

Developing Corporate Employee's Know-How for Sustaining the Business of Indonesian Tourism

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Abstract—This study is aimed to express ideas on how to develop corporate employee's know-how as one of tourism companies' strategies in Indonesia. The problem is focused on the lack of such a corporate strategies to develop labour standards, especially in the form of managerial know-how, including marketing know-how. To find solutions of this problem, this research employed the normative methods starting from formulating problem to find solution. Results show that one of the reasons to train corporate employee's know-how is to increase their knowledge and skills in promoting, managing, and sustaining the business of tourism in Indonesia; to realize such reasons, it is necessary to have licensing contracts between big companies and SMEs as a legal framework to keep any confidential information (know-how), conducting related training based on such know-how contracts, and at the end it is also importance to exporting local wisdom of Bali in the matter of tourism business to succeed the enforcement of such contract. For those, I recommended that this model of exploitation of corporate employee's know-hows can be copied paste to another field of business to get improve the performance of SME in Indonesia.

Keywords—investment; social corporate responsibility collected funds; corporate employee's know-how; tourism of business.

I. INTRODUCTION

Phenomenally, investing corporate social responsibility (CSR) funds for developing corporate employee's know-how in the business of tourism services in Indonesia is rarely found as a business practice. As a consequence, the performance of employee's know-how in SME's is still less-developed in comparing with big companies. However, it should have a high turnover of staffs, qualified personnel to perform the best quality of services, and rapidly changing skill needed. So, the quality of tourism services is very significant points that is determined by the qualified people who deliver such services, satisfaction of enjoyment of tourism services provided by those people that are very much influencing to the number of tourist visit to country of destination [1].

However, all of these were caused by several factors: a) the lack of funding scheme for improving such employee's know-how; b) the lack of legal cooperation networks with big companies; c) the insufficient programmed and scheduled training agenda for corporate employee of SME's; d) there has no governmental initiatives for stimulating and developing

corporate employees in knowledge's and experiences in tourism; and 5) the use of CSR fund were mostly spent in the environmental matters, not to develop the skill of corporate employees [2].

However, the core problem of mentioned above can be seen at legal frameworks. At international legal dimension, the 1994 WTO's Agreement on Trade in Services (GATS) provisioned that foreign companies can establish a commercial present of course in the business of tourism in its member in Indonesia [3]. Certainly, companies mostly offer their services by employing their best knowledge (know-how) and experiences to run the business of services by giving respect to related national laws. This is becoming challenges for national companies to compete in the same business of services. On the contrary, national (local) companies still offer their services by employing knowledge and experiences minimally. This gap will be problematic to national (local) companies in the business competition of tourism. As a consequence, this unequal business competition will brought national (local) companies into peripheral or vulnerable situation [4].

At national legal dimension, this situation should be solved by issuing a kind of practical or technical legal framework in the form of agreement (contract) of know-how to improve the performance of national companies (SMEs) [5]. Therefore, improving this intellectual (corporate) capital usually can increase the performance of such companies including in the business competition in the market of tourism services. Of course, such increase were not affected, for example, by the application of the 2000 Trade Secret Law of Indonesia, but it is very much determined by the agreement or contract technically. This means that the transfer of this corporate know-how is realized by the enforcement of such contracts, not by applying law number 30 on Trade Secret. In sum, legal protection such know-how during the enforcement and post-performance of contract was arranged in the contract. In other word, legal certainty in transferring know-how is very much depend on the enforcement of such contract between licensor and licensee. In the business practices, the transfer of know-how will take form in the licensing contract or franchising contract of know-how between big companies that having international business operation in employing KH and SMEs [6].

Furthermore, root cause of this problem can be seen at philosophical level. At this level, the lack of licensing or franchising contract of know-how had triggered legal uncertainty in the business of tourism services. This means that SMEs in Indonesia will never have opportunity to improve their production of services and still running the business of tourism in old fashioned method. There will have no improvement in this business and will come to a peripheral situation of business competition. This situation will also in turn arrive at the failure of business and merged or acquired by national or foreign companies.

To come out of the problem above mentioned, this work offer at least four solutions: 1) using CSR for promoting and advancing the project of green and sustainable tourism; 2) investing CSR for developing corporate employee's know-how of SMEs; 3) having licensing contract on know-how or franchise contract to improve the employees-knowledge and know-how in the business of tourism; 4) having joint management between big companies and SME's.

However, these four offered solutions are too much burdens of work to be answered. Therefore, it is wise to select one of them. For those, I just select the offered solution number 2), namely investing CSR for developing corporate (SMEs) employee's know-how to become the central research question. In detail, it will be in depth analyzed in chapter four into four points as follow: a) the reasons why to invest CSR fund for developing corporate employee's Know-How; b) investing CSR Fund for developing corporate employee's Know-How in Indonesia, that can be more explained: 1. investing CSR Fund for improving corporate employee's Know-How; 2. concluding a licensing contract of know-how in the business of tourism service; 3. having trained corporate employee in the matter of know-how of tourism; and 4. Combining CEKH and local wisdom of Bali in the business of tourism.

From the selected offered solution above mentioned, thus the central research question is focused on the lack of legal framework to exploit know-how in the business of tourism in through licensing or franchising contracts. The questions are "What to exploit corporate employee's know-how in the business of tourism services in Indonesia?" and "Why to exploit corporate employee's know-how in the business of tourism services?"

II. METHOD

The type of this research is normative research. Legislation sources were obtained from library study and related literature as the data analyzed to support the finding in this study. Qualitative descriptive was the method used in analyzing and presenting the data. In addition, conceptual and statue approach were used collecting the data to determine to which the data relating to law governing tourism activities in relation to the concept of know-how.

III. RESULT AND DISCUSSION

A. *Legal Concept of Know-How*

This section will discuss at least four main points that consists of a general overview of know-how, definition of

know-how, some sort of know-how, corporate employee know-how, corporate employee in the business of tourism, and know-how and country wisdom in the business of tourism services. In detail, they could be explained as follow.

1) *Term and definition of Know-How:* Having read about know-how, it is one of components of knowledge or intellectual capital that involved in design, manufacture, and use of technological system [7]. The term of know-how may refer to expertise, skill and proficiency. In the intellectual property context, it may refer to secret of production (see article 75 of Russian Intellectual Property Law), all practical knowledge (know-how or cognition) or knowledge and experience [8]. Then, it defines as 'knowledge of how to do something well'. In more clear Butterworths Concise Australian Legal Dictionary, know-how is defined as industrial information and techniques likely to assist in the manufacture and processing of goods and materials. In intellectual property law, for the purpose of determining whether there has been a breach of confidence, the 'know-how' acquired during a working career [7]. The way in which a skilled worker does his or her job has a quality resulting from experience, which a worker is is entitled to use for his or her own advancement in his or her chosen career. According to Horst in Hamid Jafarieh mentioned that 'know-how is a body of industrial useful, secret, novel, and valuable information and associated with technical and other information and skill' [9].

Subsequently, article 1465 of the Russian Federation Rights to Result of Intellectual Activity and Means of Individualism (last amended by the Federal Law of March 12, 2014) defined that: "information of any type (production, technological, economic, organizational, and others) with respect to which the owner of such information has introduced a regime of trade secret". Then, in the perspective of manufacturing production of goods, know-how can be at least categorized into: 1) know-how regarding to obtaining raw material; 2). production process know-how and managerial know-how; 3) Marketing know-how, including the promotion know-how.

Then, to dealing with resources of know-how, there are at least three possibilities how to obtain know-how. They can be obtain from having a licensing contract, franchising contract, or having corporate employee's research project. These three are optional for companies as a legal program to improve their production process, corporate management, and marketing or their business performance in a dynamic competition. Empirically, Raghu added that know-how is created by a process of "learning by doing/LBD". He clarified 'LBD is a process of whereby knowledge about how to perform a task accumulate with experience over time. One created, such knowledge may reside in different 'storage bins'. These bins include individuals, organizational routines, and manufacturing process. Some aspect of know-how are articulate through time and motion studies and through stories that form part of organizational culture. Other aspect of know-how, though, may remain tacit or invisible.

However, in a company providing tourism services, especially in hotel and catering industries, there are at least

three main areas of task that result know-how. They consist of know-how in the task of personal relation and communication, know-how in technical skill (technical know-how), and know-how in the task of organization and management. These three potential know-hows can be found at the high complexity of task. Therefore, corporate intellectual property management should control and prevent from infringement activities by providing a system of protection and audit.

2) *Corporate employee's Know-How*: Corporate employee's know-how (CEKH) is part of corporate trade secret. This intangible corporate asset has play important functions in running business, including in the business of tourism industry. It is developed by employees in the stage of production of goods or services. In the service industry of tourism, CEKH is also key of business to succeed the service production. The service production may related how to have a well-promoted tourism services, how to provide and manage accommodation (hotel, resort, villa) services, how to handle the guests after enjoying accommodation services, and how to manage transportation services by hotel and airlines. In sum, how to provide such services in the best performance that the user of such services got a maximum satisfaction.

3) *Corporate employee's Know-How in the business of tourism*: In general, each business can produce a specific know-how developed in providing raw material, in the production process, or in marketing process. It of course depends on what kind business run by companies. Thus, in the business of transportation for example, companies that are running this business can produce and develop know-how in the specified transport business. Only in a limited amount of corporate workers may be getting involved in the matter of know-how to run the business, including to providing services of the tourism business.

In the tourism business, there are at least five services that may result such know-how in specific business in: hotel, restaurant, transportation, souvenir, and art (music and drama performance). All of them are potential to developing corporate intangible assets. Therefore, both big companies and SMEs should establish a department on research and development (R&D) to manage including to audit all corporate intangible assets periodically. Because it is the most significant and important factors to run a specific business, including the business of tourism services. Thus, corporate intellectual property management should be established to ensure such business run well in the right direction and right time.

Each of these five services of tourism can result know-how: 1) know-how in promotion (time and style for advertising the business of tourism), know-how in production of services, 3) know-how in marketing. They can be distinguished from the kind of these services. For example, in the industry of hotel and catering services, these business should be run by employing managerial know-how, production services know-how and marketing know-how. It may be colored by the size of companies whether it is run in a jurisdiction with many branches and local cultures (local wisdom).

4) *Developing corporate employee's Know-How for sustaining the business of tourism*

To achieve and succeed a sustainable tourism in Indonesia, it is necessary to employ a kind of know-how in the business of tourism. This is because employee's know-how usually function as one importance key in running business, including tourism business as well. Therefore, the function of employee's know-how should be improved due to the emergence of business competition of tourism business. Local companies especially in running tourism business compete in the same market with foreign companies in the same jurisdiction, even region. Thus, local SME's should make a new policy to improving their service production in line with the the dynamic of related market.

One item of this policy is to develop employee's know-how and making new structure by employing such kind of corporate employees. It might also be better to exploit local wisdom of Bali in tourism. This means that exploitation of corporate employee's know-how should be integrated with any form of local wisdom to demonstrate hospitality and dignity offered to the guest, This is important to image making of Bali's tourism that would become main point.

B. *The Reasons Why to Invest CSR Fund for Developing Corporate Employee's Know-How*

There are some reasons why to exploit such CEKH in Indonesia. They may consist of: 1) mostly practice, the CSR fund is usually spent for society surrounding industry; 2) there is rarely in practice that the CSR fund is used for training of corporate employees; and 3) most of corporate employee were also being local people that having impact from tourism industry; and 4) mostly SMEs should be empowered by such collected CSR funds to make a move forward in the business of tourism services. All these reasons would become the basis for legalizing the use of CSR funds to make corporate employees being more professional or qualified human resources in companies.

In this matter, it is necessary to recognize that to increase the performance of companies or to improve know-how hold by corporate employees is not an easy way. Because this efforts requires a lot of amount of money, not just for paying royalty to licensor, but it is also needed to undertake a specific and closed training for related corporate employees. In some cases, it not possible for several companies to come into a licensing contract of know-how (including technical know-how). Therefore, it is importance to think that how to get much money to succeed this program. One of strategic step is to collect CSR funds from the group of companies that will be organized by a task force established by the group.

Then, by referring the scheme of thinking mentioned above, it is necessary to make a mechanism about the use of such collected CSR money to be organized and reported transparently and accountable. Of course, this would ensure that such money will be spent in the efficient and effective manner. In turn, it is realized that such CSR collected funds do really useful to develop or improve corporate employee's know-how.

To improve the today's performance of employees of SME in Indonesia, it is necessary to have discussion on several main topics as follow: 1). Investing CSR Fund for improving corporate employee's Know-How; 2). Having a licensing contract on promotion of tourism, marketing of tourism, management of tourism; 3). Having trained corporate employee in the matter of know-how of tourism services by using a collected CSR funds; and 4). combining the use of CEKH and country (local) wisdom of Bali in the business of tourism. In more detail, each of them are described as follow.

1) investing CSR fund for improving corporate employee's Know-How

Due to the scarcity of funding to undertake specific training for corporate employees, it is necessary to rethink that most of Corporate Social Responsibility (CSR) funds have been spent by companies for ineffective, unclear or inappropriate uses or objectives. Therefore, it is important to propose that the CSR fund should be collected by business association group in the objective of conducting a series of specific training for corporate employees. It is designed to increase or improve the knowledge and know-how of employees in the challenges of business competition regionally and globally. This is an important step to strengthen corporate employee performance and to support the exploitation new patents employed by companies to improve production of goods or services, especially in the industry of tourism services.

2) Concluding a licensing contract of Know-How in the business of tourism services: Before having such training mentioned above, it is necessary to have contract of KH in the matter of promotion, marketing, and management of company. This is a very importance step to succeed this program. Because such kind of KH as a part of corporate intellectual properties should be protected legally to keep them all companies trade secret. Therefore, such kind of contracts should be signed by related contracting parties before KH training conducted. This means that such training should be part of performance of related contract.

Substantially, this know-how licensing contract (Agreement) can be substantiated into 12 main points as follow: 1) definition; 2) granting a license; 3) providing know-how; 4) consideration; 5) payment, report; 6) improved technology; 7) confidentiality; 8) unfair competition of a third party; 9) obligation to exploit the license; 10) term and termination of the agreement; 11) licensee's obligation after termination; 12) consultation. For more detail, this simple example contract can be elaborated into more specific one. For instance, article 3 on providing know-how can be formulated into know-how in the stage of promotion of tourism services, or know-how in marketing service product, or know-how in the hotel management, and know-how in handling hotel guests, or combination of them, etc. It can also completed with the obligation of licensee to create the management of know-how for protection in their SMEs office.

3) Having trained corporate employee in the matter of know-how of tourism: To make such licensed know-how mentioned in the contract be transferred, it is necessary to undertake a closed training for selected SMEs employees. For

that purpose, SME should select relevant employees to get involved in such training. To succeed this training, they should also sign a agreement or commitment to keep the secrecy of Know-How continuously maintained. In this matter, licensor will fulfil their obligation to give a written description of the details of licensed know-how. In certain circumstances, licensor will provide technical guidance and time for discussion since it is required by licensee. Empirically, this kind of training should be scheduled and determining the place and the proposed budget needed. Of course, this kind of training should be hold in a closed situation that can guarantee that such secret of know-how is always in the correct track of protection.

Then, to formulate this combined know-how with local wisdom, it is necessary to have a closed discussion between licensor and licensee. The result of that discussion will be written as a new guideline to be enforced. The enforcement of this new guideline can be part of the agenda of training to the Licensee's corporate employers. It can be a closed training in a limited day per day basis in the company of SMEs. Participant of this training will be the managers or planners, or technical corporate staffs. Finally, all participant shall also be bind with a personal commitment (agreement) to keep all kind of know-how and other undisclosed information secretly.

IV. CONCLUSIONS

There are some reasons why SME that is running business in the service of tourism should have a kind of transfer of KH from a big and experienced companies. They may consist of; a) to improve to performance of corporate employees of SME by using new know-how in the field of tourism; b) to increase their services production in the business of tourism; c) to increase efficiency and the benefit (profit gaining) of SME as well; d) to improve corporate culture in the business of tourism; and e) to broaden the business network that help to increasing corporate income and benefit.

There are some main points that should be considered in developing and exploiting corporate employee's know-how in Indonesia: a. having trained corporate employee in the business of know-how of tourism by using a collected CSR fund; behaving a licensing contract on promotion of tourism, marketing of tourism services, corporate management in providing the tourism services; c. combining the use of CEKH and local wisdom of Bali related to the business of tourism services.

From these two conclusions mentioned above, I come to present at least two recommendations. First, to increase the performance of SMEs that is running the business of tourism, it is necessary to have a contractual relationship with big companies to enrich the existing know-how employed by SMEs. The aim of this enrichment of the existing know-how is to improve production services in the business of tourism in Indonesia, and especially in Bali. Second, to succeed the program of this enrichment, SMEs should have to organize or manage the use of their existing know-how that have been developed so far, including the new know-how obtained from the licensing contract of specific know-how.

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REFERENCES

- [1] P. Jonkers, *General Trends and skill need in the tourism sector in Europe*. Luxemburg: Cedefop Panirama Series, 2005.
- [2] The 2000 Trade Secret Law number 30 of Republic of Indonesia.
- [3] A. Argandona, *Corporate Social Responsibility in the tourism industry. Some Lessons from The Spanish Experience*. Spain: IESE Business School-University of Navara, 2010.
- [4] R. Garud, "On The Distinction between know-how, know-why, and know-what", *Advances in Strategic Management*, JAI Press. Inc, vol. 14, 1997.
- [5] N. Karamarko, "Knowledge Management as a new Managerial Paradigm," *Tour. Hosp. Manag.*, vol. 15, no. 1, pp. 1–152, 2009.
- [6] T. Horst, "The Theory of Multinational Firms: Optimal Behavior under different Tariff and Tax Rules," *J. Polit. Econ.*, vol. 79, 1971.
- [7] V. Kubicka, Erik; Piovarci, Andrej; Simuth, Josef; Dubrovskiy, "Transfer of Know-how for Small and Mid Size Businesses in Georgia, Moldova and Ukraine," *Cent. Soc. Econ. Res.*, vol. 121, 2015.
- [8] P. (Gen. E. . Nygh, Peter E; Butt, *Butterworths Concise Australian Legal Dictionary*, Second edi. Butterworths, Sydney, 1998.
- [9] "Implementing Green and Sustainable Tourism," *Proceeding Int. Semin. Tour. Events*, 2016.