Juridic Review of The Implementation of Good Corporate Governance Principles in Bumn Banks Related to OJK Regulation Number 55/Pojk.03/2016 Concerning Implementation of Governance For Commercial Banks

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Abstract

Corporate Governance, in simple terms, can be interpreted as a system built to direct and control the company so as to create a good, fair and transparent relationship between various parties who have an interest in the company. Companies belonging to the government are also required to apply the principles of Good Corporate Governance, including state-owned banks (BUMN Banks). The research method used in writing this journal is a normative juridical research method, namely research is carried out based on the main legal material by examining theories, concepts, legal principles and legislation related to research. The principles that must be applied in the implementation of Good Corporate Governance in Government-owned Banks (BUMN Banks) in accordance with the provisions of the financial services authority include transparency, accountability, responsibility, independence, and fairness. In the implementation of good corporate governance at banks in Indonesia, there is still an assumption that the implementation of good corporate governance is only a form of compliance with the provisions of company management and not a necessity that is really needed to improve company performance. Good Corporate Governance shows the relationship pattern between Management and all stakeholders, the relationship between Management and the Board of Commissioners and the relationship between Management which is based on ethics and Core Values which is supported by a system, process, work guideline and organization to achieve maximum performance. Consistent implementation of good corporate governance can lead to improvements in both financial and non-financial performance so as to maintain business sustainability and the Company’s long-term goals.

Key words: corporate governance, bank, company

Introduction

GCG is a term that comes from English, namely good which means good, corporate which means company and governance which means regulation. In general, the term good corporate governance is defined in Indonesian as good corporate governance. This term, in the banking world, is defined by good bank governance. Corporate Governance,
simply defined as a system built to direct and control the company so as to create a good, fair and transparent relationship between various parties who have an interest in the company (Faozan, 2013).

BUMN is one of the important economic activity actors in the national economy. State-owned companies along with other economic actors, namely the private sector and cooperatives, are the embodiment of the form of economic democracy that will continue to be developed gradually and sustainably (Kompas Cyber Media, 2022).

The obligation to implement GCG in BUMN has been around for a long time, this can be seen from the issuance of the Decree of the State Minister for State-Owned Enterprises (Meneg BUMN) No. Kep-117/M-MBU/2002 concerning the Implementation of Good Corporate Governance Practices in SOEs, SOEs are required to apply GCG principles. These obligations include consistent implementation and/or making GCG the operational basis for the relevant BUMN. The GCG principles that are required through the decision include the principles of transparency, independence, accountability, responsibility, and the principle of fairness. (Ari, 2022).

The banking industry has stricter regulations than other industries, for BUMN Commercial Banks the implementation of GCG in addition to having to comply with the regulations of the Ministry of BUMN, especially those stipulated in the Regulation of the Minister of State for BUMN Number PER–01/MBU/2011 of 2011 as amended by the Regulation of the Minister of State BUMN Number PER–09/MBU/2012 Year 2012 concerning Amendment to Regulation of the Minister of State for State-Owned Enterprises Number PER–01/MBU/2011 concerning Implementation of Good Corporate Governance in State Owned Enterprises. In addition to complying with regulations issued by the Ministry of BUMN, they must also comply with the regulations of the Financial Services Authority, as regulated in POJK No. 55/POJK.03/2016 concerning the Implementation of Good Corporate Governance for Commercial Banks. In addition, it must also comply with Bank Indonesia regulations in the implementation of GCG principles.

An example of poor implementation of good corporate governance in the Indonesian banking industry can be seen in the case of Century Bank which changed its name to Bank Mutiara and changed back to PT Bank J Trust Indonesia Tbk, where the bank had to be taken over by the Deposit Insurance Corporation (LPS) and designated as the bank failed in 2008 due to the large number of non-performing loans owned by the bank. (Arbaina, n. d.)

With the implementation of Good Corporate Governance, the management of the company will act fairly by protecting the interests of all related parties, so that no party is harmed, especially the shareholders. The managers of the company will not act by prioritizing their own interests even though they have the opportunity to do so, so that the interests of the shareholders will be maintained.

Optimal application of GCG principles benefits that can be felt by the company are increased productivity and business efficiency, increased operational capabilities of the company and accountability to the public. (Investor.Id, 2021)

**Method**

The research method used in writing this journal is a normative juridical research method, namely the research is carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to research, especially POJK No. 55/POJK.03/2016 concerning the Implementation of Good Corporate Governance for Commercial Banks. The research specification is descriptive analysis, namely descriptive research is a simple analytical model and very easy to apply. This method of analysis can also systematically describe a fact and object of research accurately.

**Finding & Discussion**

**Good Corporate Governance (GCG)**

Good Corporate Governance, hereinafter referred to as GCG, are the principles that underlie a company management process and mechanism based on laws and regulations and business ethics. Meanwhile, Good Governance or GCG for Banks is a procedure for Bank management that applies the principles of transparency, accountability, responsibility, independence, and fairness.

The essence of corporate governance is improving company performance through supervision or monitoring of management performance and the existence of management accountability to other stakeholders based on the applicable rules and regulations framework. Good corporate governance is an important step in building market confidence that can encourage more stable and long-term international investment flows. The objectives of implementing Good Corporate Governance include:

a. Creating added value for all interested parties (stakeholders).
b. Ensure that the set targets have been achieved.
c. Ensure that company assets are well maintained
d. Ensuring the company implements healthy business practices
e. Ensure company activities are transparent.
Meanwhile, the direct benefits felt by the company by realizing the principles of good corporate governance are increasing productivity and business efficiency as well as increasing the company's operational capabilities and accountability to the public as well as reducing the practice of corruption, collusion, and nepotism, as well as conflicts of interest. In addition, Good Corporate Governance can encourage more democratic organizational management, more accountability because there is accountability for every action, and is more transparent and will increase confidence that the company can provide long-term benefits (Hidayat, 2020).

The implementation of Good Corporate Governance can make a strategic contribution in creating a healthy business climate, increasing competitiveness and being very effective in avoiding irregularities and preventing fraud and abuse of authority (Sianipar, 2017)

Obligation to Implement GCG in State-Owned Enterprises (BUMN)

State-Owned Enterprises, hereinafter referred to as BUMN, are business entities whose entire or most of the capital is owned by the State through direct investment originating from separated state assets. In article 2 of the Regulation of the Minister of State for State-Owned Enterprises (BUMN) Number PER-01/MBU/2011 concerning the Implementation of Good Corporate Governance in State-Owned Enterprises, it is regulated that BUMN must implement GCG consistently and sustainably in the context of implementing GCG. In this regard, the Board of Directors prepares a GCG manual which includes a board manual, manual risk management, internal control system, internal control system, reporting mechanism for alleged irregularities in the relevant BUMN, information technology governance, and code of conduct (Peraturan Menteri BUMN, 2011a).

The principles of GCG referred to in Ministerial Regulation BUMN Number PER-01/MBU/2011 concerning the Implementation of Good Corporate Governance in State-Owned Enterprises, include: 1) Transparency, namely openness in carrying out the decision-making process and openness in disclosing information. Material and relevant to the company; 2) Accountability, namely clarity of functions, implementation and accountability of organs so that the management of the company is carried out effectively; 3) Accountability, namely conformity in the management of the company to the laws and regulations and sound corporate principles; 4) Independence, namely a condition in which the company is managed professionally without conflict of interest and influence/pressure from any party that is not in accordance with the laws and regulations and sound corporate principles; 5) Fairness, namely justice and equality in fulfilling the rights of stakeholders that arise based on agreements and laws and regulations (Peraturan Menteri BUMN, 2011b).

The existence of BUMN is expected to balance the existence of private companies so that monopoly or control of these production branches can be avoided by the private sector. But in fact, until now there are still BUMNs that have not reached the maximum point in their management, and are still reaping significant losses in several fields. (Sari, n.d.)

With the implementation of GCG in the business world, the government realizes the need to implement and implement good governance in BUMN. The objectives of implementing GCG in BUMN include: 1) maximizing the value of BUMN by increasing the principles of being open, accountable, trustworthy, responsible, and fair so that companies have strong competitiveness; 2) Encouraging the management of BUMN in a professional, transparent and efficient manner, as well as empowering functions and increasing the independence of organs; 3) Encouraging that in making decisions and carrying out actions, organs are based on high moral values and compliance with applicable laws and regulations, as well as awareness of BUMN's social responsibility to stakeholders, including environmental sustainability in the area around BUMN; 4) Increasing the contribution of BUMN in the national economy; 5) Improving the national investment climate; 6) The success of the privatization program. While the benefits that can be obtained from the application of GCG principles in BUMN are improving company performance through the creation of a better decision-making process, increasing company operational efficiency, improving services to stakeholders, making it easier to obtain financing funds that are cheaper and less rigid (because of factors such as trust) which in turn will increase the value of the company (corporate value), increase investor interest in buying the shares of the BUMN in question, if the BUMN has go public. (Rachmawati, n.d.)

Implementation of GCG in State-Owned Banks In accordance with POJK No. 55/POJK.03/2016 concerning the Implementation of Good Corporate Governance for Commercial Banks.

State-owned banks (BUMN banks), in addition to complying with regulations issued by the Ministry of BUMN, must also comply with and comply with regulations issued by the Financial Services Authority, which acts as the bank's supervisor. In this study the author tries to take the example of the implementation of GCG at PT. Bank Mandiri Persero (Tbk). Chapter 2 of POJK No.55/POJK.03/2016 concerning the Implementation of Good Corporate Governance for Commercial Banks stipulates that Banks are required to apply the principles of Good Governance in every Bank's business activities at all levels or levels of the organization. The application of this principle is at least manifested in:
a. Implementation of the duties and responsibilities of the Board of Directors and the Board of Commissioners, which refers to the articles of association of the Bank and the laws and regulations, including the provisions governing the implementation of these duties and responsibilities.

b. Completeness and implementation of the duties of committees and work units that carry out the internal control function; The purpose of establishing the committee is, among others, to assist the smooth running of supervisory duties by the Board of Commissioners, while the establishment of a work unit that performs control functions such as the internal audit work unit, compliance work unit, and the Bank's risk management work unit is intended, among other things, to support the control task by the Board of Directors.

c. Implementation of compliance, internal audit and external audit functions

d. Implementation of risk management

e. Provision of funds to related parties and provision of large funds

f. Strategic plans, which include both a corporate plan and a business plan; and

g. Transparency of financial and non-financial conditions. Transparency includes aspects of disclosure of Bank information that are both qualitative and quantitative to the Stakeholders.

The application of the principles of Good Governance in each of the Bank's business activities, including the preparation of the vision, mission, strategic plans, implementation of policies, and internal control measures at all levels or levels of the organization.

Governance in the banking industry must always be based on 5 (five) basic principles. First, transparency, namely openness in presenting material and relevant information and openness in carrying out the decision-making process. Second, accountability, namely the clarity of functions and implementation of the responsibilities of the Bank's organs so that their management runs effectively. Third, accountability, namely compliance with Bank management with laws and regulations and sound Bank management principles. Fourth, independence, namely the management of the Bank in a professional manner without any influence or pressure from any party. Fifth, fairness, namely justice and equality in fulfilling the rights of the Stakeholders that arise based on agreements and statutory regulations. In order to implement these five basic principles, Banks are required to be guided by various minimum provisions and requirements as well as guidelines related to the implementation of Good Corporate Governance, (OJK).

Based on the research, the implementation of GCG at PT Bank Mandiri (Persero) Tbk includes aspects of (1) Governance Structure, namely the GCG structure and infrastructure consisting of Organizational Structure, Composition of the Board of Directors and Board of Commissioners, and others; (2) Governance Process, namely the process of implementing GCG principles through the implementation of GCG practices and Information Disclosure. And (3) Governance Outcome, namely the results of the implementation of GCG principles as outlined in the GCG report and assessment, as well as the awards received. The application of the principles of GCG itself which includes Transparency, accountability, responsibility, independence, fairness can be seen from, among others (Bank Mandiri, n.d.) :

a. Transparency

1. Bank discloses punctually, properly, clearly, accurately and comparable as well as accessible information to the stakeholders.
2. Bank discloses information including but not limited to vision, mission, business target, bank’s strategies, financial and non-financial conditions, structures of Board of Directors and Board of Commissioners of the Bank, shareholding, remuneration and other facilities for Board of Directors and Board of Commissioners, majority shareholders, risk management, monitoring system and internal control, implementation of compliance function, system and implementation of GCG as well as information and material facts affecting investors’ decisions, etc.

b. Accountability

1. Bank will specify the accountable business target and strategies for the stakeholders
2. Bank defines distinct tasks and responsibilities for each organ members of Board of Commissioners and Board of Directors as well as all inferior levels in accordance with vision, mission, Corporate Values, business target and Bank's strategies.
3. Bank must ensure that each member of Board of Commissioners and Board of Directors as well as all inferior levels acquire competencies according to their respective responsibilities and understand their roles in implementation of GCG, etc.

c. Accountability

1. Bank relies on prudential banking practices and warrants the compliance with the applicable regulations
2. Bank as a good corporate citizen pays it attention to environment and perform proper social responsibilities.
d. Independency

1. Bank keeps off the occurrence of improper domination by any stakeholders and not affected to partial interest as well as free from any conflict of interest.
2. Bank will take objective decision and free of any pressures from any parties.

e. Fairness

1. Bank will take into consideration of all stakeholders based on equality and fairness principles (equal treatment).
2. Bank gives opportunities to all stakeholders to give input and submit opinion for interest of Bank as well as open access to information according to openness principle.

Structures under Corporate Governance at PT. Bank Mandiri (Persero) Tbk consist of Shareholders and General Meeting of Shareholders (GMS), Board of Commissioners, Committees under Board of Commissioners, Board of Directors, Committees under Board of Directors, Directors in charge for Compliance Function and Corporate Secretary. According to OJK Regulation number 55/POJK.03/2016, Governance Process among others, include Confidential Information, Bank Secrecy and Conflict of Interest, In maintaining the Good Corporate Governance Principles, Bank determines the procedures related to Information, Bank Secrecy, and Conflict of Interest.

Bank delivers to Capital Market Authority and announce to public punctually, accurate, and objective information on the events, information, and material facts that may arise affecting securities values or investment decision in compliance with the applicable Capital Market regulations. Bank also provide information Annual Reports containing Material Financial Data Summary, Analysis and Management General Description, Audited Financial Statements, Management Letter as well as other material information.

Bank's Strategic Plan.

GCG Roadmap at PT. Bank Mandiri (Persero) Tbk continues to experience improvements and improvements, following the GCG roadmap for the last three years, namely the period from 2019 to 2021:

a. 2019; GCG rating by The Indonesian Institute for Corporate Directorship (IICD) in the 2019 ASEAN CG Scorecard event, Bank Mandiri won the "The Best Overall" category; The Corporate Governance Perception Index (CGPI) is a research program and ranking of GCG implementation conducted by an independent institution, namely The Indonesian Institute for Corporate Governance (IICG). Bank Mandiri has participated in the CGPI assessment for 16 (sixteen) consecutive years since 2003. In 2019 at the 2019 Indonesia Most Trusted Companies Award organized by IICG, Bank Mandiri again won the title of "Highly Trusted" 13 (thirteen) times. consecutive; Bank Mandiri is included in the Top 50 PLCs of ASEAN and Top 3 PLCs of Indonesia; Improvement of the Composition of the Integrated Governance Committee so that the majority of its members are Independent Commissioners, so that it complies with the ACGS criteria.

b. 2020; Bank Mandiri won The Best GRC Overall For Corporate Governance & Performance held by Business News Indonesia Magazine in collaboration with the CEO Forum; Bank Mandiri's participation in the Corporate Governance Perception Index (CGPI) ranking organized by IICG, again won the title of "Highly Trusted" 14 (fourteen) times in a row; Bank Mandiri is included in the ASEAN Asset Class in the ASEAN Corporate Governance Scorecard (ACGS) ranking by the ASEAN Capital Market Forum; Bank Mandiri has adjusted the composition of the
Board of Commissioners with the presence of a female Independent Commissioner, so that it is in accordance with the ACGS criteria.

c. 2021; Bank Mandiri won The Best GRC Overall for Corporate Governance & Performance 2021 (Digital & Wholesale Banking) in the 2021 GRC & Performance Excellent Award event held by Business News Indonesia Magazine in collaboration with the CEO Forum; Bank Mandiri won The Best Chief Compliance Officer 2021 at the 2021 GRC & Performance Excellent Award; PT. Bank Mandiri (Persero) Tbk won The Best Chief Risk Management Officer 2021 in the 2021 GRC & Performance Excellent Award event; Bank Mandiri won The Best Chairman in Banking Industries 2021 at the 2021 GRC & Performance Excellent Award; PT. Bank Mandiri (Persero) Tbk again won the title of "Highly Trusted" in the 2020 Corporate Governance Perception Index (CGPI) research and ranking program held in 2021 by The Indonesian Institute of Corporate Governance (IICG) for 15 (fifteen) consecutive times. ; Bank Mandiri won the Best Financial Sector category in the Top 50 Big Capitalization Public Listed Companies organized by The Indonesian Institute for Directorship (IICD); Bank Mandiri has refined the Integrated Governance Committee Charter based on Decree Number KEP/KOM/011/2021 dated November 15, 2021.

Implementation of GCG at PT. Bank Mandiri (Persero) Tbk also has a positive impact on the company’s finances, this can be seen in the consolidated net profit of IDR 28.03 trillion in 2021, growing 66.83% yoy compared to 2020 of IDR 16.80 trillion. In addition, the NPL ratio will be 2.72% in 2021, down 38 bps yoy compared to 2020 at 3.10%. Even though PT. Bank Mandiri (Persero) Tbk has implemented GCG in accordance with the provisions of POJK and SEOJK but there are still shortcomings, namely there are still violations of regulatory compliance, although the frequency of these violations continues to decrease every year.

**Conclusion**

From the discussion above, the writer concludes the following:

a. Good Corporate Governance The company shows a pattern of relationship between Management and all stakeholders, the relationship between Management and the Board of Commissioners and the relationship between Management which is based on ethics and Core Values which is supported by a system, process, work guideline and organization to achieve maximum performance.

b. State-owned Commercial Banks (BUMN Banks) are required to apply GCG principles in running their business as regulated in the regulation of the Ministry of SOEs PER- 01/MBU/2011 concerning the Implementation of Good Corporate Governance in State- Owned Enterprises, in addition to complying with the regulations of the Financial Services Authority, as regulated on POJK No. 55/POJK.03/2016 and SEOJK No.13/POJK.03/2017 concerning the Implementation of Good Corporate Governance for Commercial Banks, and must also comply with Bank Indonesia regulations in the implementation of GCG principles.

c. The application of GCG principles to the Bank shall at least contain the matters stated in the provisions of Article 2 of POJK No. 55/POJK.03/2016. The implementation of GCG includes the preparation of the vision, mission, strategic plans, implementation of policies, and internal control measures at all levels or levels of the organization

d. Implementation of GCG at PT Bank Mandiri (Persero) Tbk includes aspects:

   1. Governance Structure, namely the GCG structure and infrastructure consisting of the Organizational Structure, the Composition of the Board of Directors and the Board of Commissioners, and others.
   2. Governance Process, namely the process of implementing GCG principles through the implementation of GCG practices and Information Disclosure; And
   3. Governance Outcome, namely the results of the implementation of GCG principles as outlined in the GCG report and assessment.

e. Bank Mandiri has been consistent in implementing good corporate governance although until now there are still violations of regulations, Bank Mandiri guarantees an increase in quality in the implementation of governance, this is an indicator of governance outcome, this can be seen from the GCG roadmap and an increase both financial and non-financial performance as well as social responsibility to the community in a sustainable manner so as to maintain business sustainability & the Company’s long-term goals.

**References**


Financial Services Authority Circular Letter (SEOJK) Number 13/SEOJK.03/2017 Year 2017 Implementation Of Governance For Commercial Banks

Financial Services Authority Regulation (POJK) Number 55/POJK.03/2016 Year 2016


Regulation of the Minister of BUMN Number PER01/MBU/2011 of 2011 as amended by Regulation of the Minister of State for BUMN Number PER–09/MBU/2012 of 2012 concerning Implementation Of Good Corporate Governance In State-Owned Enterprises.
