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Dr Petrina Faustine SE MM MSc

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Organizer



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The Legal Aspects of Family Business Succession Planning In Indonesian Economy

by
Sari Mandiana & Suhartati
Faculty of Law, University of Surabaya

Abstract

Family business success plays very important role in Indonesian economy. It has been suspected that most of the gigantic companies which have become multi-national corporations started as small family businesses. Why do family business companies able to maintain their existence while countries are experiencing economical crisis? This is caused by no other reason than strong culture and characteristics that bind the family business system. The characteristic which concerns lifetime memberships and sense of belonging, supported by the harmonization of business values and the business characteristic which especially embraces innovative chance, will sustain global economics.

Indonesia's commitment as a member of the WTO is to always proactively directs trade liberation current by optimizing it and minimizing risks, not only on legal aspect, but also on deregulation and debureaucratization. Another policy primarily focuses on increasing competitiveness and plus values for companies which are appropriate and able to be globalized through innovation options actually possessed by family businesses.

Keywords: family business, family and business values harmonization, legal aspect, global company.

I. The Culture of Family Business

As a country with high culture and civilization, family ties in Indonesia hold an important role in every aspect of life. Heterogeneity in Indonesian society also gives nuance and strengthens ties in each group. It is undeniable that binding togetherness in a family is still very dominant. This is apparent from the number of family-owned companies that grow in Indonesia as a true evidence of the strength of togetherness in family ties.

Family business is an asset of a country, since it usually has sturdier monetary balance and healthier capital structure. Besides, family business also holds a very important role in creating PDB (Crude Domestic Product) on the economy of a country. In advanced countries, the average contribution shows a value preceding 75% of the country's economy. In Indonesia, according to 1996 BPS Economics Census, family business contribution even reaches to 82,44% of the PDB (Suara Merdeka: 2003).

Family or owner-managed businesses account for 70-80% of businesses worldwide, according to the 'Family Business Network' (FBN), the world-wide association for families in business. FBN (www.fbn-i.org) is devoted exclusively to increase the quality of leadership and management of family-owned enterprises. Owner-managed businesses account for more than 50% of all employment and, depending on which country they are in, contribute between 50 and 75% of gross national product. In many countries, these businesses out-perform quoted companies. (Grant Thornton International:2006)

Martijn F.L. Rademakers states : *According to Hofstede (1982: 11, 1984), Indonesia comes last in a ranking of levels of individualism among Western and Asian countries. This high level of collectivism found in Indonesia is consistent with Javanese ideals of harmony and unity (Kartodirdjo 1972: 77; Schwarz 1994: 45). Nevertheless, considering Indonesian society as highly collectivistic would be spurious. Indonesia's history is characterized by many wars and disputes between different local, cultural, and ethnic groups (Geertz 1972: 232; Ricklefs 1993) and obvious social tensions still exist between these groups. Hence, collectivism in Indonesia is strong, but restricted to social groups such as the family and the village community. Membership in such a group provides an individual with security and protection (Mulder 1978: 57). Within these social groups, principles such as collective decision-making processes (musyawarah), unanimous decisions (mufakat), co-cooperativeness (gotong royong), and loyalty are important. (Martijn F.L. Rademakers; 1998)*

However, for the purpose of understanding the family business, it is more appropriate to study families as a unit, with their own structure, beliefs and patterns of relating. Indeed, the underlying issues facing the family and the

business need to be properly understood, otherwise resolutions to problems maybe deemed inappropriate or simply not feasible. In fact, in order to unlock the most lasting and practical solutions for the business, one must understand the interactions between family members, family dynamics and address the psychological issues that hold the solutions captive.

The family is typically inward-looking and, as such, decisions are often based on emotions rather than commercial grounds. This contrasts with business decisions which demand rationality and results. However, it is easy to see why the basis for decision-making differs - there is a history to the family which in terms of the individuals concerned, predates their involvement in the business. Furthermore, a fully functioning family is likely to incorporate the characteristics of lifetime membership and unconditional acceptance of family members.

It is important for the family business to recognize these pressures in order to deal appropriately with any conflicts that come to light in order for the family business to prosper into the future and the family members within the business to feel that they are making a successful contribution to both the business and their underlying personal goals.

Family communities have characteristics different to those of business. Those apparent characteristics are as followed:

1. The Family System

Families are inward looking; they seek to protect their own. They are emotion based in love and that love is unconditional. If a report is not produced in time by a family member in the business, this does not affect how much the family loves them. Families share with each other and there is lifetime membership. Families do not like change and do not respond well to it.

Characteristics: a. Inward looking; b. Emotion based; c. Unconditional acceptance; d. Sharing; e. Lifetime membership; f. Averse to change

2. The Business System

The business system on the other hand has different characteristics. It is outward looking and task based. It has to be unemotional in its dealings and rewards performance based on results. Employees must perform or leave. Businesses also embrace and thrive on change.

Characteristics: a. Outward looking; b. Task based; c. Unemotional; d. Reward performance; e. Perform or leave; f. Embraces change

Family Values in the Business

Where the systems overlap, that is, where there is close involvement of the family in the management and ownership of the business, there is potential for conflict.



Issues which often arise caused by difference between family and business values are as described below.

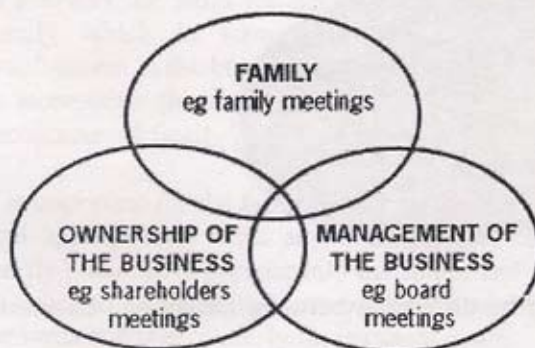
Issue	Family Values	Business Values
Recruitment	To provide for family members in need of a job irrespective of their ability to fulfill the role to the standard required	To recruit the most qualified and competent individuals to perform a role, not necessarily a family member
Remuneration	To pay according to the needs of the family member	To pay a salary in accordance with market worth and performance history
Appraisals	Tendency not to differentiate between siblings and appraisals can be very informal	Tend to differentiate to identify high performers and it is normal for a structured approach to be in place
Training	To provide opportunities to satisfy individual development needs, irrespective of the commercial benefit to the family firm	To provide training in order to meet the organisational needs of the business
Strategy	Reluctance to change things if there is no apparent need to	To undertake continuous improvement and thus enhance the business and the service provided to customers and suppliers

(Grant Thornton International: 2006)

Therefore, to avoid and minimize conflict, there is a need for harmonization

of family values with business values in a family business in order to succeed the goal of the company. That harmonization could be done through professional management organization and good communication system between family members.

The communication structures between the family and the business systems are also complicated. For decisions to be taken in an informed way, all parties should be considered.



If the communications system works in isolation and the needs, for example, of the management are not taken into consideration by the family who own the majority of the business, then conflict will arise and needs to be addressed (Grant Thornton International : 2006).

One example of successful family businesses is the Jarum Sampurna cigarette company, established in the 1800s. Its business organization has surpassed 5 generations. Another exists in the field of monetary management, PT Bank NISP, which has been run by 3 generations. In herbal industry, another apparent successful family business is PT Nyonya Meneer which is founded in the 1919.

In the Indonesian national context, a number of mutually connected social institutions constitute a favorable environment for the development of the Chinese family business system. Results from case studies of eight large and medium-sized jamu firms owned by either Indonesian Chinese or indigenous business people show that, in many respects, the market organization in the Indonesian jamu industry reflects Chinese family business characteristics.(Martijn F.L. Rademakers: 1998)

II. The Shifting Family Business Through Capital Market

The impact of capital market development, foreign companies investing in Indonesia, followed by effects of globalization and internationalization of Indonesian companies; cause a shift from closely controlled by owner family businesses with confined capital ownership to companies with more professional management.

Limited company by share is a universal business form existing in almost every legal system of every country in the world. This similar form is known in Indonesia as PT (Perseroan Terbatas), formerly known as "Naamloze Vennotschap" (NV), classified in UU Nomor 1 Tahun 1995 on Perseroan Terbatas. Capital element is a distinct quality of PT that cannot be found in other association forms. According to literary, a form similar to PT is a "capital association", meaning and association formed to collect extensive capital from the mass.

Share concerns character and form of the business as a capital association. Therefore the element of share required from a shareholder in a company cannot be withdrawn, instead it is allowed to put the share on market.

As a legal form based on legal fiction, PT has the same juridictive capacity as a natural person. Therefore PT is able to operate all personal legal functions, that is able to possess, take legal action, sell or buy possessions, accept transfer of possessions from another party, accept transfer or other bills, pay or give loans, claim bankruptcy et cetera. PT is a different and separated legal entity from its shareholders.

As a different and separated legal entity from its shareholders, on operating its legal function PT does not act as a representative of shareholders, but acts for and on behalf itself. Doctrine stating the legal stand of a PT is called: The doctrine of separate legal personality of a company or the principle of the company's separate legal personality. It is one of the cornerstone of modern company law (Sutan Remy Syahdeini:2002).

The management of family business that started as an enclosed company has spread its wings into susceptible company through capital market. This is one of capital growth effort to achieve success in family business planning.

In spite of that, change from enclosed to susceptible company is also one of

the solutions for issues in family business. One of the common problems in family business is how to transform professional management into the company. Therefore, to retain a family business can be done by changing it into a susceptible company, by going public, in order to have control over the company itself (Suara Merdeka : 2003).

In lieu with the above, Martijn F.L. Rademakers states : *“A Number of options exist for the family business that has come to a crossroads and needs to make a decision about the future. Retaining family control means passing it onto the family member but there are alternatives to this. Some of the more common outcomes that should be considered include: listing the business (Going Public).”*

Development of family business from enclosed to susceptible company has positive aspects for a company as well as a country in achieving capital growth through capital market. Capital growth is needed for economic development which basically is an economic potential transformation into true economic power.

Like any other developing country, Indonesia is faced with restrictions in varied investment elements. In order to overcome this gap, the government supports family businesses as a direct investment to participate in economy development. Compared to foreign loans, direct investments yield a lot of benefits. One of those benefits is that through direct investment growth, the government does not face a risk of loss. Unlike with capital loans, where there has to be a return interest regardless of profit or loss. Therefore government policy on direct investment is managed to optimize these benefits.

There have been a lot of policies concerning deregulations and debureaucratization issued by the government. Debureaucratization steps have been taken starting on 1986 up to the issuance of PAKTO 1988 (Paket Kebijaksanaan 27th October 1988).

The efforts toward healthy and efficient Indonesian economic climate or economic rationalization could be described as follow:

- a. Restructuring economy on market mechanism principles, open economy, stable monetary climate, restricted government intervention in economy.

- b. Changing a locative and distributive economic system into incentive economic system.
- c. Rousing entrepreneurs to invest, innovate and produce through price mechanism, tax and credit cost policy, budget policy, and monetary policy.
- d. Attracting foreign investments and loans.

Point c above shows that government also supports family business development to be involved in capital growth through capital market. To rouse entrepreneurs is done through some of government policies. Thomas R. Dye defines nation policy as : *"is whatever governments choose to do or not to do"* . This definition depicts an understanding that governmental policy has to be obliged to society purposes.

In correlation to direct capital growth, the main purpose of deregulation is to eliminate any inhibition for investment flow and businesses, mainly in Indonesian private sector. Deregulation through PAKTO 1988 increased private role on investment which has forward perspective principally demanding equal treatment growth that leads to equality in capital market. Through PAKTO 1988, government policy aims to give a positive impact or create a conducive climate for capital market growth in Indonesia. Besides, through Undang-undang Nomor 8 Tahun 1995 on Capital Market, the government also provided *payung hukum* for execution of capital market activities in Indonesia.

Therefore the involvement of private sectors including family businesses in capital market (as susceptible companies) is an effort towards capital growth for Indonesian economy. Family business also became one of direct investments that could provide positive contributions for Indonesian economic development. This is supported by varied accommodation in government policies.

III. Family Business Role in Globalization Era

Transnational corporations are companies whose operations precede nation boundaries with mother companies in Indonesia or other countries. A transnational corporation needs to be approached not merely nationally, but also transnational in the meaning of the place of incorporation. This provides a character far different from the character of a usual national company/ PT.

This is more apparent in Indonesian activity on international trade, the impact of WTO existence would be very crucial to Indonesia concerning relationships with trade partners.

Speaking about change, in the near future there will be some factors essential enough to affect Indonesia's economic development. In globalization era of the 21st century, there are 4 (four) factors highly influential on national development efforts.

- First, Economic drive triggers society behaviors. Economic growth and development are mostly influenced by world economic condition, including political issues with economic gap and importance background.
- Second, *Monetary incentive as the only public standard.* Capital role became more dominant in business rules.
- Third, Mastering science and technology as a nation superiority instrument.
- Fourth, Justice and injustice became the standard of development success (BAPPENAS : 1997).

Indonesian economy are more integrated into global economy, bringing along consequences of higher level competition within the area. Therefore, efforts to sustain and increase competitiveness become an agenda of company development and resource management. This includes family businesses that maintain their culture and existence not only through capital market, but also reaching global economy as industrial economy players; some of which are PT Maspion, PT Sampurna, PT Gudang Garam.

Globalization phenomenon arising in the near future has been predicted to create deregulations and privatizations in economic sectors, adjustment of external economic relationships management in bilateral level as well as in regional and multilateral level. It is important to realize that in order to compete in free trade market there has to be efforts and ability not only to maintain domestic market, but also to breach international market.

It is not only depended on major commodity to breach international market; but it is also important to have vision, strategy, and synergy translated into competent business organization mirrored by the family business on account of the strong culture it possesses. According to research done by OECD, there are 5 categories of industrial businesses which have or would be able to

go global:

1. Leading Firm, an industrial business which becomes global by using middle and small businesses as supporting industries.
2. Trading Firm, a trading business which is able to form trade partnerships with business units in various countries.
3. Domestic Network, forming a network between business units in various countries in order to be able to infiltrate the world market together.
4. Keiretsu, a major business unit which is already global where small and middle industries are placed on important parts within.
5. Innovation Option, innovative industrial business performing a market breakthrough for merchandise products as well as services in the world market.

By strengthening through harmonizing family and business values; through issues of recruitments, remunerations, appraisals, trainings, strategies; family business system would be able to become a global company/ industry based on the 5 industrial business categories mentioned above.

IV. Closure

Law and business are two inseparable things and have to be understood by everyone involved: human, business and law. Tracing of issues in business and human dimension begins from living in a society with various needs, one of which is family business. In doing business, references are needed to determine behaviors and interaction between business partners. A company aiming for success in business needs 3 (three) main requirements, which are: good products, smooth management and ethics. Good products and smooth management are things that can be achieved through means of science and modern technology. While business ethics adopted in law is very much connected with business culture practiced by family businesses, has to be supported by government policy through innovative legislative regulations. Liberalization process would go along with rules improvement and restriction. WTO existence functions as global trading relationship regulator in free trade market framework, mainly to protect and utilize small and middle economy.

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