

IMPROVING GOOD SOE CORPORATE GOVERNANCE THROUGH THE ROLE OF INDEPENDENT COMMISSIONERS

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Abstract

Through the Decree of the Minister of State for State-Owned Enterprises (BUMN) No. Kep-117/M-MBU/2002 concerning the Implementation of Good Corporate Governance (GCG) Practices in BUMN, BUMN is obliged to implement GCG principles. The GCG principles required by this decision include the principles of transparency, independence, accountability, liability and the principle of fairness. The problem formulation in this research is (1) What is the role of independent commissioners in BUMN in the context of improving good corporate governance? (2) How are the powers, functions and responsibilities of independent commissioners in BUMN regulated in the context of improving good corporate governance? (3) What is the concept of the role of independent commissioners in BUMN in the context of good company improvement? This type of research is normative juridical legal research, which is a process of discovering legal rules, legal principles and legal doctrines in order to answer the legal issues faced. The legal basis for state financial companies is that if Persero Negara currently in Indonesia suffers losses in its business transactions, Law Number 19 of 2003 concerning Entities is considered to be a state loss . By State-Owned Enterprises, Article 1 paragraph (1) states that because the person in charge of managing the Persero is the State-Owned Enterprise, which is in the hands of the Board of Directors, it is the Board of Directors as the party hereinafter referred to as BUMN, that is the Business Entity that must be responsible. Therefore, all provisions and principles that apply to limited liability companies apply to companies as regulated in Law No. 40 of 2007 concerning Limited Liability Companies . It is recommended that one of the important issues that has emerged in the discourse on implementing good corporate governance is the formation of an Independent Commissioner and Audit Committee.

I. Introduction

The post-reform Ministry of State-Owned Enterprises (BUMN) issued *a policy* regarding the Implementation of *Good Corporate Governance* (GCG) Practices in companies listed in BUMN Ministerial Decree No. Kep-117/M-MBU/2002. A state-owned company is obliged to implement *GCG principles*. The obligation in question is the obligation for state-owned companies to apply consistently and/or make GCG practices the basis for operations in state-owned companies. The required GCG principles include the principles of transparency, independence, accountability, responsibility and *fairness*.

The regulations that have been made by the board of commissioners to the directors are related to the principles of company management. According to the National Committee for Governance Policy (KNKG) on October 17 2006, these GCG governance guidelines prioritize corporate rules, norms or guidelines that are needed in a healthy company management system, and have several principles, namely:

1. **Principle of Openness / Transparency:** is the principle of clear and honest openness in carrying out the decision-making process and openness when presenting material and relevant information to the company. In practice at PT. Jamkrindo regarding the position of regulations that have been made by the board of commissioners has openness to shareholders that every approval that has been requested by the directors from the board of commissioners can be known by shareholders through the general meeting of shareholders (GMS).
2. **Fairness Principle:** All stakeholders must have the opportunity to receive fair treatment regarding their rights and interests from the company based on agreements and relevant laws and regulations. The connection between this principle and the management practices that occur at PT Jamkrindo is that the board of commissioners provides protection to the company that every action that must be taken, such as approval made by the board of commissioners or requests for approval from the board of directors between each organ must have the same position and be fair in company management process.
3. **Accountability Principles:** Accountability is a principle regarding clarity of function, implementation and forms of responsibility within the organs of an organization so that it has an impact on the company's management so that it can be carried out effectively.
4. **Independence Principle:** is a principle in managing a company professionally without the influence of interests and pressure from other parties. The corporate governance carried

out must be in accordance with the rules and principles of a good company. In practice at PT. Jamkrindo is a form of division of tasks and company management where each company organ has an obligation to the company management process, this obligation must not interfere with the business implementation process. At PT Jamkrindo, the regulations made by the board of commissioners provide convenience to the directors regarding requests for approval that will be requested from the board of commissioners so that ultimately they have an important positive impact on the ongoing business activity process.

5. **Principle of Accountability:** It is a form of company management carried out in accordance with statutory regulations and healthy corporate principles. This principle is related to practice at PT. Jamkrindo stated that the position of the regulations made was studied by researchers, that these regulations want to illustrate that each function has responsibility for all actions carried out by the functions of the company body.

An important factor that needs to be considered in implementing good corporate governance (GCG) practices is the role and existence of the board of commissioners. The board of commissioners can be interpreted as a supervisory organ that is responsible for the supervision and control of the company. The main objective of the board of commissioners is to protect the interests of shareholders and ensure that the company is run with the principles of integrity, transparency, accountability and sustainability.

The board of commissioners in Law No. 40 of 2007 concerning Limited Liability Companies provides a definition that the Board of Commissioners is a part of the company which has the task of carrying out general and/or specific supervision, in accordance with the articles of association and providing input and advice to the directors. The board of commissioners also has the responsibility to supervise the implementation of management tasks. Therefore, the board of directors is also stated to be able to provide information to the board of commissioners and have competence in responding to various matters proposed by the board of commissioners. The Commissioner is the party who has the task of carrying out supervisory functions in a limited liability company (PT) in accordance with its interests and objectives. Meanwhile, an independent board of commissioners is defined as members of the board of commissioners who are not affiliated or have no relationship with management, other members of the board of commissioners and the majority shareholders . This is different from a non-independent board of commissioners which has the task of carrying out functional functions for shareholders.

The position of commissioner is generally higher than that of directors. The reason is

because the commissioner is responsible for supervising all operations, including the function of supervising the performance of the directors. However, commissioners should also have responsibilities like directors. In a company, the issue regarding number is that if the number of commissioners in a PT is appointed by more than one person, then one of the commissioners will serve as main commissioner or president commissioner. Meanwhile, regarding the requirements for someone to be appointed as a member of the board of commissioners, there are basic requirements stated in the Limited Liability Company Law (UUPT). The National Committee for Governance Policy (KNKG) states that the board of commissioners is divided into two, where the board of commissioners can consist of an independent board of commissioners and a non-independent board of commissioners.

A non-independent board of commissioners is a board of commissioners that carries out functional duties for shareholders. Meanwhile, an independent board of commissioners is a member of the board of commissioners who is not affiliated or not related to management, other members of the board of commissioners and the majority shareholder. Article 120 of the PT Law in paragraph 1 explains that the company's articles of association can regulate the existence of 1 (one) person or more, one independent commissioner and one delegate commissioner. Independent Commissioners as referred to in paragraph (1) are appointed based on the decision of the General Meeting of Shareholders from parties who are not affiliated with the main shareholders, members of the board of directors and /or other members of the board of commissioners. Independent Commissioners must encourage the implementation of good corporate governance principles and practices in companies in Indonesia. The Independent Commissioner's mission is to encourage the creation of a more objective climate and place equality between interested parties including the interests of the company and the interests of stakeholders as the main principle in decision making by the board of commissioners.

2. Research Method

This research uses a normative juridical approach which is carried out by reviewing and analyzing statutory regulations or other legal materials related to the position of commissioner in BUMN. Juridical research is also a literary approach that interprets theoretical matters relating to legal conceptions, principles, doctrines and norms.

In this research, the data sources used are legal materials, both primary and secondary materials, these materials include:

- **Primary Legal Material:** in the form of rules and regulations, especially those relating to the role of Independent Commissioners in BUMN, including:

- 1945 Constitution;
- Law No.19 of 2003 concerning State-Owned Enterprises
- Law No.40 of 2007 concerning Limited Liability Companies
- Law Number 11 of 2020 concerning Job Creation
- Regulation of the Minister of State for State-Owned Enterprises Number: PER-01/MBU/2011 concerning the Implementation of Good Corporate Governance *in* State-Owned Enterprises
- Regulation of the Minister of State for State-Owned Enterprises Number: PER-03/MBU/2012 concerning Guidelines for the Appointment of Members of the Board of Directors and Members of the Board of Commissioners of Subsidiaries of State-Owned Enterprises
- Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number PER-06/MBU/04/2021 concerning Amendments to Regulation of the Minister of State-Owned Enterprises Number PER-12/MBU/2012 concerning Supporting Organs of the Board of Commissioners/Supervisory Board of State-Owned Enterprises
- Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number: PER-13/MBU/09/2021 concerning the Sixth Amendment to the Regulation of the Minister of State-Owned Enterprises Number PER-04/MBU/2014 concerning Guidelines for Determining the Income of the Board of Directors, Board of Commissioners and Supervisory Board of the Agency State Owned Enterprises
- Regulation of the Minister of State-Owned Enterprises Number PER-02/MBU/02/2015 concerning Requirements for Procedures for Appointment and Dismissal of Members of the Board of Commissioners and Supervisory Board of State-Owned Enterprises
- Republic of Indonesia Government Regulation Number 45 of 2005 concerning the Establishment, Management, Supervision and Dissolution of State-Owned Enterprises
- Regulation of the Minister of State-Owned Enterprises Number PER-02/MBU/02/2015 of 2015 concerning Requirements and Procedures for Appointment and Dismissal of Members of the Board of Commissioners and Supervisory Board of State-Owned Enterprises as amended by Regulation of the Minister of State-Owned Enterprises Number PER-10/ MBU/10/2020 of 2020 concerning Amendments to the Regulation of the Minister of State-Owned Enterprises Number PER-02/MBU/02/2015 concerning Requirements and Procedures for Appointment and Dismissal of Members of the Board of Commissioners and Supervisory Board of State-Owned Enterprises

- **Materials :** Secondary legal materials are legal materials that are used to provide explanations about and understand primary legal materials. Secondary legal materials can include legal books, legal journals, legal reports and print or electronic media ¹. In this research, the secondary legal materials used include BUMN regulations, Limited Liability Company Regulations, Civil Code, Business Law Books, Good Corporate Governance Manual, Court Decisions, Scientific Articles, Company Manual, PT Jamkrindo Manual, and Minutes of DPR meetings.

The research location is the place where the researcher obtains information regarding the required data. Research location refers to the meaning of social location which is characterized by the presence of three elements, namely actors, places of activity that can be observed and things that are meaningful. The location for this research is the State-Owned Enterprise, PT Jamkrindo.

3. Results and Discussion

A. The Role of Independent Commissioners in BUMN in the Context of Improving Good Corporate Governance.

The board of commissioners is a part or organ within the company whose function is to carry out supervisory functions and provide advice to the directors in carrying out the company's operations. As one of the management of the company, independent commissioners also have the authority and right to give approval for company ownership which has been delegated by the GMS to the board of commissioners, where this approval is an obligation that must be requested by the directors as regulated in the law and articles of association. and the bylaws, namely the Company Law which states in Article 117 paragraph (1) that the articles of association can determine the granting of authority to the company's board of commissioners to provide approval or assistance to the directors in carrying out certain legal acts.

The role of the board of commissioners is given the power to monitor the company's performance and make decisions about the company. as in research from Tjandrakirana et al in 2022 which states that good corporate governance in a company is determined by the role of the commissioner and audit team, then at PT. Jamkrindo, in this research, good corporate governance is the role of independent commissioners and the audit team in carrying out strict management supervision. The Board of Commissioners is assisted by four Committees and chaired by an

¹ Irwan Saleh Indrapradja, 'Judicial Study of the Responsibilities of Directors and Board of Commissioners in the Organizational Structure of Limited Liability Companies with Collegial Characteristics According to Law Number 40 of 2007 concerning Limited Liability Companies', *Scientific Journal of the Master of Administrative Sciences (JIMIA)* , 1. June (2018).

Independent Commissioner. With the following tasks:

- To monitor the effectiveness of the duties of the Board of Commissioners,
- To carry out the check and balance function of the company's operational activities
- To ensure compliance with applicable regulations

Regarding the role of the board of commissioners in BUMN, it is essentially a regulatory issue, therefore the role of the board of commissioners is very vital in the company, so that the non-optimality of the board of commissioners in the BUMN structure will indirectly reduce the quality of the BUMN to compete with competitors from other companies. The role of Independent Commissioners in state-owned companies is as follows:

- Ensure that the company has an effective business strategy, including monitoring schedules, budgets and strategy effectiveness.
- Ensure that the company appoints professional executives and managers.
- Ensure that the company has information, control systems and audit systems that work well.
- Ensure that the company complies with applicable laws and regulations as well as the values implemented by the company
- Ensure risks and potential crises are always identified and managed properly.
- Ensure that the principles and practices of good corporate governance are adhered to and implemented properly.

B. Regulation of the Authority, Functions and Responsibilities of Independent Commissioners in BUMN in the Context of Improving Good Corporate Governance

The Board of Commissioners is a core part of corporate governance which is tasked with ensuring the implementation of corporate strategy, supervising management activities related to corporate management, and requiring the implementation of accountability functions. The function of the board of commissioners has been stated in the 2001 National Code for Good Corporate Governance where the board of commissioners is obliged to ensure that the company has considered the interests of stakeholders in carrying out its activities and monitors the effectiveness of implementing good corporate governance.

A summary of the duties and responsibilities of the board of commissioners is regulated by the following regulations:

1. Law No.40/2007 Limited Liability Companies
2. Law No.1/2016 concerning Guarantees

3. POJK No.18/2004 Implementation of Integrated Governance for Financial Conglomerates
4. POJK No.34/2014 Nomination and Remuneration Committee for Issuers or Public Companies
5. POJK No.3/2017 concerning Good Corporate Governance for Guarantee Institutions
6. POJK No.29/2020 concerning Good Corporate Governance for Financing Companies qq Amendment No.30/POJK.05/2014
7. POJK No.45/2020 Financial Conglomeration
8. POJK No.6/2022 Consumer and Community Protection in the Financial Services Sector
9. BUMN Ministerial Regulation No.2/2023 Guidelines for Governance and Significant Corporate Activities of BUMN
10. BUMN Ministerial Regulation No.3/2023 BUMN Organs and Human Resources

Meanwhile, in more detail the regulation of the authority, functions and responsibilities of independent commissioners is contained in several points as follows:

1. There are differences in the description of the duties and responsibilities of Independent Commissioners based on (1) Guarantee Law No.1/2017; (2) POJK No.3/2017, Article 1-Paragraph (21) and Articles 24 to 28; and (3) POJK No.29/2020 (qq. Amendment to POJK N0.30/2014, Article 1-Paragraph 15).
3. Independent Board of Commissioners are members of the Board of Commissioners who are not affiliated with shareholders, members of the Board of Directors, other members of the Board of Commissioners and/or members of the DPS, that is, they have no financial, management, share ownership and/or family relationships with shareholders, members of the Board of Directors , other members of the Board of Commissioners and/or members of the DPS or other relationships that may affect their ability to act independently (Guarantee Law No.1/2006; Article 1; Paragraph 21)
4. Independent Commissioners have the main task of carrying out a supervisory function to voice the interests of the Guaranteed, Guarantee Recipients and other Stakeholders (Guarantee Law No.1/2016; Article 26)
5. Independent Commissioners are required to report to the Financial Services Authority no later than 10 (ten) calendar days after the discovery of: (a) violations of statutory provisions in the field of guarantees; and/or (b) conditions or predicted

conditions that could endanger the continuity of the Guarantee Institution's business (Guarantee Law No.1/2016; Article 27; Paragraph 1).

6. The Independent Commissioner has the main task of carrying out a supervisory function to voice the interests of the Guaranteed, Guarantee Recipients and other Stakeholders (POJK No.3/2017; Article 26).

7. Independent Commissioners are required to report to the Financial Services Authority no later than 10 (ten) calendar days after the discovery of: violations of statutory provisions in the field of guarantees; and/or conditions or predicted conditions that could endanger the continuity of the Guarantee Institution's business (POJK No.3/2017 Article 27; Paragraph 1)

The board of commissioners has an important role in providing assurance of good corporate governance, these duties are regulated in UUPT article 108 which reads as follows:

a. The board of commissioners supervises management policies, the course of management in general, both regarding the company and the company's business, and provides advice to the board of directors.

b. Supervision and provision of advice as intended in paragraph 1 is carried out for the interests of the company in accordance with the company's aims and objectives.

The Board of Commissioners, including independent commissioners, according to literature from Antonius and Subarto in 2004, has authority regarding efforts to create good corporate governance, including:

1. View books, letters, securities and other documents, examine cash for verification purposes and examine the Company's assets.

2. Entering the grounds, buildings and offices used by the Company.

3. Request an explanation from the Directors and/or other officials regarding all issues relating to the management of the Company.

4. Know all policies and actions that have been and will be implemented by the Board of Directors.

5. Request the Directors and/or other officials under the Directors with the knowledge of the Directors to attend the Board of Commissioners meetings.

6. Appoint and dismiss the Secretary of the Board of Commissioners, if deemed necessary.

7. Temporarily suspend members of the Board of Directors in accordance with the provisions of the Articles of Association.

The obligations and responsibilities of the Commissioner are also contained in article 114 paragraph (2) UUPT and article 114 paragraphs (3) to (5) UUPT as

follows:

a. Commissioners' obligations in Article 114 paragraph (2) of the PT Law:

"Every member of the Board of Commissioners is obliged to carry out their duties of supervision and providing advice to the Board of Directors in good faith, prudence and responsibility as intended in Article 108 paragraph (1) for the interests of the Company and in accordance with the aims and objectives of the Company"

b. Commissioner's responsibilities in Article 114 paragraphs (3) to (5) UUPT:

- Each member of the Board of Commissioners is personally responsible for losses to the Company if the person concerned is guilty or negligent in carrying out their duties
- In the event that the Board of Commissioners consists of 2 (two) members of the Board of Commissioners or more, the responsibilities as intended in paragraph (3) apply jointly and severally to each member of the Board of Commissioners.
- Members of the Board of Commissioners cannot be held responsible for losses:
- has carried out supervision in good faith and prudence for the interests of the Company and in accordance with the aims and objectives of the Company;
- has no personal interest, either directly or indirectly, in the management actions of the Board of Directors which result in losses;
- has provided advice to the Board of Directors to prevent the occurrence or continuation of such losses.

C. Concept of the Role of Independent Commissioners in BUMN in the Context of Good Company Improvement.

According to the National Committee for Governance Policy (KNKG) on October 17 2006, it was explained that good corporate governance (GCG) must reflect several aspects as follows:

1. Transparency: The goal of transparency is for companies to provide material and relevant information in a way that is easy for stakeholders to access and understand. The Board of Commissioners needs to provide a corporate governance report to the government or internal supervisory body (Bank Indonesia, Bapepam, the office of the Minister of State for State-Owned Enterprises). Companies also need to convey to the public the extent to which they have complied with the applicable statutory provisions in various systems.

2. Accountability: Companies must be able to account for their performance transparently. A company must be managed properly, measurably and in accordance with the interests of the company while still taking into account the interests of shareholders and other stakeholders. Accountability is a necessary

prerequisite for achieving sustainable performance.

3. Responsibility: This principle is used to facilitate the implementation of GCG, the company must be managed independently so that each company organ does not dominate each other and cannot be intervened by other parties.

4. Independence: For the smooth implementation of the principles of good corporate governance (GCG), the company must be managed independently so that each company organ does not dominate the other and cannot be intervened by other parties.

5. Justice and Fairness: When carrying out activities, companies must always pay attention to the interests of shareholders and other stakeholders based on the principles of fairness and equality.

The board of commissioners as an organ of the company has the task of carrying out general and/or specific supervision in accordance with the articles of association as well as providing advice to the directors (Article 1-point 6 and Article 108 paragraphs 1 and 2 UUPT) regarding the responsibilities of the board of commissioners it can be said that the relationship of trust and fiduciary The duties of members of the board of directors apply mutatis mutandis to members of the board of commissioners. As a result of the commissioner being an assembly, a commissioner cannot act independently.

The requirements to become a commissioner are quite tough, Article 110 of the Company Law outlines the requirements to become a member of the board of commissioners, you must be competent to take legal action, apart from that there are other requirements, namely that in the last five years before your appointment you have never been declared bankrupt or been a director or member of the commissioner who was found guilty. causes a company to be declared bankrupt or punished for committing a criminal act that is detrimental to state finances and/or related to the financial sector. Since Indonesia has been mired in an economic crisis, Good Corporate Governance has become part of improving corporate management. Every issuer, board of directors and commissioners are sincerely willing to change and make a move in their business, reflecting this principle.

At PT. Jamkrindo in an effort to carry out its responsibilities well, the Independent Commissioner must proactively ensure that the board of commissioners supervises and provides advice to the directors, including on the following matters:

- Ensure the company has an effective business strategy, including monitoring the schedule, budget and effectiveness of the strategy.
- Ensure that the company appoints professional executives and managers.
- Ensure the company has information, control systems and audit systems that

work well.

- Ensure that the company complies with applicable laws and regulations as well as the values set by the company in carrying out its operations.
- Ensure risks and potential crises are always identified and managed well.
- Ensure that the principles and practices of Good Corporate Governance are adhered to and implemented properly.

Based on Guarantee Law No. 1. of 2016, article 24 paragraph (1) explains that PT. Jamkrindo as a Guarantee institution is required to have an independent commissioner in terms of:

- a. has a national or provincial operational area; or
- b. there is foreign ownership.
- c. Independent Commissioners as intended in paragraph (1) must: a. Indonesian citizen; and b. domiciled in Indonesia

In the Guarantee Law No. 1/2016 article 26 also states that "The Independent Commissioner has the main task of carrying out a supervisory function to voice the interests of the Guaranteed, Guarantee Recipients and other Stakeholders.", POJK No.3/2017; Article 26 also states that the Independent Commissioner has the main task of carrying out a supervisory function to voice the interests of the Guaranteed, Guarantee Recipients and other Stakeholders.

Regarding obligations to the financial services authority (OJK), the independent commissioner also has responsibilities as stated in article 27 paragraph (1) and paragraph (2) where the Independent Commissioner is obliged to report to the Financial Services Authority no later than 10 (ten) calendar days from the discovery :

- a. violation of statutory provisions in the field of guarantees; and/or
- b. circumstances or predicted circumstances that could endanger the continuity of the Guarantee Institution's business

4. Conclusion

The application of GCG principles is needed in order to provide added value to the company. One of the parameters is the existence of an Independent Commissioner who represents the interests of minority shareholders. Independent Commissioners basically have the same functions as Commissioners. The difference is that Independent Commissioners must not have a relationship or be affiliated with the majority shareholder or with the company's Directors. Independent Commissioners function to supervise the Board of Directors in managing the company, so that they can protect the interests of investors, stakeholders and the company itself.

Independent commissioners have the main responsibility to encourage the implementation of the principles of good corporate governance (GCG). This is done by encouraging other members of the board of commissioners to be able to carry out supervisory duties and provide advice to the directors effectively and to provide added value to the company. The government has issued a series of statutory regulations which are corporate rules, norms or guidelines required in the BUMN management system, including the Regulation of the Minister of State for BUMN Number: Per-01/MBU/2011 dated 01 August 2011 concerning the Implementation of Good Corporate Governance (GCG) In State-Owned Enterprises, it has been determined to require consistent and sustainable implementation of GCG as the operational basis for business activities based on five principle pillars, namely transparency, accountability, responsibility, independence and fairness. fairness).

The implementation of good corporate governance is very important to be developed consistently and continuously as a process to maintain the Company's business continuity in the long term. 2016 was an important period for the development, implementation and strengthening of the Company's governance.

5. Suggestions

One of the objectives of mandatory GCG principles cannot be separated from the privatization program currently being implemented by the government. By implementing GCG , it is hoped that the value of BUMN will be maximized and can increase its contribution to the national economy.

The role of the Independent Commissioner and Audit Committee is to strive for improvements in creating GCG in Indonesia. Currently, GCG has become a necessity for a country or company that wants to enter into international business activities. An investor will buy shares at a high price, one indicator is whether the company (issuer) implements GCG principles well or not. Thus, GCG principles have become a very important principle for the success of company management.

One effort that can be taken to realize GCG in corporate management is to form Independent Commissioners and Audit Committees who sit on the board of the company, especially in public companies (*public listing companies*). Revealing the increasing role of Independent Commissioners and Audit Committees in relation to creating GCG in Indonesia in the future .

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