



Principles of Good Corporate Governance in Law Number 40 Year 2007 Concerning Limited Liability Companies

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Abstract

The study discusses the principles of good corporate governance in law number 40 of 2007 concerning Limited Liability Companies. The main problems in this study include whether there are norms governing the principles of good corporate governance in Law Number 40 of 2007 concerning Limited Liability Companies and whether the principles of good corporate governance (good corporate governance) in Law Number 40 of 2007 concerning Limited Liability Companies, it has provided legal protection to stakeholders. Normative type of research is often the law conceptualized as what is written in the legislation. By using the Legislative approach and Conceptual approach.

Keywords: *Good Corporate Governance; Limited Liability Company*

Introduction

Good corporate management is a process and structure that is used to improve business success and corporate accountability in order to increase corporate value in the long term by taking into account the interests of stakeholders based on morals, ethics, and legislation divided into 3 (three) activities: implementing national policies, perfecting the regulatory framework, building private sector initiatives.¹

The laws and standards that define the rights and responsibilities of the shareholders, functions and responsibilities of the board of commissioners differ between countries that adopt the Anglo-Saxon system and Continental Europe. In the United Kingdom and the United States which are influenced by the Anglo-Saxon model, the model is based on a single board system, so that the membership of the board of commissioners and the board of directors is not separated. In this model, the members of the board of commissioners also serve as the board of directors and these two organs are referred to as the Board of Directors. Companies in Indonesia themselves generally use the Continental European system, called the

¹ Decree of the Directors of PT. Pos Indonesia (Persero) Number: KD 55 / DIRUT / 1202 concerning Guidelines for the Implementation of Good Corporate Governance (GCG) in PT. Pos Indonesia (Persero), Bandung, December 19, 2001. p. 1

two-board system. In this system there is a strict separation between the membership of the board of commissioners as supervisors, and the board of directors as executives in the company. Based on the systematic Act Number 40 of 2007 concerning Limited Liability Companies themselves who adhere to the model has distinguished the duties and authorities between directors and commissioners to adjust the application of the principles of good corporate governance.

Indonesian legal culture influences corporate management behavior in Indonesia, namely patrimonialism as a sociological concept stated by Max Weber, which refers to a patriarchal relationship system, including in the social, business and political context, so that it impacts on corporate management in Indonesia.

Legal protection for stakeholders, including minority shareholders, has not been optimal because: first, the position and weakness of the role of stakeholders and the management of the company itself; second, market observations are still lacking, because stakeholders and competitors often as part of a conglomerate owned by the same family also have a fund lending company; third, the legal protection of stakeholders is still weak due to an inefficient justice system including the Bankruptcy Act and its procedures are not active in Indonesia.²

Position of directors and commissioners, a limited liability company cannot carry out its function as an institution or body that carries out business activities to seek economic benefits only, even though there are stakeholders' interests in order to protect their rights. The Board of Directors is obliged to carry out their duties not exceeding their authority, so that supervision is carried out by the board of commissioners and limited general meeting of shareholders (GMS) as the owner of the company through the provisions stipulated in the 2007 UUPT on Limited Liability Companies and the 1995 UUPM on the Capital Market for listed companies, and the Articles of Association of the Company the company concerned.

Protection of the rights of shareholders, equality of treatment of shareholders, and the function of the company's board of commissioners and the role of stakeholders due to the weak implementation of good corporate management in Indonesia with regard to law enforcement.³

Besides the low transparency (transparency) of a company, even though Indonesia's cultural roots are not accustomed to transparency or openness, such as disclosure of the agenda of the meeting and the level of attendance of commissioners and directors, disclosure of financial statements, disclosure of dissenting opinions among commissioners, directors, and access to obtain information about the good or bad performance of the company by shareholders is also not fully accommodated properly.⁴

One of the principles of openness or transparency is to regulate the functions of company directors, audit committees, and transparent disclosure of company information, business ethics, confidentiality, and anti-corruption as well as the accountability of the board of directors. This is relevant to Article 23 paragraph (1) of Law Number 19 Year 2003 BUMN jo. Article 66 of Law Number 40 Year 2007 concerning Limited Liability Companies which requires directors to submit annual reports to the GMS to prevent abuse of authority and conflicts of interest between directors and

² accessed from www.fcgi.or.id/indonesia, accessed on 20 November 2007).

³ (Ridwan Khairandy and Camelia Malik, *opcit*: p. 163

⁴ Antonius Alijoyo and Subarto Zaini. 2004. *Komisaris Independen, Penggerak Praktik GCG di Perusahaan*. Jakarta: Indeks Kelompok Gramedia. 2004. p. 35

commissioners, costs arising from imperfections between agents and principals.⁵

Corporate law in Indonesia, in the 2007 Company Law recognizes the principles of good corporate governance, although the regulations are relatively summarized, because these principles have not been applied or not, for example the principle of listing shares or proof of ownership or the principle of obtaining relevant information regarding the company at the right time, except for public companies are still not fully implemented.

For private companies that are medium and small scale, most of which are not listed, the Board of Directors is rarely held accountable at the end of each company financial year or audited, so it does not guarantee legal protection for stakeholders.

The next step is to conduct this normative research using the Statute Approach⁶ on the principles of good corporate management in Law Number 40 of 2007 concerning Limited Liability Companies as a focus of research with the title: Principles of Good Corporate Governance In Law Number 40 of 2007 concerning Limited Liability Companies.

The main problems in this study can be formulated as follows:

1. Are there norms governing the principles of good corporate governance in Law Number 40 of 2007 concerning Limited Liability Companies?
2. Do the principles of good corporate governance in Law Number 40 of 2007 concerning Limited Liability Companies provide legal protection to stakeholders?

1. Good Management Principles According to Law No.40 of 2007

In line with this type of research, namely normative legal research, in the sub-chapter of the results of this study, a number of secondary data in the form of legal provisions or norms governing limited company activities will be presented to the principles of good corporate governance). Normative research on the provisions of norms governing the principles of good corporate management in Law Number 40 of 2007 concerning Limited Liability Companies not only observes this law from the point of its technical preparation, but what is examined is the basic understanding of the legal system contained regulations are adjusted to the increasing demands of the community for fast services, legal certainty, and demands for the development of the business world in accordance with the principles of good corporate governance, as an amendment to Law Number 1 of 1995 concerning Limited Liability Companies that have been accommodated by various provisions concerning the Company, whether in the form of adding new provisions, improving improvements, or maintaining old provisions which are considered still relevant.

Broadly speaking, the results of research on norms governing the principles of good company management in Law Number 40 of 2007 Limited Liability Companies are explained as follows:

a. Norms that Regulate the Principles of Justice

Minority shareholders get unfair treatment, because:

- 1) Lack of provisions in legislation protecting the rights of minority shareholders. In fact, even if there is a

⁵ Misahardi Wilamarta. 2002. *Hak Pemegang Saham Minoritas dalam Rangka Good Corporate Governance*. Tesis, Pascasarjana, FHUI, Depok.2002, p. 27-28

⁶ Johnny Ibrahim, opcit , p. 302

provision, it is felt that it is still not enough for minority shareholders to have their interests impaired by the majority shareholders in bad faith. In addition, the existence of the authority granted by the Company Law to the organ of the GMS to establish company policy, expressly does not regulate the obligation of active participation for minority shareholders to submit their opinions;

- 2) The attitudes and behavior of the majority shareholders, directors or commissioners who have a moral hazard character;
- 3) Weak position of minority shareholders due to lack of capital, knowledge, skills and ability to manage PT, so that minority shareholders are unable to face the attitudes and behavior of majority shareholders who have bad intentions.

The role of stakeholders is based on the principle of the role of stakeholders that Corporate Governance must recognize the rights of stakeholders established by law and encourage effective collaboration between companies and stakeholders to create prosperity, work, financially healthy company sustainability:

- 1) The Corporate Governance framework must ensure that the rights of stakeholders protected by law are respected;
- 2) If the interests of the stakeholders are protected by law, then the stakeholders must have the opportunity to obtain compensation for effective violations and their rights;
- 3) The Corporate Governance framework obtains a mechanism for strengthening performance for stakeholders;
- 4) If stakeholders participate in governance or governance, then they must have access to relevant information.

b. Norms that Regulate the Transparency Principle

The principle of good business management regulating the responsibilities of each organ in a Limited Liability Company will affect the design of the authorities and responsibilities stipulated in the Articles of Association.

Without directors and commissioners, a PT cannot carry out its function as an institution or body that carries out business activities to seek economic profit, then supervision is carried out by the board of commissioners and limited by the GMS as the owner of the company through the provisions stipulated in the 2007 UUPT, Law Capital Market for publicly listed companies, and the Company's Articles of Association. Members of the board of commissioners also serve as a board of directors and these two organs are referred to as the Board of Directors. Companies in Indonesia using the Continental European system called the two-board system there is a strict separation between the membership of the board of commissioners as supervisors, and the board of directors as executives in the company. In the 2007 UUPT adopting a model that distinguishes the duties and authorities of directors from commissioners, the limited liability company regulations have the scope of position and responsibilities of the commissioners, directors and shareholders. The roles and responsibilities of the Audit Committee will be outlined in the Audit Committee Charter which is generally grouped into three major parts, namely financial reporting, corporate governance, and risk and control management. An active, sophisticated, expert, diverse and most important independent Board of Commissioners performs its functions effectively and is assisted by the best Audit Committee to be placed in ensuring the principles of good corporate governance run well so that forms of fraud or business downturn

can have avoided.

c. Norms that Regulate the Principle of Responsibility

1) Responsibilities in the merger and acquisition of the company

Limited liability of shareholders of a Limited Liability Company, limited liability also applies to members of the board of directors even though it is not explicitly stated in the articles of Law Number 40 of 2007 concerning Limited Liability Companies that the founder is a shareholder of the company he founded cannot be encumbered personal liability for an agreement is made on behalf of the company and is not burdened with responsibilities exceeding the value of the shares it has taken against the loss suffered by the company, so there is a separation of wealth between the founder, shareholders, the company.

Limited liability of shareholders (also management / directors and commissioners) can be unlimited, in certain cases, for example if shareholders who do not approve the merger plan, directors must fulfill their rights, namely the right to sell their shares to the company and the company must buy back shares at a fair price. Even though there are shareholders who do not agree on the merger plan, it does not mean that shareholders may foil the merger plan. His rights are limited to releasing his shares at an appropriate price. He could not fail the directors of merging the company.

2) Social and Environmental Responsibility

Regulations on social and environmental responsibility are required for natural resource-based (SDA) companies so that they do not backfire, the government should also provide tax incentives and create a more conducive business climate after the issuance of mandatory corporate social responsibility (CSR) regulations.

The principle of corporate social responsibility (CSR) is in line with the applicable laws and regulations, namely: Law Number 23 of 1997 concerning the Environment and Law Number 25 of 2007 concerning Investments regulated in Article 15 which states that every investor is obliged to: (a) applying the principles of good corporate governance; (b) carry out corporate social responsibility.

d. Norms that Regulate the Accountability Principle

The founder is a shareholder of the company he founded cannot be held personally liable for an agreement made on behalf of the company and is not burdened with responsibilities exceeding the value of the shares he has taken against the loss suffered by the company, so there is a separation of wealth between the founder, shareholders and the company.

2. Implementation of Good Management

a. Norms that Regulate Good Corporate Governance in Law Number 40 Year 2007 concerning Limited Liability Companies

The first problem that will be discussed through this normative research is whether there are norms governing the principles of good corporate governance in Law Number 40 of 2007 concerning Limited Liability Companies? Based on the research data, the norms governing the principles of good corporate governance developed by the Organization for Economic Cooperation and Development (OECD) are described as follows:

1) Norms that Regulate the Principles of Justice

Based on the provisions in Law Number 40 of 2007 concerning Limited Liability Companies, there are norms governing the principle of justice for the protection of the rights of shareholders, so they have equal treatment of all shareholders in the presence of entitled companies and obligations in legal relations constituting a capital alliance. and was established based on the agreement (Article 1 paragraph (1) of the Indonesian Company Law 2007).

Based on the study of legal contractual theory theory, applying the company's legal position is a legal entity established under an agreement that limits social responsibility and creates entities that are difficult to influence the state. Whereas Article 97 paragraph (6) states that on behalf of the Company, shareholders who represent at least 1/10 (one tenth) of the total number of shares with voting rights can file a lawsuit through a district court against a member of the Board of Directors who is due to an error or negligence. cause losses to the Company.

This shows that there is a right of the majority shareholders to sue the directors who are suspected of harming the shareholders. This norm has set the principle of justice for the protection of shareholders' rights to a minimum if the majority shareholder of the company is suspected of harming minority shareholders.

Majority shareholders represent at least 1/10 of the company's shares issued to take action according to the provisions of Article 79 paragraph (1) that the Board of Directors holds an annual GMS as referred to in Article 78 paragraph (2) and other GMS as referred to in Article 78 paragraph (4) preceded by the invitation of the general meeting of shareholders (GMS) and paragraph (2) The holding of the general meeting of shareholders (GMS) as referred to in paragraph (1) can be carried out at the request of:

- a) 1 (one) or more shareholders who together represent 1/10 (one tenth) or more of the total shares with voting rights, unless the articles of association determine a smaller amount; or
- b) Board of Commissioners.

Based on the application of legal contractual theory studies, this has seen the majority vote of legal subjects, namely shareholders as a reflection of the will of a company that is manifested in a legal object in an agreement that gives rise to an engagement of the parties that makes it that points to the boundaries of shareholder responsibility, namely a nominal amount of shares owned, so that rights and obligations arising from the shareholders.

2) Norms that Regulate the Transparency Principle

- a) Function of the Company's Directors

Based on the application of legal contractual theory study, applying the legal position of the directors of a company owned by shareholders, entrust the management of the company to the directors as agents to provide maximum profit.

Based on the provisions in Law Number 40 of 2007 Limited Liability Companies, there are norms governing the principle of transparency relating to the functions of the company's directors contained in Article 92 paragraph (1) of the Board of Directors carrying out the management of the Company for the benefit of the Company and in accordance with the aims and objectives of the Company. Article 97 paragraph (1) The Board of Directors is responsible for the management of the Company as referred to in article 92 paragraph (1). The norm provisions governing the ratification of a

Limited Liability Company in Article 9 paragraph (1) To obtain a ministerial decree concerning the ratification of the Company's legal entity as referred to in Article 7 paragraph (4), the founders jointly submit applications through information technology services in the legal entity administrative system electronically. to the Minister by filling out the complete formatting.

b) Disclosure of Company Information

Based on the provisions in Law Number 40 of 2007 Limited Liability Companies, there are norms governing the principle of transparency relating to the disclosure of company information in Article 92 paragraph (4) of the Company whose business activities are related to collecting or managing public funds, the Company issues a debt acknowledgment letter to the public, PT must have at least 2 (two) members of the Board of Directors who are obliged to: a) make a list of shareholders, special list, minutes of the GMS, minutes of the Board of Directors' meeting, b) make an annual report as referred to in Article 66, c) the Company's financial documents as referred to in Law on Company Documents, d) maintain the entire list, minutes and financial documents of the Company as referred to in letter a and letter b and other Company documents (Article 100 paragraph (1) of the 2007 Company Law).

c) Audit Committee

Article 120 paragraph (1) The articles of association of the Company can regulate the existence of 1 (one) or more Independent Commissioners and 1 (one) Commissioner of Envoys, (2) Independent Commissioners as referred to in paragraph (1) are appointed based on the GMS decision of a party that is not affiliated with major shareholders, members of the Board of Directors and / or other members of the Board of Commissioners, (3) Commissioner delegates as referred to in paragraph (1) are appointed members of the Board of Commissioners based on the decision of the Board of Commissioners' meeting.

Conclusion

Based on the results of previous studies and discussions, the following conclusions can be concluded:

1. Normatively, the provisions in Law Number 40 Year 2007 concerning Limited Liability Companies have governed the principles of good corporate governance, namely: the principle of justice, the principle of transparency, the principle of responsibility, and the principle of accountability in accordance with the application of the review literature on the theory of company establishment according to contractual theory and concession theory.
2. The principles of good corporate governance in Act Number 40 of 2007 concerning Limited Liability Companies have been applied in the norms of the Act, so that they will provide legal protection and legal certainty for stakeholders, although they are still there are norms that still summarize the provisions, so a more complete explanation is needed, for example through a Government Regulation (PP) or other statutory provisions.

Next, the appropriate recommendations should be submitted as follows:

1. There needs to be support from various parties and the willingness of a company to apply the principles of good corporate management voluntarily so that its application is expected not to be hampered and run successfully and be able to create healthy and professional business competition to obtain optimal profits.

2. In the framework of implementing this law, a team of legal monitoring experts of the Company is formed consisting of elements of: government, experts / academics, professions, business world, so they must be more active in disseminating Law Number 40 of 2007 concerning Limited Liability Companies to the general public, among others through the mass media, workshops and seminars.
3. The Indonesian Company Law 2007 to be effective, it is deemed necessary for the government to make the legal regulations under it as a guideline for implementing or guiding the implementation of this law, namely: Government Regulation (PP) or Presidential Regulation in the context of good corporate governance) in private companies and SOEs.
4. Increasing awareness and awareness of the community to enforce normative corporate law in the framework of applying good corporate management principles to support future economic activities requires legal regulation (regulatory driven), ie required force in the form of laws or legal rules in field of corporate law.

References

- Abdulkadir Muhammad. 1999. *Hukum Perusahaan Indonesia*. Bandung: Citra Aditya Bakti.
- Agus Budiarto. 2002. *Kedudukan Hukum & Tanggung Jawab Pendiri Perseroan*. Terbatas. Jakarta: Ghalia Indonesia.
- Ahmad Yani and Gunawan Widjaja. 1999. *Seri Hukum Bisnis: Perseroan*. Terbatas. Jakarta: RajaGrafindo Persada.
- Ali Rido. 2001. *Badan Hukum Dan Kedudukan Badan Hukum Perseroan, Perkumpulan, Koperasi, Yayasan, Wakaf, Perseroan Terbatas*. Bandung: Alumni.
- Aminuddin Ilmar. 2004. *Hukum Penanaman Modal di Indonesia*. Jakarta: Prenada Media.
- Antonius Alijoyo dan Subarto Zaini. 2004. *Komisaris Independen, PenggerakPraktik GCG di Perusahaan*. Jakarta: Indeks Kelompok Gramedia.
- Burhan Ashshofa. 2004. *Metode Penelitian Hukum*. Jakarta: Rineka Cipta. Chatamarrasjid. 2003. *Badan Hukum Yayasan Suatu Analisis Mengenai Yayasan Sebagai Suatu Badan Hukum Sosial*. Bandung: Citra Aditya Bakti.
- _____. 2004. *Penerobosan Cadar Perseroan dan Soal-soal Aktual Hukum Perusahaan*. Bandung: Citra Aditya Bakti. Chidir Ali. 1991. *Badan Hukum*. Bandung: Alumni.
- Dedi Sumardi. 1982. *Sumber-sumber Hukum Positif*. Bandung: Alumni.
- Djokosantoso Moeljono. 2003. *Budaya Korporat dan Keunggulan Korporasi*. Jakarta: Elex Media Komputindo.

Esmi Warassih. 2005. *Pranata Hukum: Sebuah Telaah Sosiologis*. Semarang: Suryandaru Utama.

Hasnati. 2004. *Peranan Komite Audit Dalam Organ Perseroan Terbatas Dalam Kerangka Good Corporate Governance*. Yogyakarta: FH UII Press.

I.G. Ray. Widjaya. 2002. *Hukum Perusahaan Perseroan Terbatas*. Jakarta: Megapoin Kesaint Blanc.

I Nyoman Tjager, dkk. 2003. *Corporate Governance, Tantangan dan Kesempatan bagi Komunitas Bisnis Indonesia*. Jakarta: Prenhallindo.

Indra Surya and Ivan Yustiavandana. 2006. *Penerapan Good Corporate Governance Mengesampingkan Hak-hak Istimewa demi Kelangsungan Usaha*. Jakarta: Prenada Media Group dan LKPMK FH UI.

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