Asian Journal of Management Entrepreneurship and Social Science
ISSN: 2808 7399
https://ajmesc.com/index.php/ajmesc Volume 03 Issue 03

Digitalization Of The Board Of Commissioners Supervision Program Through The Application Of Good Corporate Governance Principles

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Abstract

Company management in accordance with the Good Corporate Governance (GCG) principles can actualize good implementation of the duties and functions of every organ in the Company complying with the articles of association governing them. The Company's organs consist of the General Meeting of Shareholders (GMS), the Board of Commissioners (BOC), and the Board of Directors (BOD). BOC holds a fiduciary duty which in its entirety holds the supervisory function, and acts as an advisor to the BOD of the Company. The implementation of BOC's positions must be based on the best interests of the Company and not intended for personal interests. Currently, supervision on the implementation of BOC's positions which has been carried out manually so far is considered less than optimal due to the fact that there are still many cases of BOC carrying out their positions contradicting with the laws and regulations, causing material and immaterial losses to the Company. The implementation of GCG principles can facilitate the supervision of the BOC's position and avoid abuse of authority of BOC's position, but in fact the implantation of GCG principles has not been implemented properly by companies. Digitization of BOC's supervisory program through the implementation of GCG principles in Company's management by the BOD is considered the right solution to overcome these legal matters. Therefore, legal issues raised and analyzed in this study includes the implementation of GCG digitization associated with the supervision program on the *implementation of BOC's positions by the BOD in gaining Company's legal benefits, and regulatory reformulation regarding GCG digitization program implemented in supervising the BOC's positions based on the prevailing regulations in Indonesia. This study uses a normative juridical analysis method through a statutory approach and prescriptive analysis techniques. The concluded analysis results that digitizing the application of GCG principles related to supervising the BOC's position makes it easier for the BOD to provide tighter supervision in actualizing Company's legal benefit. Implementation on the digitization of GCG program is realized through advanced technology while still complying to Indonesian prevailing laws. Regulatory reformulation by the Government regarding BOC's supervision digitization program must refer to the 5 (five) principles of GCG, the Electronic Information and Transactions Law, the Company Law, and the Job Creation Law in Indonesia. The regulation shall comply the existence of a special supervisory agency in charge of overseeing the implementation of GCG principles regarding Company's digital supervision program on BOC's positions by BOD.*

Keywords: Digitalization, Good Corporate Governance, The Board Of Commiioners Supervision, Legal Benefit

1. INTRODUCTION

The world is currently in the information century where the existence of information technology has a very important role in human life. It is undeniable that the development of technology and information has had a positive and negative impact on various aspects, including business activities. One of the positive impacts that can be done is to implement a digitalization system in carrying out business activities.

In its implementation, not all activities have tried to implement digitalization, one of which is related to the supervision model. Supervision is important to be carried out so that all work charged to the implementer can be carried out appropriately. In relation to business activities in a Company, the supervisory function is carried out by the Board of Commissioners as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the Company Law).

Referring to the Company Law, the company's organs consist of the General Meeting of Shareholders (GMS), the Board of Commissioners, and the Board of Directors, as well as in Law Number 19 of 2003 concerning State-Owned Enterprises (hereinafter referred to as the SOE Law) which states that the state-owned company organ consists of General Meeting of the Shareholders (hereinafter referred to as GMS), Board of Directors and Commissioners. The GMS has authority not granted to BOD or BOC. This authority is limited by law and/or by the articles of association. This provision reminds us that although the GMS has authority that is not given to the Board of Directors or the Board of Commissioners, this authority is limited by the law and the articles of association, so it cannot be carried out arbitrarily in carrying out its position, such as violating the law and the provisions of the articles of association.

The company's organ other than the GMS is the Board of Directors. Provisions related to the Board of Directors are regulated in Article 1 number 5 of the Company Law. The Board of Directors is an organ that is responsible for the day-to-day management of the company both inside and outside the court in accordance with the provisions of the articles of association. It can be said that the members of BOD are employees of the company, though has full authority in carrying out management related to the purposes and objectives of the company, therefore the Board of Directors are also authorized to represent the company inside and outside the court.

Furthermore, the Board of Commissioner is an organ that has the function and duty to supervise and provide advice to the Board of Directors in carrying out company management activities. In carrying out their duties, the three organs of the company must act by the interests and objectives of the company, to provide the greatest benefit to the company and minimize losses received by the company. One form of loss that can be accepted by the company is the practice of multiple positions.

Currently, the supervision of the Board of Commissioners is still carried out manually, so in its implementation, manual supervision still has many shortcomings, where it is proven that there are various cases of the Board of Commissioners and Directors who are negligent in carrying out their duties and are not in accordance with the principles of *Good Corporate Governance* (hereinafter referred to as GCG). GCG can be interpreted as a system that is used to direct and control a company, especially companies owned by the Government such as SOEs in order to create a good corporate governance mechanism, foster fairness, and maintain a balance between the authority owned by the company through a form of responsibility to *stakeholders*. Eventually, GCG is seen as a solution for improving the system from the company's operational management to a better direction.

The implementation of GCG in Indonesia itself is actually a starting point as well as awareness for all stakeholders. A sign that the company's activities or activities that occur must be based on good governance and not only solely to achieve the objectives of the interests of stakeholders in the company, but the activities that occur within the company must also have a wider impact, especially on society and the state. The maximum implementation of GCG is expected to be a mechanism for the company concerned to be more responsible both internally and externally.

In general, companies that implement GCG well and consistently will have a more stable state, both internally and externally because of the company's ability to properly accommodate all stakeholders' interests. Indirectly, this stable and robust company will also have the ability to be committed to participating in sustainable economic development in order to improve life and the environment, that is beneficial to both the company itself, the local community and society in general.

The main objective of GCG is to create a system of checks and balances to prevent the misuse of company resources and still encourage company growth (Nurainy, Nurcahyo, 2013). In fact, an excellent GCG must provide appropriate incentives to pursue goals, meet the interests of the company, and shareholders, and facilitate effective supervision.

In the implementation order, *checks and balances* in a company, especially in SOEs, are often difficult to achieve. There were several cases where the company's organs held concurrent positions as directors and commissioners. The appointment of commissioners who are supposed to correspond to the background of competence is often not aligned. The results of previous studies prove that the appointment of the Board of Commissioners in SOEs does not have clear indicators. As a result, the amount of authority assumed by the Board of Commissioners in carrying out supervisory functions has not been carried out effectively.

Based on the issues described above, this paper will focus on the implementation of GCG digitalization for the supervision program of the position of the Board of Commissioners to benefit the company and reformulation of regulations regarding the digitization of the GCG program in supporting the supervision of the Board of Directors to the Board of Commissioners digitally in accordance with applicable regulations in Indonesia.

2. RESEARCH METHODS

This research uses normative juridical methods, namely legal research methods carried out by examining library materials or secondary data. Legal research or literature includes research on legal principles and legal comparisons. (Soerjono Soekanto, 2015). Specifically, the approach method used is the statutory approach, which is carried out by reviewing the laws and regulations related to the legal issues raised.

The materials used in this study are secondary materials as the main source, including theories, concepts, and laws and regulations related to GCG principles, company organs, and Laws and Regulations, such as Law Number 19 of 2003 concerning State-Owned Enterprises Law Number 40 of 2007 concerning Limited Liability Companies, and Law Number 12 of 2011 concerning the Establishment of Laws and Regulations.

Data collection is carried out through library research activities, documents, and archives in order to obtain a theoretical basis in the form of opinions, as well as to obtain information both in the form of formal provisions and through existing official texts. (Hadari Namawi, 1992)

The data analysis used in this study is a qualitative approach, that is, the research target studied and studied is a complete research object. (Sri Mamudji, 2005) A qualitative approach focuses on the general principles underlying the realization of units of symptoms that exist in human life or patterns that are analyzed in socio-cultural symptoms by using the culture of the community concerned to obtain an idea of the prevailing patterns. These patterns are then analyzed using objective theory. (Burhan Ashofa, 2004)

In drawing conclusions, this legal research will use inductive reasoning. Inductive reasoning is a way of thinking to draw a general conclusion from individual cases. The drawing of conclusions begins from known positive legal norms and will end with the discovery of legal principles or legal doctrines.

3. RESULTS AND DISCUSSION

3.1 The Urgency of Digitalization of GCG for Board of Commissioners Supervision

A study conducted by the *Asian Development Bank* (ADB) showed several factors that contributed to the crisis in Indonesia. *First*, a high concentration of corporate ownership; *second*, the ineffectiveness of the supervisory function of the board of commissioners; *thirdly*, inefficiency and low transparency regarding procedures for controlling company mergers and acquisitions; *fourth*, too high dependence on external funding; and *fifth*, inadequate oversight by creditors. The efforts that can be made by the Government in overcoming this are by implementing GCG. (Mas Ahmad Daniri, 2005)

In practice, Indonesia's performance in terms of law enforcement and *corporate governance* culture is still relatively low. In addition, there are still several obstacles that need to be paid attention to jointly by the pillars of *governance*, namely the government, business actors, and the community. The implementation of the GCG concept in accordance with Indonesian culture is to strengthen the 5 principles of GCG (*Transparency, Accountability, Responsibility, Independency, and Fairness*) which are implemented continuously and periodically evaluated by each pillar of GCG implementation itself, namely the government, business actors and the community.

In general, the explanation of the five basic principles of GCG is as follows: (Thomas S Kaihatu, 2006)

a. *Transparency,* namely openness in carrying out the decision-making process and openness in presenting material and relevant information about the company.
b. *Accountability,* namely clarity of functions, structures, systems, and accountability of company organs so that company management is carried out effectively.
c. *Responsibility*, namely conformity (compliance) in the management of the company to sound corporate principles and applicable laws and regulations.
d. *Independency*, which is a condition where the company is managed professionally without conflict of interest and influence/pressure from the management that is not by applicable laws and regulations and sound corporate principles.
e. *Fairness* (equality and fairness), namely fair and equal treatment in fulfilling the rights of stakeholders arising based on agreements and applicable laws and regulations.

In the end, the essence of GCG is the improvement of the company's performance through supervision of the performance of the Board of Directors by the Board of Commissioners, and the accountability of the Board of Directors and Commissioners to other stakeholders, based on the framework of applicable rules and regulations. Article 1 number 5 of the UUPT explains that the company's organs that are authorized and fully responsible for the management of the company for the purposes and objectives of the company are the Board of Directors. In carrying out its duties, the Board of Directors is supervised by another company organ, namely the Board of Commissioners. The BOC is responsible for overseeing management tasks. Thus, the Board of Directors must also provide information to the Board of Commissioners and answer matters submitted by the Board of Commissioners. In this case, the Board of Commissioners should not involve itself in management tasks and should not represent the company in transactions with third parties.

In relation to GCG, the Board of Commissioners plays a very important role in the company. Quoting the *Forum for Corporate Governance in Indonesia*, the Board of Commissioners is the core of *corporate governance* which is tasked with ensuring the implementation of the company's strategy, supervising management in managing the company, and requiring the implementation of accountability. The ineffective role of the Board of Commissioners in carrying out its functions, namely supervision, can have an impact on losses for the company to cause a crisis for the company. (Sulistyanto and Wibisono, 2003).

The following describes the stages of analysis of the company's situation and condition, and the level of company readiness in implementing GCG in general and manually, as follows: (Thomas S Kaihatu, 2006)

a. Preparatory Stage

This stage consists of 3 main steps: *awareness* building, GCG *assessment*, and GCG *manual building*. *Awareness building* is the first step to building awareness about the importance of GCG and joint commitment to its implementation. This effort can be done by asking for the help of independent experts from outside the company. This form of activity can be carried out through seminars, workshops, and group discussions.

GCG *Assessment* is an effort to measure or rather map the condition of the company in determining current GCG. This step is necessary to ensure the starting point of the GCG implementation level and to identify appropriate measures to prepare the infrastructure and company structure that is conducive to the effective implementation of GCG. In other words, GCG *assessment* is needed to identify what aspects need attention first, and what steps can be taken to make it happen.

GCG *manual building* is the next step after the GCG *assessment* is carried out. Based on the results of mapping the level of company readiness and efforts to identify priorities for its implementation, the preparation of manuals or guidelines for the implementation of GCG can be prepared. Manual preparation can be done with the help of independent experts from outside the company. This manual can be distinguished between a manual for the organs of the company and a manual for the entire member of the company, covering various aspects such as:

1. Company's GCG Policy
2. GCG guidelines for company organs
3. Code of conduct
4. Audit *committee charter*
5. *Disclosure* policy and transparency
6. Risk management policy and framework
7. Implementation roadmap

b. Implementation Phase

After the company has manual GCG, the next step is to start implementation in the company. This stage consists of 3 (three) main steps, namely:

1. Socialization is needed to introduce to all companies various aspects related to GCG implementation, especially regarding GCG implementation guidelines. Socialization efforts need to be carried out with a special team formed for it, directly under the supervision of the president director or one of the directors appointed as GCG *champions* in the company.
2. Implementation, namely activities carried out in line with existing GCG guidelines, based on the roadmap that has been prepared. Implementation must be *a top-down approach* involving the company's board of commissioners and directors. Implementation should also include change management efforts to oversee the process of change brought about by GCG implementation.
3. Internalization, that is, the long-term stage in implementation. Internalization includes efforts to introduce GCG in all business processes of the work company and various company regulations. With this effort, it can be ensured that the implementation of GCG is not just a surface or just a compliance that is *superficial* but is reflected in all company activities.

c. Evaluation Phase

The evaluation stage is a stage that needs to be carried out regularly from time to time to measure the extent to which the effectiveness of GCG implementation has been carried out by asking independent parties to conduct implementation audits and scoring of existing GCG practices. Many consulting companies can provide such audit services, and in Indonesia, several companies do *scoring*. Evaluation in the form of *assessment*, audit, or *scoring* can also be carried out mandatory, for example as applied in the SOE's environment. Evaluation can help companies remap the condition and situation as well as the company's achievements in the implementation of GCG so that it can strive for necessary improvements based on the recommendations provided.

In its implementation, research results prove that the supervision carried out by the supervisory board with various stages as described above in fact still has various shortcomings and causes losses to the Company. Conflict of interest becomes one of the impacts that are difficult to avoid when someone holds concurrent positions. The link between a person's role in an organization and a conflict of interest can be identified when the effects of a person's inherent interests distort the role the institution expects of that person. Furthermore, conflicts of interest can be transformed into organizational corruption if there is cooperation and understanding to cover, protect, and even exploit conflicts of interest experienced by individuals in institutions. This can only be anticipated by understanding that conflicts of interest are not isolated, singular, and dyadic phenomena but are connected, viral, and multi-stakeholder.

The urgency of digitizing supervision carried out by the Board of Commissioners is very important, so that monitoring can be carried out quickly and accurately. So far, the supervision carried out by the Board of Commissioners on the management of the company by the Board of Directors has been carried out manually, in the sense that it requires the physical presence of the parties, both the Board of Commissioners and the Board of Directors.

The meeting mechanism that was held physically began to get new breakthroughs when the COVID-19 pandemic occurred in 2020-2021, where there were restrictions on holding physical meetings with the Indonesia Large-Scale Social Restrictions policies. This requires the Board of Commissioners and Board of Directors to come up with a breakthrough whereby meetings can be held using online media such as Zoom Meetings. This has an impact on the Board of Commissioners to continue to upgrade themselves and get used to technological developments.

Supervision which is carried out manually, generally runs less effectively, because in joint meetings of the Board of Commissioners and the Board of Directors, the Board of

Directors generally submits a version of the performance report from the Board of Directors, without the Board of Commissioners being able to guarantee the accuracy of the data submitted. With regard to data, to ensure that all information requested by the Board of Commissioners can be conveyed, it is necessary to have system connectivity between the Board of Commissioners and the Board of Directors related to company management. The information needed by the Board of Commissioners is related to financial performance, operational performance, GCG performance, compliance performance, risk management performance and audit supervision performance.

The key to the ease of providing data can be bridged with digital applications that ensure the Board of Commissioners can monitor this performance. This is not difficult, considering that a similar process can be developed by the Information Technology section which is provided for the Board of Directors.

The concern that arises is the existence of confidentiality, but the big question is, is it necessary to have company secrets related to the Board of Commissioners? Answering this question must be returned to the legal basis of carrying out the duties of the Board of Commissioners which states that the Board of Commissioners can see the necessary books, data and information related to the management of the Company by the Board of Directors.

The digitization of supervision carried out by the Board of Directors actually makes it easier for the Board of Directors to ensure that every action taken by the Board of Commissioners fulfills GCG principles and can be measured in every implementation. Digitalization of the Board of Commissioners facilitates the decision-making process, both in terms of the speed of the decision-making process and the accuracy of the actions taken.

3.2 Reformulation of Regulations in the context of Digitalization of GCG

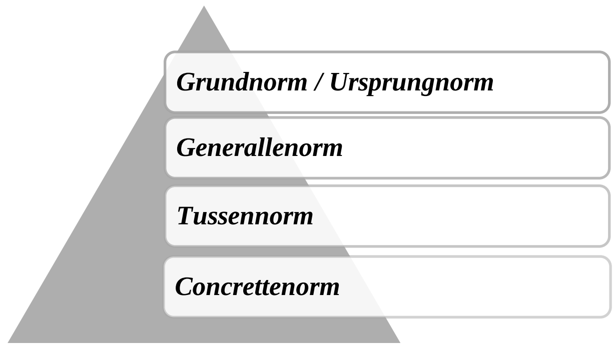
The increasingly significant development of information technology encourages all parties to keep up with the times. One of the efforts that can be done is to encourage *digital governance* or online governance. In the era of digitalization, all parties, both agencies, and individuals can more easily manage and develop services and goods, human resources can apply digital governance in managing business and work, so that every job can be done quickly and in *real-time*, supporting the occurrence of public transparency supported by the application of the concepts of efficiency, innovation, focus, equality, inclusiveness, and control, which is a necessity in today's era.

Everyone can develop technical and academic skills to be able to compete professionally in the global competition and the era of digitalization. Before using many digital technologies, people should understand some of the visions of digital, namely a National Transformation Program with Strengthening the Digital Society and Knowledge of the Digital Economy Sustainably. This vision is geared towards achieving goals including 1) Digital *Infrastructure as a Utility to Every Citizen, 2) Governance & Services on Demand and 3) Digital Empowerment of Citizens*.

Digitalization to supervise the Board of Commissioners is considered necessary considering the ineffectiveness of manual supervision. In realizing the digitalization of GCG, a strong legal umbrella is needed, as the *status quo*, no one regulates the digitization of GCG. In this case, the author proposes to form a regulation in the form of implementing regulations, namely Government Regulations related to the digitization of GCG. However, revisions to the Company Law and/or the SOE Law still need to be carried out, considering the absence of delegation of authority governing the digitization of GCG.

Revision on the Company Law and/or the SOE Law needs to be done first before forming a government regulation on the digitization of GCG, because in Legal Science legislation there is a hierarchy of legal norms or levels of legal norms. According to Hans Kelsen, legal norms are tiered and multi-layered in a hierarchy (order). The legal system, especially the legal system personified in the form of the state, is not a system of norms with each other coordinated alone, which stand parallel or equal, but rather a system of sequences of norms of different levels. That is, a lower norm applies, sourced, and is based on an even higher norm, a higher norm applies, is sourced, and is based on a higher norm, and so on until a norm that cannot be traced further and is hypothetical and fictitious i.e. the basic norm. (Hans Kelsen, 1995)

The basic rule is called *grundnorm* or *ursprungnorm*. *Grundnorm* are legal principles that are abstract, general, and hypothetical, then move to *generallenorm* (general rules), which are further posited into *concrettenorms* (real norms). (I Gde Pantja Astawa, 1990) Ni'matul Huda analyzes that real norms are more individual. Since there are positive norms that are "intermediaries" of basic norms with individual norms, they are also called intermediate norms (*Tussennorm*). (Ni'matul Huda, 2006)



[Figure 1 - Hierarchy of norms according to Hans Kelsen]

If contextualized with the hierarchy of laws and regulations in Indonesia, it can be known the hierarchy of laws and regulations as stipulated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations as follows:

a. Constitution of the Republic of Indonesia of 1945;
b. Provisions of the People's Consultative Assembly;
c. Government Acts/Regulations in Lieu of Laws;
d. Government Regulations;
e. Presidential Regulation;
f. Provincial Bylaws; and
g. District/City Bylaws.

In addition to the seven regulations above, there are several 12 types of regulations that are recognized for their existence and have binding legal force as long as they are ordered by higher laws and regulations or based on authority.

Another reason related to the digitization of GCG needs to be done by going through the revision of the law first because referring to the doctrine presented by Bagir Manan, five things underlie the formation of the law, including:

a. Order of the Constitution of the Republic of Indonesia 1945;
b. The embodiment of the Sovereignty of the people;
c. Updating established laws or parts of existing laws;
d. Already formed statutory orders; and

If contextualized with the digitalization of GCG, to eradicate duplicate positions and optimize GCG principles, the reason for the revision of the PT Law and/or the SOE Law is to update the laws that have been formed. In this case, Article 25 and Article 26 of the SOE Law explicitly explain that the board of directors and the board of commissioners are prohibited from concurrent positions. The change that the author proposes is to add a clause explaining the digitization of GCG for the board of commissioners' supervision program. In addition, the draft amendments to the PT Law and/or the SOE Law need to include substance related to the authority of delegation to form implementing regulations related to the digitalization of GCG in the form of government regulations.

Furthermore, the author's reason for pouring out the digitization of GCG for the supervision of the board of commissioners in more detail is regulated in a Government Regulation considering that the government's content material contains content material that is delegated in nature. That is, the content material of a Government Regulation contains the content material for carrying out the Act as it should be. Government Regulations are classified as *Verordnung* (Implementing Regulations) because their content material is formed as a result of the delegation of authority to form regulations carried out by higher laws and regulations to lower laws and regulations (sourced from the authority of delegation). As for what is meant by delegation authority according to Maria Farida is implementing regulations and autonomous regulations located under laws that function to organize the provisions in the law. (Maria Farida, 2007).

The purpose of the delegation authority is basically so that the provisions in law can be implemented. A regulation can be said to be a delegation regulation as long as the basis for its formation is still within the corridors of the legislation above it, therefore in fact the authority of the delegation to form regulations does not always have to be seen from explicit delegation but can also be seen from the factual need to form delegation regulations, although not expressly delegated by the legislation. To the extent that the factual need arises to implement the provisions in the higher Legislation, it can be said that the regulations to be formed are delegate regulations or implementing regulations.

The substance of the Draft Government Regulation on the Digitization of GCG in general will contain related to the optimization of the use of technology in carrying out supervisory functions carried out by the Board of Commissioners, the prohibition of concurrent positions along with sanctions consisting of administrative sanctions and fines. Through the digitalization system, it is hoped that GCG principles can be implemented, and be able to create a good governance climate.

4. CONCLUSION

Based on the results of research that has been carried out, it can be concluded that digitalization the supervision of the Board of Commissioners is urgent to implement in the current era. This digitalization effort is carried out to adjust to the current needs of the industry and improve the GCG assessment system which is currently still carried out manually. This digitalization system will later be carried out using a mechanism that resembles One-Stop Integrated Service so that the supervisory function can be carried out better.

The legal vacuum related to the digitalization of GCG can be answered by revising the SOE's Law and/or the Company Law. The revision on the two laws needs to be carried out first before designing more detailed implementing regulations governing the digitization of GCG. This is done considering that Indonesia adheres to the Hierarchy of Laws and Regulations where the position and material content of the law is higher and broader than government regulations, so efforts to form GCG implementing regulations need to go through a revision process of the SOE Law and/or the Company Law, then the two laws will delegate the authority to form detailed government regulations related to the digitization of GCG for the supervision of the Board of Commissioners.

The main goal and hope is to create a digitalization of the supervisory system for the Board of Commissioners by the Board of Directors which can make the supervisory function more effective and measurable through analytical data presented on the dashboard to appoint the Board of Commissioners in the Company, while still referring to GCG principles.

5. AUTHOR'S SHORT BIO

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