CHALLENGES OF THE BOARD OF COMMISSIONERS IN STRENGTHENING GOOD COOPERATE GOVERNANCE IN STATE-OWNED INSURANCE COMPANIES IN INDONESIA

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ABSTRACT

The practice of good corporate governance is one of the main pillars in the effort to achieve a healthy state-owned insurance company. The position of commissioner is used as a political background regardless of the ability and knowledge of prospective commissioners in the business sector of state-owned companies. State-owned insurance companies are rife with default cases; this affects the continuity of the insurance industry. The Board of Commissioners is also responsible for carrying out its supervisory duties. The problem of default of several insurance companies will have an impact on the development of the insurance industry in Indonesia; therefore serious steps are needed to solve various existing insurance problems. One of the factors that influence the implementation of good corporate governance in BUMN insurance is the board of commissioners. Article 114 Paragraph (3) of the Limited Liability Company Law states that each member of the Board of Commissioners is personally responsible for the loss of the Company if the person concerned is guilty or negligent in carrying out his duties. The Commissioner plays an important role in implementing good insurance company governance and with the principle of good faith, which is responsible for independent supervision and control functions on the Board of Directors who carry out management in order to realize and continuously improve the health of BUMN insurance. The commissioner's duties related to supervision are classified as a task that requires special attention. In carrying out its function as an element that can strengthen good governance of state-owned insurance companies, the Board of Commissioners is challenged by many factors of interest from the government, arrangements that have not been maximized and the joint commitment of stakeholders in implementing good governance of state-owned insurance companies. Optimizing the relationship between the board of commissioners and the board of directors. This is because there are still commissioners who do not properly position themselves, so that the role of the commissioners becomes less than optimal.

Keywords: Challenges, Commissioners, Good Corporate Governance.

INTRODUCTION

State-Owned Enterprises (BUMN) are companies owned by the government, wholly, largely, or only partially. State-owned companies previously known as State Companies (PN) are controlled by the government. However, this type of company has a legal entity status and different operational characteristics from government agencies or ministry agencies. Law No. 40

of 2014 concerning Insurance states that insurance is a risk transfer institution that is beneficial for individuals or society as a whole. However, with the rise of cases of default by insurance companies, especially BUMN insurance, it affects the continuity of the insurance industry. The problem of default of several insurance companies will have an impact on the development of the insurance industry in Indonesia; therefore serious steps are needed to solve various existing insurance problems. How does the governance of the insurance company apply the principles of Good Corporate Governance (hereinafter referred to as GCG). Basically the legal rules that are used as the basis for implementing GCG already exist. As in Indonesia, the current rules regarding GCG in SOEs are regulated in the Decree of the Minister of State for SOEs Number: PER-01/MBU/2011 concerning the Implementation of Good Corporate Governance in SOEs as amended by the Decree of the Minister of State for SOEs Number: PER-09/MBU/2012. Regulations regarding GCG itself are not new. Previously, regulations regarding GCG had existed and were pursued in this direction, namely with the issuance of the Decree of the Minister of State-Owned Enterprises Utilization No. 23 of 1998 which requires transparency among SOE management. This was followed by the issuance of Decree Number: KEP-117/M-MBU/2002 concerning the Implementation of GCG Practices in BUMN. However, there are still problems that harm the policyholder. Currently, a number of listed companies are still experiencing default, such as Jiwasraya, Asuransi Jiwa Bersama (AJB) Bumiputera 1912, PT Asuransi Jiwa Adisarana Wanaartha (WanaArtha Life), and PT Asuransi Jiwa Kresna (Kresna Life). Because it will directly provide clear instructions for the company to make appropriate and responsible decisions and enable safer company management, so as to increase company value and the trust of business partners.

Troubled governance has triggered cases in a number of insurance companies. In addition, the regulator also highlighted the optimization of the supervisory role of commissioners, the independence of companies in a conglomerate, to transparency in the implementation of good governance. To emphasize the weight in GCG, OJK through POJK 28/2020 concerning Health Level Assessment for Non-Bank Financial Services, places governance as the first benchmark. After that, an assessment of the risk profile, profitability, capital and access to funding is carried out. Governance is number one in assessing the health of a company. The root of the problem is mostly the lack of GCG implementation. This GCG is not visible from the outside, GCG is like a root, if it is strong then the fruit and leaves will be good. (Supriyono, 2021).

The implementation of Corporate Governance in companies in Indonesia is still very low, this is caused by a number of obstacles faced by these companies when the company seeks to implement Corporate Governance for the realization of good GCG principles. Therefore, the government needs great attention in strengthening good corporate governance, especially in this BUMN insurance. How is the Government's role in strengthening insurance company management so that it can restore the insurance industry in Indonesia. The role of the Government through the appointment of a competent Board of Commissioners.

The position of commissioner is often sold out to people from political backgrounds regardless of the ability and knowledge of the prospective commissioner in the business sector of state-owned companies. This BUMN commissioner position cannot be separated from political interests. So it is necessary to change the way to appoint commissioners, which was previously subjective to professional-based. (Abra Tallatov, 2021).

The Financial Services Authority (OJK) stated that the commissioners of insurance companies must carry out their functions more optimally, especially in ensuring the implementation of good governance. As long as the commissioners are still not functioning, they are more proper. In good corporate governance, the board of commissioners can ensure that the company is well managed by the board of directors, so that the business is sustainable (Supriyono, 2021).

RESULT AND DISCUSSION

The Concept of Good Corporate Governance

The implementation of Good Corporate Governance in the management of the company is very important because it will directly provide clear instructions for the company to make decisions correctly and responsibly and allow the management of the company to be more secure, so as to increase the value of the company and the trust of business partners. The implementation of Corporate Governance in companies in Indonesia is still very low, this is caused by a number of obstacles faced by these companies when companies try to implement Corporate Governance for the realization of good GCG principles (Suwandi et al, 2021). Governance which is translated as regulation which in the context of Good Corporate Governance (GCG) is called governance. Corporate Governance can be defined as a process and structure used by company organs (Shareholders/Capital Owners, Commissioners/Supervisory Boards and Directors) to improve business success and corporate accountability in order to realize shareholder value in the long term while taking into account the interests of other stakeholders, based on laws and regulations and ethical values. (Sutedi, 2012:1)

The definition according to Cadbury says that Good Corporate Governance is directing and controlling the company in order to achieve a balance between the power and authority of the company. According to the decision of the Minister of State-Owned Enterprises Number KEP-117/M-MBU/2002, Corporate Governance is a process of structure used by BUMN organs to improve business success and corporate accountability in order to realize shareholder value in the long term while taking into account the interests of stakeholders. others, based on laws and ethical values (Sulistyanto, 2003).

According to Price Waterhouse Coopers, Corporate Governance is related to effective decision making. Built through organizational culture, values, systems, various processes, policies and organizational structures, which aim to achieve a profitable, efficient, and effective business in managing risk and responsibly by taking into account the interests of stakeholders (Coopers, 200:37). In the context of economic recovery, the Indonesian government and the International Monetary Fund (IMF) introduced and introduced the concept of Good Corporate Governance (GCG) as a healthy corporate governance procedure (Sulistyanto, Lidyah, 2002)

Corporate governance focuses on fundamental issues such as how the management of the company should be monitored and influenced by the banking industry, capital market, and other financing mechanisms, including insurance in the form of BUMN. Good corporate governance must be applied to insurance companies in the form of BUMN (Surya, Yustiavandana: 7), In the context of economic recovery, the Indonesian government and the International Monetary Fund (IMF) introduce and introduce the concept of Good Corporate Governance (GCG) as a procedure for healthy corporate governance (Sulistyanto and Lidyah, 2002).

The concept of corporate governance is the foundation for the effective implementation of good governance. The World Bank defines the meaning of corporate governance as follows: "…a combination of laws, regulations and practices undertaken by the private sector on a voluntary basis that enables companies to attract financial capital and labor, perform efficiently and with all of which can sustainably generate long-term economic value for its shareholders, and at the same time pay attention to the interests of stakeholders and society as a whole" (Maassen, 2000).

According to Ridwan Khairandy and Camelia Malik, GCG is definitively "a system that regulates and controls a company to create added value for all stakeholders". The concept of GCG in Indonesia can be interpreted as the concept of good corporate management. Two things are emphasized in the GCG concept. First, the importance of the right of shareholders to obtain information correctly (accurately) and on time Second, the company's obligation to disclose (disclosure) accurately, timely and transparently to all information on company performance, ownership, and stakeholders (Khairandy, Malik, 2007:73).

In the principles of corporate governance published by the OECD (OECD CG Principles) it is stated that the corporate governance framework should promote transparency and efficient markets, be in line with the rule of law, and clearly divide obligations and responsibilities among the authorities that carry out these functions. Oversight, regulation and enforcement (OECD, 2004). The corporate governance framework in Indonesia is based on the following principles: transparency, accountability, responsibility, independence, and fairness and equity (KNKG, 2006). The principles of governance are basically in line with the principles contained in Pancasila and the 1945 Constitution. By referring to the hierarchy of laws in Indonesia, these principles are derived more concretely in various laws and regulations in Indonesia.

Arrangements for the Appointment of the Board of Commissioners for BUMN Insurance in Indonesia

State-owned insurance companies are faced with challenges until management that is not professional enough then causes defaults. One of the reasons for the improvement in governance that has been carried out so far has not achieved the expected results is because these improvements have not been carried out comprehensively. Improving governance cannot be done by simply issuing regulations, but also requires the provision of guidelines, implementation of education and training, socialization, and conducive development that can encourage the implementation of good governance. These improvements include various aspects of governance such as the concept of governance, the role of stakeholders, information transparency, the role of the Board of Directors and the Board of Commissioners.

Currently, the regulatory framework does not require companies in Indonesia to have a code of ethics. Based on the General Guidelines for GCG, companies are encouraged to have a code of ethics whose implementation is supervised by the Board of Commissioners for the benefit of stakeholders. Meanwhile, the Board of Commissioners must ensure that any complaints related to violations of the code of ethics can be handled and processed properly. The implementation of GCG needs to be supported by three interconnected pillars, namely the State and its apparatus as regulators, the business world as market players, and the public as users of business products and services. The basic principles that must be implemented by each pillar are: (1) The government and its apparatus create laws and regulations that support a healthy, efficient and transparent business climate, implement laws and regulations and enforce law consistently; (2) The business world as market players applies GCG as a basic guideline for business implementation; (3) The public as users of products and services of the business world as well as parties affected by the existence of the company, show concern and carry out social control (social control) in an objective and responsible manner (Rachmawati, et al: 2011). To achieve success in the long term, the implementation of corporate governance needs to be based on high integrity; therefore, business ethics is an integral part of corporate governance (KNKG, 2011).

Bad corporate governance is considered to be the root cause of a number of insurance cases. This problem needs to be addressed through the implementation of regulations and the commitment of all parties, not only the government but also the directors and commissioners, including independent commissioners.

The Organization for Economic Cooperation and Development (OECD) sector business advisory group on the management of companies makes a report relating to what is required in a management to attract capital. In the OECD report, it is stated that government intervention in the management of companies is the most effective way of attracting capital, focusing on four areas, namely:

1. The field of transparency, where the corporate management framework must ensure that accurate or appropriate disclosure of information is carried out in relation to material related to the company, including the financial situation, performance, ownership and leadership of a company.
2. Ensuring the protection of the rights of minority and foreign shareholders and ensuring the implementation of a fair contract with the provision of resources/materials.
3. Clarification of management roles and responsibilities as well as efforts that can help ensure the interests of management and the interests of shareholders to be monitored by the board of directors.
4. Ensuring that the company fulfills legal and other regulatory obligations reflecting the public's judgment (Gregory, Simms. 2000)

For a limited liability company which in its business activities mobilizes public funds, greater supervision is needed because it involves the interests of the community at large (Ginting, 2007; 183). BUMN Insurance which in its efforts to manage public premiums in this case is the policy holder, when a problem occurs with the insurance company which stems from the non-implementation of the principles of good corporate governance, resulting in a case of default which is very detrimental to the community as the policyholder

The appointment of the board of commissioners in BUMN is subject to the provisions of the Law of the Republic of Indonesia Number 19 of 2003 concerning State-Owned Enterprises (BUMN Law). Where for the appointment of members of the board of directors is regulated in the provisions of Article 15 Paragraphs (1) and (2) and for the appointment of Commissioners in BUMN is regulated in the provisions of Article 27 of the BUMN Law. In these two provisions it is clearly stipulated that the Minister of SOEs can act as a GMS to appoint members of the board of directors and/or commissioners in BUMN.

Strengthening the governance of BUMN insurance companies is very important considering the roles and responsibilities of the commissioners of BUMN insurance. Ministry as regulated in Chapter 1 Point 13 of the Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number Per-10/Mbu/10/2020 Regarding Amendments to the Ministerial Regulation! 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. Assessment of prospective members of the Board of Commissioners and Supervisory Board hereinafter referred to as Assessment is a process to determine the suitability and suitability of a person to serve as a member of the Board of Commissioners and Supervisory Board of SOEs.

With the regulation of the assessment in the appointment of the board of commissioners of BUMN Insurance, of course the commissioners of BUMN Insurance are people who have gone through the assessment process. If the BUMN Commissioner commits an act that is detrimental to the company, he can be dismissed. In the above regulation the reasons for dismissal of the Commissioner are: Members of the Board of Commissioners/Supervisory Board may be dismissed at any time based on a Ministerial Decree or GMS by stating the reasons. The dismissal of members of the Board of Commissioners/Supervisory Board at any time is carried out if the relevant member of the Board of Commissioners/Supervisory Board is unable to carry out their duties properly; violates the provisions of the articles of association and/or laws and regulations; involved in actions that are detrimental to SOEs and/or the state; take actions that violate the ethics and/or propriety that should be respected as a member of the Board of Commissioners and the Supervisory Board. The role of the Government in selecting and appointing commissioners for BUMN Insurance will determine the continuity of the BUMN insurance company. When in carrying out supervision it is found that the commissioner deviates from the principles of good corporate governance to the detriment of the BUMN insurance company, the Commissioner can be dismissed and replaced in accordance with the above regulations.

Independent commissioners are also very instrumental in the governance of state-owned insurance companies. The basic idea of independent commissioners itself arises from the fact that many commissioners are merely “puppets” of the majority shareholder. Independent commissioners are needed to present the interests of minority shareholders, which sees the situation in Indonesia as urgent. (Alijoyo, Zaini, 2004: 118)

Independent Commissioners are members of the Board of Commissioners who are not affiliated with the Board of Directors, other members of the Board of Commissioners and controlling shareholders, and are free from business relationships or other relationships that may affect their ability to act independently. The existence of independent commissioners will encourage and create a more independent, objective climate and increase fairness as one of the main principles in paying attention to the interests of minority shareholders and other stakeholders (KNKG, 2006). Independent commissioners have the main responsibility to encourage the implementation of good corporate governance principles. This is done by encouraging other members of the board of commissioners to carry out their supervisory duties and provide advice to the directors effectively and can provide added value to the company. Independent Commissioner ensuring that the principles and practices of good corporate governance are adhered to and implemented properly. In relation to good corporate governance, the duties of independent commissioners are:

a. Ensure the transparency and disclosure of the company's financial statements.
b. Strive for fair treatment of minority shareholders and other stakeholders.
c. Disclosure of transactions containing conflicts of interest fairly and fairly.
d. Strive for company compliance with applicable laws and regulations.
e. Ensuring the accountability of the company's organs (company organs, for example, the general meeting of shareholders).

In carrying out his duties, the Independent Commissioner chairs the audit committee and the nomination committee. The audit committee is a committee in charge of conducting an audit of the organization. Meanwhile, the nomination committee is in charge of making a scoring system and providing recommendations on the number of independent commissioners. Based on rational and prudent considerations, an independent commissioner has the right to express opinions that differ from other members of the board of commissioners and his opinions are recorded in the Minutes of the Board of Commissioners' Meeting and if his opinions differ materially, it must be included in the Annual Report.

The existence of an Independent Commissioner in an insurance company is regulated in the Financial Services Authority Regulation Number 73 /pojk.05/2016 concerning Good Corporate Governance for Insurance Companies. In Chapter V, article 19 of the regulation, it is stated that the Company must have at least 3 (three) members of the Board of Commissioners. At least half of the members of the Board of Commissioners of Insurance Company are Independent Commissioners. The Independent Commissioner has the main task of carrying out a supervisory function to voice the interests of policyholders, the insured, participants, and/or parties entitled to benefits. Arrangements for the appointment of the board of commissioners of BUMN companies are regulated in Law Number 19 of 2003 concerning BUMN, Law Number 40 of 2007 concerning Limited Liability Companies. Government Regulation Number 45 of 2005 concerning the Establishment, Management, Supervision and Dissolution of BUMN. Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number Per-10/Mbu/10/2020 concerning Amendments to Regulation of the Minister of State-Owned Enterprises Number Per-02/Mbu/02/2015 is concerning Requirements and Procedures for Appointment and Dismissal of Members of the Board of Commissioners and the Board State Owned Enterprise Supervisor. The appointment of the board of commissioners is through a screening and assessment process. This process is very vulnerable; therefore the Government through the ministries must ensure the competence of the candidates for the board of commissioners, free from various political interests.

Challenges of the Board of Commissioners in Strengthening Good Corporate Governance BUMN Insurance

Business issues are not solely separated from the situation and responsibility to the surrounding community, for that we need GCG principles which are seen as a necessity for our business world to reorganize their business life for the better. According to Saleem Sheikh and SK Chatterjee corporate governance is "as a social contract between the company and the wider constituencies of the corporation which morally obliges the corporation and its directors to take account of the interests of other stakeholders" (Saleem Sheikh, Chatterjee, 1995)

In practice, the challenges faced by BUMN managers in implementing good governance are hampered by three main factors. The first is that there are too many interests from the government which are sometimes contradictory, making it difficult for BUMN management to determine the company's objectivity. Second, management is given limited authority or has too strong a political scent, making it difficult to make objective decisions. Third, management is given an incentive system that is less attractive so that its performance is limited (Pranoto, 2021).

One of the problems that occur in SOEs in Indonesia is their management which is often based on political interests, not profit. This can be seen by referring to the empirical facts where SOEs are often forced to bear losses due to their role as a public service obligation in which SOEs have obligations in addition to pursuing profits as well as serving the community. (Kociubinski, 2014)

SOEs have become a political commodity for the rulers. The position of the board of commissioners or supervisory board is considered not to have a significant role in the organization, so the position is often given to people who have made political contributions to the elected President or people from parties. Certain political parties, even most of them are people who already have certain professions, in the sense that BUMN commissioners are just a side job, not their main job. This has the implication of making the commissioner position one of the positions in the BUMN environment whose function is not running optimally. (Mahardika, 2021)

The implementation of good corporate governance requires a strong commitment from the board of commissioners in supervising the corporate governance. Therefore, the boards of commissioners appointed by the government are truly competent and professional people so that they are able to understand and realize the vision and mission as well as the insurance company's strategy. The board of commissioners must be independent free from political interests so that state-owned insurance companies become healthy and conducive. This is the challenge of the board of commissioners, seen from the insurance company institution, it can be said that this is an institutional challenge.

Improvements to the rules of the company's work mechanism as outlined in policies, standard procedures and other technical guidelines that are always based on GCG principles. So based on the substance (regulation), the imperfect rules of the company's working mechanism are a challenge for the board of commissioners, how the board of commissioners provides advice, suggestions and opinions related to improving policies that are born by state-owned insurance companies. If the Board of Commissioners is truly tested and elected based on their abilities, then this is very urgent in strengthening the governance of the BUMN insurance company.

In practice, the process of aligning the GCG system in the company can be carried out systematically through five structured stages, namely: (Muchayat, 2010: 159).

1. Formulation of governance commitment. It is believed that the implementation of GCG will run well if it is based on a strong commitment from all levels of the company. For this reason, it is necessary to formulate the company's vision, mission and strategy.
2. Improving the governance structure. At this stage the company has done several important things, namely the fulfillment of the number and composition of the board of commissioners and the formation of committees.
3. Improving the governance mechanism. At this stage, improvements are made to the rules of the company's work mechanism as outlined in policies, standard procedures and other technical guidelines that are always based on GCG principles.
4. Socialization and evaluation. To ensure the implementation of GCG implementation, socialization has been carried out, which is not only related to GCG principles but includes socialization of corporate culture, strategic initiatives, and policies.
5. Walk the talk. The previous four stages are certainly meaningless if the implementation of GCG is not carried out in a disciplined and consistent manner which is manifested in concrete actions by all levels of company management.

The socialization and evaluation of the implementation of good corporate governance in state-owned insurance companies is the duty of the board of commissioners, this is one form of concrete action from the board of commissioners. The Board of Commissioners is willing to provide advice to the Board of Directors if in carrying out their supervisory duties; the Board of Directors finds irregularities in managing the company. Article 1 point 6 and article 108 of the Limited Liability Company Law serve as the basis for the Board of Commissioners to provide advice to the Board of Directors in their duties to manage the company. The two articles clearly show the proactive activities of the Board of Commissioners to provide advice to the Board of Directors, regardless of whether or not the advice is requested by the Board of Directors.

CONCLUSION

Arrangements for the appointment of the board of commissioners of BUMN companies are regulated in Law Number 19 of 2003 concerning BUMN, Law Number 40 of 2007 concerning Limited Liability Companies. Government Regulation Number 45 of 2005 concerning the Establishment, Management, Supervision and Dissolution of BUMN. Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number Per-10/Mbu/10/2020 concerning Amendments to Regulation of the Minister of State-Owned Enterprises Number Per-02/Mbu/02/2015 is concerning Requirements and Procedures for Appointment and Dismissal of Members of the Board of Commissioners and the Board State Owned Enterprise Supervisor.

The challenges faced by BUMN managers in implementing good governance are hampered by factors of interest from the government which are sometimes contradictory, making it difficult for BUMN management to determine the company's objectivity. Political interests that influence the appointment of the board of commissioners greatly affect good corporate governance.

RECOMMENDATION

Governance improvement cannot be done by only issuing regulations, but also requires the provision of guidelines, implementation of education and training, socialization, and conducive development that can encourage the implementation of good governance. The board of commissioners must improve its supervisory function and unite steps to strengthen good corporate governance for state-owned insurance companies. So that the implementation of GCG can be maximized. Among them is optimizing the relationship between the board of commissioners and the board of directors. Because, there are still commissioners who do not properly position them, so that the role of commissioners becomes less than optimal.

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