

Duties and Functions of Independent Commissioners in Making Our Company's Governance

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Abstract

The objective of this research is to reveal the role of the independent commissioner to realize Good Corporate Governance in Indonesia. The research method was normative research with conceptual approach, statute approach and case approach. The research result indicated that the role of independent Commissioner is intended to create a climate that is more objective, independent and to maintain fairness and provide a balance between the interests of the majority shareholder and the protection of minority shareholders' interests and the interests of other stakeholder so that all interested parties receive great benefits, especially the formation of situation accordance with the principles of Good Corporate Governance.

Keywords: Independent Commissioner, Role Good Corporate Governance.

1. Introduction

Good corporate governance is a must in Indonesia given the poor perception of the outside world for Indonesia and the high expectation that public enterprises and public enterprises will become the backbone of the Indonesian economy. Admitted or not, so far the impression that Good Corporate Governance is only a revival still felt. However, this should not be considered as a barrier, but it can be a motivator to motivate all the organs of the company to lead the spirit of Good Corporate Governance. The Board of Commissioners plays a very important role in the company, especially in the implementation of Good Corporate Governance. According to Egon Zehnder, the Board of Commissioners is the core of Corporate Governance, which is charged with ensuring the implementation of corporate strategy, overseeing management in the management of the company and forcing the implementation of responsibility. In essence, the Board of Commissioners is a mechanism and oversight mechanism to provide guidance and direction to corporate managers. Given the responsible management to improve the efficiency and competitiveness of the company, while the Board of Commissioners is responsible for the supervision of management, the Board of Commissioners is a center of endurance and enterprise success. One of the efforts that can be made in the accomplishment of Good Corporate Governance in corporate management is through the establishment of an Independent Commissioner who is a member of the company board, especially in public companies. An independent commissioner is a commissioner who is not a member of management, majority shareholder, employee or person who is in direct or indirect contact with the holder holding a controlling interest in the company. Researches on the role of independent commissioners in the accomplishment of Good Corporate Governance in the librarian research did not find research in the form of thesis. In terms of substance, the closest survey of the role of independent commissioners in conducting Good Corporate Governance in Indonesia is (1) Firmansyah conducts research in 2010 entitled "Role of Optimizing the Role of the Internal Auditor in the Application of GCG in PT BNI .tbk ", contained in the Journal of Legal Science Shiar Law, Volume XII, Number 1; (2) Badriyah Rifai, conducting research in 2010 entitled "The Role of Independent Commissioners in Conducting GCG in Public Enterprises," published in Journal of Laws, Volume 16, Number 3; and (3) Djohari Santos conducted a study in 2008 entitled "The failure of the implementation of GCG in public enterprises in Indonesia," published in the Journal of Laws, Number 2, Volume 15. Of the differences of these studies, this study contributes to material thoughts and inputs in terms of the role of independent commissioners in the form of Good Corporate Governance in Indonesia. The objective of this study is to determine the role of independent commissioners in the performance of Good Corporate Governance in Indonesia

2. Research Methods

In line with the problems of this research, the legal research method used is normative legal research with conceptual approach, statutory approach and case approach. The technique of legal materials is done through the study of literature. The legal analysis technique used is legal analysis. Objects or targets that are the data of this study basically revolves around the study of jurisprudence, which focuses on the substance or legal regulation on the role of independent commissioners in conducting Good Corporate Governance in Indonesia.

3. Research and discussion results

In the postwar period of the Cold War, many companies with various types of corporations began to manage corporate governance in an open, systematic, and responsible manner. This is driven by market demand that requires public companies to run their management system in a sound, transparent and auditable way, following

the rampant scandal of the global financial reporting system a few years ago. According to the GCG concept, the company will obtain the maximum corporate value if the functions and tasks of each of the modern business actors can be separated by the following forms: (1) Board of Directors (BOD), provided they work full time without employment. They manage the company through various managerial decisions. (2) Board of Commissioners (BOC), including regular commissioners and independent commissioners and the various committees it establishes. The main function of the BOC is to supervise the management of the company and the functioning of the company in accordance with the principles of the GCG. In order for the functions and duties of the Board of Commissioners (Decoma) to proceed properly, it is necessary to ensure that any Decoma policies and decisions issued do not take the interests of the BOD as an agent or biased in the interests of the owner. In this case, an independent commissioner may play a role in representing minority shareholders. In this regard, to implement the principles of Good Corporate Governance (GCG), today's business world requires an independent commissioner who sits on the company board. This development deserves praise because it shows the existence of consciousness to reorganize well the existence and commercial activities. It is expected that the presence of independent commissioners is not just a symbol, or decoration, there is even a mention as a shock therapy for people who do not mean well to the company. The lack of operation of the independent commissioners should open opportunities for companies to check. Whereas the presence of an independent commissioner is important for the creation of a good organization. In fact, the duty of an independent commissioner is very heavy and has a very great responsibility, even as an angel to bring improvements to the company. For example, during the New Order era, many retired generals who were appointed as commissioners, although they seldom attended the office, nor knew the pros and cons of the company, needed at least one independent commissioner and one deputy commissioner (article 120 paragraph (1) of Law 40, year 2007, relating to the Limited Liability Company (hereinafter UUPT). The notion of an independent commissioner is a member of the board of commissioners who is not affiliated with the directors, other members of the board of directors and the controlling shareholder, and is free from any business relationship or other relationship that may affect his ability to act in a manner acting on behalf of the company. An independent status focuses on the responsibility of protecting shareholders, especially independent shareholders, from fraudulent practices in committing crimes on the capital markets. According to Emmy Yuhassarie, the understanding and arrangement of independent commissioners in Indonesia are relatively new and are still in the process of proper search or positioning, so unnecessary in a hurry to choose an effort to properly understand. You need to study and study seriously and deeply, before you make the rules for the independent commissioner become functional. It is feared that if he is not careful he will be caught up in superficial things and ultimately the company is satisfied only by the presence of these attributes and consequently the next independent commissioner ends up only as an accessory In the UUPT, he regulated and demanded that, in the Company's Bylaws, he put at least one independent commissioner and one deputy commissioner. It is hoped that with the appointment of an independent commissioner he can act as an arbitrator. In addition, independent commissioners may avoid conflicts of interest between majority and minority shareholders. In a company, the commissioner should be a counterweight to the decisions taken by the majority shareholder in order to represent the minority shareholders. This is so that the interests of minority shareholders are not neglected. The commissioner's existence is a new inspiration for players in the capital market, they are expected to bring the voice of minority shareholders into a company that is advertising. Therefore, sipaa alone, who becomes an independent commissioner, must be people with integrity, credibility and professional. Also do not let them bribe you in the interest of the majority shareholders. From the point of view of the law action became the basis of independent commissioners. First, the reference to the position of commissioner in a limited liability company is regulated in Articles 108 to 121 UUPT. Secondly, the provisions of Article 80 of Law 8 of 1995 on Capital Markets, which is responsible for incorrect information and mentions, where commissioners, including those threatened by the article, in signing any documents relating to the delivery of information to the public, in order of registration. Third, the existence of guidelines issued by the National Committee on Good Corporate Governance, in relation to the presence of an Independent Commissioner, in accordance with the General Guidelines of GCG Indonesia Section IV-c, in principle states "the council of commissioners as organs The Board of Commissioners, including the Commissioner-designate, is equivalent. The position of the Commissioners as a member of the Board of Commissioners is the same as that of the Commissioners. Process is to coordinate the activities of the council of commissioners ". The extent to which the Independent Commissioner may be independent and able to reject the influence, intervention, or pressure of the management or major shareholders that are interested in a particular transaction or decision, because the average ownership structure of the issuer is still related to control of the majority of shareholders in the company's implementation, the resilience of independent commissioners not to give up and avoid the element of conflict of interest is a difficult test. Thus, independent commissioners aim to create a more objective and independent climate in order to maintain equity and strike a balance between the interests of majority shareholders and the protection of the interests of minority shareholders, even the interests of other stakeholders. The Independent Commissioner is required by companies in Indonesia, especially for public companies. With the Independent Commissioners, all

stakeholders will benefit greatly, especially in the form of an appropriate situation with the principles of Good Corporate Governance, in which the Council of Commissioners can provide views with a level of independence with greater responsibility. An independent commissioner is ideally a commissioner who is not a member of management, a majority shareholder, an employee or a person who is in direct or indirect contact with the majority shareholder of a company that oversees the company's management.

4. Conclusions

Based on the above discussions, it can be concluded that the role of independent commissioners in achieving Good Corporate Governance in the field of law and legislation in Indonesia aims to create a more objective and independent climate to maintain equity and provide a balance between the interests of majority ownership holders and protection of the interests of minority shareholders, even the interests of other stakeholders. With the existence of Independent Commissioners, all stakeholders have great benefits, especially the formation of a situation appropriate to the principles of Good Corporate Governance.

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