of the state entities or private companies. The rules relate to principles such as disclosure, openness, and information, transparency, legitimization, participation, and checks and balances [3].

Public expectations about the business of state-owned enterprises have increased. These trends are sometimes straight forward related to the Corporate Social Responsibility (CSR) benefits of state-owned enterprises or with other ideas such as sustainability, triple bottom line, sustainable development, corporate citizenship, or human rights. It should be noted that various concepts involve several different debates, together with tradition, focus, and frame; sometimes certain attention the topic can be traced back to a particular literary

genre. For example, a collection of knowledge about environmental management (and organization and environment) has laid the foundation to understand 'green business' and do business ethics and business and society [4].

Many factors cause poor State-Owned Enterprises (SOE) performance in Indonesia, one of which is the low implementation of State-Owned Enterprise (SOE) management based on the principles of Good corporate governance or healthy corporate governance. But good corporate governance today has been a commitment to the international world and also the national authorities not only aimed at improving the protection of Interests within the company but are also aimed at being able to Increase the economy of a country. Various studies have shown That the economic and financial crises occurring in Asian countries by the end of the year 1990, one of which is due to the low implementation of good corporate governance That ignore the principles of transparency, accountability, and fairness in the Conduct business transactions. [1]

Therefore, to reform the bureaucracy of the implementation of good principles of corporate governance, especially in the environment of State-Owned enterprise, becomes a necessity. Writing It aims to review the conceptual framework of good corporate governance and Its application in Indonesia, especially as one of the efforts to reform the existence of BUMN as the country's economic drivers [2].

One of the main reasons the government has to do state-owned reform Performance and health of the state itself. The magnitude of the scope Efforts made by BUMN seems to be not balanced with the performance Generated. Various observers from both practitioners and academics assess that since the deregulation of 1986 state-owned enterprises increasingly longer lag behind the Performance of private conglomerates. It is recognized by the Deputy Minister of State BUMN Restructuring and privatization, Mahmuddin Yasin (2002), who disclosed the data That the return on Equity (RoE) of BUMN in 2000 and 2001 only reach 5.15% and 8.2% or much lower than the level of Interest rates on the market. Even in the previous years, 1992 to 1999, ROE Average of only 9.9%. While contributions through a wide range of taxes must be paid to Rp25 trillion annually from 2003. Income is certainly not comparable to the size of BUMN's assets; moreover, 80% of the profits are only Produced by 10 BUMN alone. Besides, the majority of state-owned enterprise's financial losses. Therefore, the profits gained by the government be meaningless because the government also has to subsidize the experienced state. Similarly, the health level of state-owned enterprises there is still many SOES categorized as less healthy even worse, unhealthy. It is seen from statistic data which in 2000 There are about 8 BUMN that are not healthy and 22 state-owned enterprises categorized Less healthy [2].

SOES needs to adopt new reforms so that they can run optimally. According to companies must be strategically directed, managed, and controlled in a coherent manner entrepreneurial and ethical ways in certain contexts. This approach tries to cover up value orientation from the perspective of shareholders and stakeholders. A holistic framework is very important for the direction and control of entities that seek to integrate accountability, remuneration, and reporting elements to ensure proper functioning theory and practice boards.

Based on the fact that the institution of Ministry of State-owned enterprises need to improve business ethics through good corporate governance The Ministry of BUMN is the first institution to implement good corporate governance principles and in the form of decisions. With the issuance of Decree of the Minister of BUMN number 117 the year 2002 on the implementation of Good Corporate Governance practices in BUMN, state-owned enterprises are obliged to implement Good Corporate Governance consistently and or to make Good Corporate Governance the foundation of its operations[5].

Good corporate governance implementation important step to Build and restore Community confidence. Corporate Governance will effectively Enable the formation of Checks and balances through Effective supervision. Good Corporate Governance concept will not be as appropriate to the company that always violates the values of the Moral and ethical Adopted. That is why every Company must have values Companies (corporate values) that the moral attitude of the company in its business activities. This end in the business world there is a shift of value Intellectual to emotional and then to Spiritual. The concept of Good Corporate Governance reflects One-sided business practice based on Moral and ethical [5].

## **II. RESEARCH METHODOLOGY**

The research method used is a normative juridical research method. Analysis of the data used in this study is qualitative analysis, and conclusions are drawn using inductive methods, which describe specific things and then draw conclusions that generally follow the problems discussed in the study. The approach used by the normative approach addresses management of business ethics in state-owned companies. Therefore, based on the

background above, the problem discussed in this study is how to manage business ethics in state-owned companies and how to apply business ethics.

### **III. RESULT AND DISCUSSIONS**

#### **1. Based Business Practice Ethics**

Most business ethics implementation common within the company today manifested in the form of a pocketbook code of conduct' or code of ethics in each company. The first stage and business ethics practices to codify the value contained in business ethics together corporate culture, in a form of a written statement from companies to do and not conducted by management and employees in conducting business activities understanding of business ethics can diverse. It can simply describe as ways to doing business activities, which covers all aspects relating to with individuals, corporations, industry ss well as communities with running business is fair (fairness), following the laws applicable (legal) does not depend on the of individual or corporate in the community.

Business ethics is broader than the provisions governed by law, even a higher standard than minimum standards of legal provisions because Business activities we often find the unset "grey-area" by legal provisions. Business ethics for companies lately increasingly important, especially post- Case Enron, WorldCom, and the Downfall Arthur Andersen to create a Robust company, competitive and able to create values [6].

The fact that so much emphasis is placed on deliberate, principled reasoning in an ethics training program limits its ability to incorporate ethics into concerns of normal daily business practices. This preoccupation deliberates and principled considerations can be linked to a number important, although often assumptions are largely unexplored. The first of this has to do with the nature of moral agency. Many business ethics experts and practitioners uncritically assume that people are negotiating agents, who can objectively consider all the various constitutions related to certain situations before making a decision or take action [7].

Require a strong foundation, it usually starts from a strategic planning organization, the bail, the system of procedures transparency backed by culture a reliable and ethical company implemented consistent and consequent. It is believed that basically practice company ethics will always be profitable companies both for both mid-and long-term because:

1. Will be able to reduce costs due to the possibility of occurrence of frictions both internal companies as well as external.
2. Will be able to improve worker motivation,
3. Will protect the freedom to trade.
4. Will increase compete, principles advantages [5].

Good Corporate General (GCG) guidelines governance in KPK (Corruption Eradication Commission) suggests that to achieve success in the long term, implementation of Good Corporate Governance should be based on High integrity. Therefore, the required Code of Conduct that can be a reference for company organization and all employees in implementing the values and business ethics so that it becomes part of the company's culture. The underlying principle must be owned by the company are:

1. Each company must have a Corporate Value (Corporate Values) describing the moral attitude of the company Implementation of its business.
2. To be able to realize the attitude moral in the implementation business, the company must of business ethics agreed by the organ company and all employees. Ethical implementation sustainable business will form culture companies that are a manifestation of the values company.
3. Values and ethical formulation business companies need to be described and outlined information in the code of conduct to be understood and Applied [5].

Business ethics itself is part integral of the basic principles of Good Corporate Governance (GCG) comprising the transparency, accountability, responsibility, independence, and equality and fairness. The fundamental principles of Good Corporate Governance in Indonesia.

Good Corporate General Guidelines Governance of Corruption Eradication Commission (KPK) of the Republic of Indonesia from transparency, accountability, responsibility, independence, equality, and fairness. Application these principles on each aspect of business and in all ranks of the company required to achieve performance continued Stakeholders [5].

**Transparency.** To maintain objectivity in conducting business, the company must provide information that material and relevant to the way that is easily accessible and understood by stakeholders. The company must take the initiative to reveal not only the problems required by Legislation, but it is also important to Decision Making Shareholders, creditors, and other stakeholders [5].

**Accountability.** The company must be accountable for performance-transparent and reasonable. For that company must be managed correctly, measurable, and compliant with the company's interests with a fixed account interest of shareholders and other stakeholders. Accountability is a prerequisite necessary to achieve Continuous performance [5].

**Responsibility.** The company must comply with laws and regulations implementing responsibilities to the community so it can be maintained enterprises in the long term and got recognition as a good corporate citizen [5].

**Independency.** To launch the implementation Principles of Good Corporate Government (GCG). The company must independently be managed so that individual groups do not dominate each other and can be intervened by other parties. **Equality and fairness.** In carrying out its activities, companies must always concerned with the interests of shareholders and stakeholders, other interests based on principles of equality and fairness [5].

## 2. Good Corporate Implementation Governance and Ethics Business in Indonesian state-owned enterprises;

Policies to encourage implementation Good Corporate Governance in the BUMN environment by issuing a ministerial decree of BUMN Number 117 the year 2002 about the implementation of Good Corporate Practices Governance in BUMN. Minister of State Enterprises explains, to increase the performance of BUMN, the government has done the improvement continuously. Operating BUMN according to the admiral, resting three things, namely restructuring, privatization, and application of Good Corporate Governance (GCG). Implementation Good Corporate Governance by the Ministry of BUMN divided into 3 programs, namely

1. Drafting Statement of Corporate Intent;
2. Preparation of Appointment Agreement for the board of Directors New Commissaries, and;
3. Performance Development Incentive System [5].

Statement of Corporate Intent is public documents containing together about our goals and performance expectations between BUMN and Ministry. The goal is to improve performance BUMN and support the use of efficient and effective resources. Previous frameworks between BUMN and government as holders in performance and planning aspects is through the mechanisms of general meeting, shareholders covering the process of drafting the work plan Company Budget and Long-term plans. For now and which will come after, this mechanism develops with the addition of the Statement of corporate intent will include a wider publication in the framework of transparency and accountability [5].

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To implement Good Corporate Governance required Specific Good Corporate Governance guidelines for each BUMN. Guidelines include various policies that at least include the things as follows:

1. Vision, MISL, and values Company.

2. Position and function of GMS, Board of Commissioners, Directors, Board support Committees, Commissioner, and supervision Internal.
3. Policies to ensure Implementation of the effectiveness of its functions Each Organ Company.
4. Policies to ensure the accountability and effectiveness of internal control and financial statements.
5. Code of Conduct based on the agreement of business ethics.
6. Information disclosure means for stakeholders (Public disclosure).
7. Refinement Policy various corporate regulations to fulfil the principles of Good Corporate Governance [5].

To implement Good Corporate Governance more, the Ministry of BUMN also implements the fit and proper test, for its candidates for directors of BUMN. It is hoped that BUMN not only makes Good Corporate Governance a mere slogan but also make it valuable cultural activities applied in everyday operations. Based on year-end report BAPPENAS, until the end of the year 2006, the number of BUMN recorded as 139 companies. When compared with the year 2005, despite the number of State-owned enterprises are not changed, which is 103 the company, but there is a total increase of BUMN profit of Rp42,35 trillion in 2005 to Rp53,35 trillion in 2006. The total loss of the BUMN Suffered losses also experienced significantly decreased from Rp2.68 Trillion in 2005 to Rp3,38 Trillion in 2006 [5].

The resulting profit has shown enhancement, realized BUMN performance overall is still optimal. Related to achieving performance implementation of Good Corporate Governance in BUMN, still Based on the BAPPENAS report, during 2006 have some progress including regulation of the Minister of State BUMN Number: PER-05/MBUF. 2006 Audit Committee on Business Entities State-owned. Besides, to solidify the implementation of Governance Good company (GCG) during 2006 has been implemented by the statement of Corporate Intent (SCI) by 16 companies is a manifestation of transparency Business Management by BUMN [5].

Furthermore, the Ministry of BUMN continues to monitor and assess, among others, through an assessment of 28 BUMN and review of the implementation of Good Corporate Governance of 16. To increase effectiveness assessment of the Good Corporate Governance practices BUMN conducted refinement indicators and parameters to assessment and review of Good Corporate Governance Conducted with BPKP namely: Original 86 Item indicator to 50 items; and the original 253 item parameter becomes 160 items [5].

Other related matters in the implementation of Good Corporate Governance is the decision refinement of ministerial legal decree state-owned enterprises number KEP-117/M-MBU/2002 involving internal units associated and in cooperation with BPKP, National Committee on Corporate Governance and State officials and the workshop's specificity held to collect required inputs. The process generates improvement of regulatory State Minister of BUMN legal regulation number: PER-06-I/M-BUI/2007 dated 31 July 2007 on implementing Good Corporate Governance on proprietary enterprises Country.

However, whether it has been adequate and how the substance been achieved? BPKP when INL Implementation of Good Corporate Governance by BUMN still a necessity because of the order from superiors. Good Corporate Governance cannot yet be rooted, as a pattern in the company. Minister of State Enterprises legal of the circular letter No 117/M-MBUI/2002, it does require BUMN to implement the principle of Good Corporate Governance. Test equipment conducted O/EH BPKP Is the decree of Minister of State BUMN number 117 years 2002. That requires the company to apply the principle and Good Corporate Governance practices. As a cornerstone of the company's operations, Good Corporate Governance can serve as the spirit in the context of extensive management, as a soft control for daily operational activities day. The implementation of Good Corporate Governance will be able to increase company value. In tests conducted by BPKP, BPKP also gives input that will be any things to be repaired and maintained [5].

The aspect measured by BPKP is a commitment to implementing Good Corporate Governance, structure, and governance of each company, on shareholders, in the implementation of General Meeting of shareholders, directors, and the supporting organs of governance next to coaching relationships with other stakeholders. The Good Corporate Governance element is the process of transparency, accountability, Responsibility, independence, and fairness. BPKP gives a note, currently, most BUMN in implementing Good Corporate Governance is still mandatory, so awareness needs to be improved.

Five state-owned enterprise companies willing to follow a Corporate Governance Survey Perception Index (CGPI) in the year 2005, not one that enters the Top 5 good sector of the statement or non-financial. It is proved that the implementation of Good Corporate Governance, the company loses from its enterprises private.

Then how is the business culture ethics in our state? what are some cases of mega corruption in the new state disclosed to the public is a Reflection of the abandonment ethic business for the officials of BUMN? Corruption, Collusion, and Nepotism (KKN) have become a danger. Main causes of individual moral margins, other than open opportunities. Until now, practices continue to evolve. Corporate corruption eradication has the world's serious concern for a long time. Nevertheless, corrupt practices continue to develop and continue to develop. It has been the leading company of DUNLA caused by corruption. Economic crisis development that struck Indonesia in 2007 also caused the rise of Corruption, Collusion, and Nepotism. Many economic actors collapse and the Private companies and state-owned enterprises affected [12].

Realize or not, entrepreneurs who not pay attention to business ethics destroy their names and countries. Implementation of Good Corporate Governance is enough role to form personal morals business people. Despite the importance of the Good Corporate Governance as one of the press of corruption, many companies that are still implementing Good Corporate Governance principle only because of the encouragement regulations and to avoid sanctions that exist compared to what is regarded the principle from the corporate culture [5].

A fact about corruption in State-Owned Enterprises, Indonesia Corruption Watch (ICW) found that the indications of corruption around RP 10,484 trillion in some BUMN during the period 2004-2006. These findings Based on 57 cases revealed with indications of adverse country. The largest indication of country loss occurs in the financial sector, i.e. banking and with the value of IDR 5, 3 trillion. Losses incurred by the energy sector and electricity occupies the second order with a value of about IDR 3 trillion (Governance, 2011).

The most deviations are done is the project mark up with a total loss of about Rp4 trillion. Besides, manipulation and credit modes Rp2,87 trillion and Rp2, 2 Trillion. Not to mention corruption cases override many strategic companies. Let us see a bad credit case of Bank Mandiri. In the National conference, Corruption eradication mentioned the accuracy of the former President Director Bank Mandiri ECW Neloe as suspected corruption became tangible evidence that business ethics companies in Indonesia, in particular, have not run fully [13].

#### **IV. CONCLUSION**

Ethical business in good corporate governance is required to encourage the creation of markets, transparent and consistent with legislation and policy that has been outlined. Therefore, the implementation of good governance is the responsibility of the three pillars of mutual related, organizer State (executive, legislative, judiciary), the business, and the community. Principles to be played by each pillar. First, state organizers provide legislation and policy that support a healthy business climate, efficient and transparent, implement legislation, and enforcement law consistently. Second, the World market participants to implement Good Corporate Governance as a basic guideline business implementation. Third, the community as a user of world products and services business, and the affected parties- Legislation or Policy, as well as from the existing company, showing concern and perform the control objective and responsible. Concept Good Corporate Governance will not run as appropriate to the company always violate moral values and ethics that should be adopted. Therefore, the concept of Good Corporate Governance reflects business practices based on the moral side and ethics.

Recognizing the importance of Good Corporate Governance implementation business ethics in the BUMN environment, government through the Ministry of State have taken measures strategic since 2002 began by issuing a decree Minister BUMN No. 117 the year 2002, which requires the company to implement Good Corporate Governance principles and practices. Efforts such as programs Drafting Statement of Corporate Intent, Appointment Agreement for BOD and BOC Development of the Performance Incentive System, monitoring, and review Implementation of Good Corporate Governance in BUMN. Also Improvement of regulations aimed at encouraging the principle of Good Corporate Governance, such as regulation of the legal Minister of state BUMN number. PER-06/MBU/2007 dated 31 July 2007 on implementing governance Good Corporate Governance on owned Enterprises State has been run.

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