
Law Enforcement, Human Rights Protection, And Challenges Faced by SOEs and SOE Subsidiaries (Post Constitutional Court Decision Number 01/PHPU-PRES/XVII/2019)

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Abstract

Business transformation, law enforcement, and safeguarding human rights are pivotal global concerns applicable to all nations and jurisdictions. These issues present notable challenges, particularly for State-Owned Enterprises (SOEs) and their subsidiaries. This has been underscored in the discourse surrounding Constitutional Court Decision Number 01/PHPU-PRES/XVII/2019, which implicitly recognizes SOE Subsidiaries as problematic elements within corporate operations. A central inquiry arising from this context is how the regulations governing SOEs and their subsidiaries' activities have evolved subsequent to the aforementioned Constitutional Court Decision. The research employs a normative juridical legal approach, drawing on primary sources such as regulations and statutes pertinent to the case, along with secondary data. The primary objective of this study is to offer legal insights to law enforcement bodies and institutions directly involved with State-Owned Enterprises and their subsidiaries. These entities are anticipated not only to enhance profitability but also to function as catalysts for societal well-being. The findings of this research underscore the vital role played by SOEs and their subsidiaries in aiding corporate restructuring, upholding legal standards, and advocating for human rights, both internally and externally.

Keywords: Business Transformation, Law Enforcement, Human Rights, SOEs and SOE Subsidiaries.

I. INTRODUCTION

Law enforcement and the protection of human rights implementation dynamics and problems offer motivation for study in Indonesia, notably for SOEs and SOE subsidiaries (Imran, 2019). The growing demands of community members and stakeholders for the execution of law enforcement and the preservation of human rights (both individually and collectively) serve as a sign of this.

Convention on Civil and Political Rights of the United Nations, which was adopted in 1966, said that human rights were basic and that their application was essential for allowing people to develop in accordance with their skills, ideals, and social connections. Additionally, it is globally true, which means that people are all equal regardless of their nationality, ethnicity, religion, or gender.

Objectively, the principle of human rights protection between countries is the same. But the implementation is not so. This means that at one time there is an equality of will towards what should be protected and regulated, but at other times there are differences in perceptions and interpretations of law enforcement and human right protection one to another (Soekanto, 1996).

Since gaining independence on August 17, 1945, the Indonesian nation has maintained a dedicated stance towards human rights matters. This commitment is clearly evident in the introductory section of the 1945 Constitution, where it upholds and acknowledges the honorable and equitable principles of humanity, including the entitlement to shape one's own fate. As the structure of Indonesian governance is established upon the explicit legal principles detailed within the 1945 Constitution, the law stands as the fundamental body of regulations that all parties are obligated to follow and execute, without any exemptions.

Given the multifaceted factors that impact the enforcement of laws, it is imperative for various entities to consistently rectify each other owing to the complexity of issues related to implementing law enforcement and upholding human rights. Concurrently, the purpose of law enforcement is to sustain societal equilibrium. Once the intended outcome is achieved, the functionality of law enforcement is realized. Consequently, when taken as a whole, law enforcement can be conceptualized as a comprehensive legal framework.

Satjipto Rahardjo (1980) argues that contemplating law enforcement as a vocation imbued with distinct allure underscores the strategic nature of addressing human rights concerns while excluding the individuals/entities responsible for executing law enforcement. The discourse on this subject aims to offer legal insights for law enforcement bodies and organizations directly engaged with State-Owned Enterprises or their subsidiaries, with the aim of enhancing profitability and transforming into agents of progress for the well-being of the populace.

II. METHOD

This research employs the normative legal approach, utilizing both primary and secondary data sources. Metode penelitian yang digunakan dalam skripsi ini menggunakan metode penelitian hukum normatif dengan menggunakan pendekatan masalah yaitu pendekatan masalah yang mengacu pada pendekatan menelaah peraturan perundang – undangan yang bersangkutan dengan isu yang dikaji serta doktrin yang berkembang dalam ilmu hukum (Irianto & Shidarta, 2017). The primary legal sources encompass documents like the 1945 Constitution of Indonesia, Human Rights Law numbered 39 of 1999, State Owned Enterprises Law numbered 19 of 2003, Limited Liability Company Law numbered 40 of 2006. Meanwhile, supplementary legal references, including books and various informational sources, constitute the secondary materials. The data collection process involved techniques like library research and note-taking.

III. RESULTS AND DISCUSSION

3.1 Human rights, law enforcement, and commercial change are all governed by Indonesian law.

In Indonesia, the interplay of business transformation, law enforcement, and human rights protection carries significance both universally and for society at large. This necessitates a linkage between law enforcement, human rights, and the stability and cohesion of the diverse national populace. The degree to which the Indonesian legal system upholds human rights, among other aspects, becomes evident through the following indicators:

The preamble of the 1945 Constitution holds considerable declarations and acknowledgments that uphold fundamental human ideals such as self-respect, morality, and decency. Furthermore, notable similarities exist between the 1945 Constitution's preamble and the Universal Declaration of Human Rights (UDHR). For instance, the assertion that "All nations have the right to independence, so global occupation must cease as it contradicts humanity and justice" parallels the opening paragraph of the UDHR Preamble, which states: "Recognizing that the inherent dignity and the equal and inalienable rights of all members of the human family are the foundation of freedom, justice, and peace in the world."

The body of the 1945 Constitution contains provisions like Article 27 (1), affirming equal treatment of all citizens before the law and government, closely resembling Article 6 of the UDHR that emphasizes recognition as a person under the law. Other examples include Article 7, ensuring equal access to legal protection for all individuals, Article 21 Paragraph 3, granting equal access to public services, and Article 2, entitling everyone to rights and freedoms without discrimination. The fundamental nature of human rights, inherent from birth, is acknowledged in Indonesia, exemplified by the formalization of human rights

through Law No. 39 of 1999 on Human Rights. This legislative measure underscores the increasing integration of human rights protection within the Indonesian legal framework, with specific categories, including family rights, self-development, justice, personal freedom, security, welfare, participation in governance, and an in-depth explanation of human rights.

The mentioned rights encompass the entitlements to:

- a. Seek rehabilitation or compensation in instances where arrest, detention, or sentencing lacks legal basis, or to comprehend the rationale behind these actions.
- b. Receive proper care and protection in accordance with the law while being arrested, held in custody, or convicted.

Moreover, the principle of presumption of innocence is a fundamental cornerstone of criminal law, ensuring individuals are considered innocent until proven guilty by a court decision.

3.2 Challenges in Managing Law Enforcement and Human Rights Protection within State-Owned Enterprises (SOEs) and their Subsidiaries

Effective implementation of law enforcement and human rights protection aligned with the values of preserving human dignity necessitates highly skilled and determined law enforcement officers. Law enforcement, beyond adhering to legal regulations, involves realizing the intent of the law. This complexity arises because those who enforce the law might not always represent its enforcement, potentially disrupting local peace and order.

The management of SOEs and their subsidiaries holds a legal responsibility to uphold law enforcement and safeguard human rights (Akbar, 2019). The transformation of enterprises intersects with human rights concerns, often linked with law enforcement. Various provisions within criminal law address human rights violations. The management bodies of SOEs and their subsidiaries (comprising boards of commissioners and directors) carry the authority and duty to prevent corporate behaviors that might lead to corporate crimes. This involves compliance with Law No. 40 of 2007 and other applicable laws, particularly considering Constitutional Court Decision Number 01/PHPU-PRES/XVII/2019, which distinguishes a subsidiary of a state-owned enterprise from the parent company in terms of obligations and limitations.

IV. CONCLUSION

The conclusion that can be drawn from the foregoing explanation is that SOEs and SOE subsidiaries play a crucial part in promoting business transformation, law enforcement, and protection of human rights both in the company's internal and external affairs. As the constitutional court he Constitutional Court Decision Number 01/PHPU-PRES/XVII/2019 is currently a legal precedent that can encourage law enforcement officials to change the laws and regulations governing BUMN and/or BUMN subsidiaries.

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Law Number 19 of 2003 concerning State-Owned Enterprises;
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