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Implementation of Good Corporate Governance Principles in Commercial Banks

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Abstract

This research was conducted to find out how the application of the principles of Good Corporate Governance by Bank Indonesia to Commercial Banks and what are the legal consequences if Commercial Banks do not apply the principles of Good Corporate Governance in carrying out banking activities. This research is a normative legal research with a statutory and conceptual approach and qualitative data analysis. The results obtained from research conducted were that the implementation of Good Corporate Governance at Commercial Banks by Bank Indonesia was caused by the economic and monetary crises that occurred in Indonesia in 1997-1999 due to the failure to apply Good Corporate Governance in every activity in the company and in banking and legal consequences. for Commercial Banks that do not apply Good Corporate Governance in their banking activities as stipulated in Bank Indonesia Regulation Number 8/14 / PBI / 2006 Article 69, namely administrative sanctions and No criminal sanctions for Commercial Banks that do not apply Good Corporate Governance in their banking activities.

Keywords: *Principles; Good Corporate Governance; Commercial Banks*

Introduction

Since the multidimensional crisis hit Indonesia, the discourse regarding the issue of good corporate governance has suddenly become a hot buzzword. The national banking world cannot be separated from its negligence in implementing these good corporate governance practices.[1]

Bank Indonesia on 30 January 2006 issued Bank Indonesia Regulation Number: 8/4 / PBI /2006 concerning the Implementation of Good Corporate Governance for Commercial Banks as amended by Bank Indonesia Regulation Number 8/14/ PBI/2006 on 5 October 2006. The efforts of Bank Indonesia to issue a regulation on the implementation of Good Corporate Governance are appropriate, although a little late. The objectives of the issuance of this Bank Indonesia Regulation are to strengthen the internal conditions of the national banking system in facing increasingly complex risks, to seek to protect the

[1] Joni Emerson, (2007) *Prinsip-Prinsip Good Corporate Governance: Paradigma Baru dalam Praktik Bisnis Indonesia*, Genta Press, Yogyakarta, p. 4

interests of stakeholders and to increase compliance with the prevailing laws and regulations as well as the prevailing ethics values. general in the banking industry.

The implementation of Good Corporate Governance in the banking industry requires special attention, because the character and complexity of the banking industry is different from the industry in general. Management that is mismatched, prudent, not transparent, and abuse of authority has resulted in the downfall of several banks. When observed, the banking industry in Indonesia faces problems caused by weak or not implementing Good Corporate Governance. This was one of the main contributors to the banking crisis in 1997 which led to the national economic crisis.[2]

Research Methods

The research method used in this research is normative juridical legal research with a statutory and conceptual approach and qualitative data analysis. Normative juridical research is research that examines legal materials both primary legal materials consisting of laws, regulations related to the problem under study and also examines secondary legal materials consisting of literature and opinions of scholars related to the problem researched.

Results and Discussion

1. Application of the Principles of Good Corporate Governance in Commercial Banks

Good Corporate Governance or in Indonesian, namely Good Corporate Governance is a system, process and set of regulations that govern the relationship between interested parties (stakeholders), especially in the narrow sense of the relationship between shareholders, the board of commissioners and the board of directors for the sake of achievement of organizational goals.

Good Corporate Governance has 5 principles that can be applied in every banking activity[3]:

a. Transparency.
Companies must provide material and relevant information in a way that is easily accessible and understood by stakeholders. The company must take the initiative to uncover not only the problems implied by laws and regulations, but also other important matters for decision making by shareholders, creditors and related stakeholders.

b. Accountability
The company must be accountable for its performance in a transparent and fair manner. For this reason, the company must be managed properly, measured and in accordance with the interests of the company by taking into account the interests of shareholders and other stakeholders.

c. Responsibility.
Companies must continue to comply with statutory regulations and carry out responsibilities towards society and the environment so that long-term business continuity can be maintained and gain recognition as a good corporate citizen.

[2] Muh. Arief Effendi, (2009), *The Power of Good Corporate Governance Teori dan Impementasi Edisi 2*, Salemba Empat, Jakarta, p. 142

[3] Leo J. Susilo dan Karlen Sinormata, (2007), *Good Corporate Governance Pada Bank: Tanggung Jawab Direksi dan Komisaris dalam Melaksanakannya*, PT. Hakikat Dunia, Jakarta, p. 19

d. Independency.
Companies must be managed independently so that each company organ does not dominate each other and cannot be intervened by other parties.

e. Fairness.
Companies must always pay attention to the interests of shareholders and other stakeholders based on fairness and equality in fulfilling stakeholder rights that arise based on agreements and applicable laws and regulations.

In general, the successful implementation of Good Corporate Governance goes through three main stages, namely preparation, implementation and evaluation.

1) In the first stage, namely the preparation stage, the company takes the main steps starting from awareness building, Good Corporate Governance assessment, and Good Corporate Governance manual building[4].

2) The second stage, in building Good Corporate Governance is the implementation stage. This stage contains socialization, implementation, and internalization.

3) The third stage, is the evaluation stage. This stage must be carried out regularly to measure the effectiveness of the implementation of Good Corporate Governance, which if necessary through independent experts outside the company to audit the implementation and scoring of the company's GCG practices.[5]

The implementation of the implementation of the principles of Good Corporate Governance in banking is very important to carry out careful phasing based on an analysis of the situation and condition of the bank and the level of readiness so that the implementation of Good Corporate Governance can run smoothly and get support from all elements within the bank.[6]

Bank Indonesia needs to increase its role so that Good Corporate Governance practices are truly grounded. This refers to a number of sources of the role of Bank Indonesia in realizing good corporate governance in banking, namely: Regulatory role. As widely understood, Good Corporate Governance is a system, process and set of regulations that govern the relationship between various interested parties (stakeholders). Therefore, it is logical if a rule and provisions are needed in order to encourage the implementation of Good Corporate Governance in the banking sector.

2. Legal Consequences for Commercial Banks Not Implementing Good Corporate Governance in Carrying Out Banking Activities.

In accordance with Bank Indonesia Circular Letter Number 15/15 / DPNP dated 29 April 2013 Regarding the Implementation of Good Corporate Governance for Commercial Banks, in order to ensure the implementation of the 5 (five) basic principles of Good Corporate Governance, Banks must conduct periodic self-assessments which at least 11 (eleven) Assessment Factors for Good Corporate Governance, namely:

[4] Tri Hendro dan Conny Tjandra Rahardja, (2014) *Bank dan Institusi Keuangan Non Bank di Indonesia*, UPP STIM YKPN, Yogyakarta, , p. 89
[5] Ibid, p. 90
[6] Wilson Arafat, (2008) *How to Implement GCG Effectively*,Skyrocketing Publisher, Jakarta, p. 17

1. Implementation of duties and responsibilities of the Board of Commissioners (10%);
2. Implementation of duties and responsibilities of the Board of Directors (20%);
3. Completeness and implementation of Committee duties (10%);
4. Handling conflicts of interest (10%);
5. Implementation of compliance function (5%);
6. Implementation of the internal audit function (5%);
7. Implementation of external audit function (5%);
8. Application of risk management including the internal control system (7.5%);
9. Provision of funds to related parties (related party) and provision of large funds (7.5%);
10. Transparency of the Bank's financial and non-financial conditions, reports on the implementation of Good Corporate Governance and internal reporting (14%);
11. Bank's strategic plan (5%).

Apart from that, it is also necessary to pay attention to other information related to the implementation of Bank Good Corporate Governance outside of the 11 (eleven) Good Corporate Governance Implementation Factors, such as problems that arise as a result of a bank's remuneration policy or internal bank disputes that interfere with operations and / or business continuity. Bank. For example, the setting of bonuses is based on the achievement of targets at the end of the year, where the targets are very high, resulting in unhealthy practices by management or bank employees in achieving them.[7]

Based on Bank Indonesia Regulation Number 8/14 / PBI / 2006 Article 69, it is stated that a Bank that does not comply with the provisions in the articles of Bank Indonesia Regulation Number 8/14 / PBI / 2006 will be subject to administrative sanctions, including in the form of:

a. written warning;
b. a decrease in the level of health in the form of a decrease in the rating of management factors in assessing the level of health;
c. prohibition from participating in clearing activities;
d. freezing of certain business activities;
e. dismissal of management of the Bank and subsequently appoint and appoint a temporary replacement until the General Meeting of Shareholders or Meeting of Cooperative Members appoints a permanent replacement with the approval of Bank Indonesia; and
f. inclusion of members of the management, employees, and shareholders of the Bank in the list of failures through a fit and proper test mechanism.

There is no criminal sanction in the event that a Commercial Bank does not implement Good Corporate Governance in their banking activities.

Conclusion

Based on the description above, there are several things that can be concluded based on the main problem, namely the following: The implementation of Good Corporate Governance at Commercial Banks by Bank Indonesia was caused by the economic and monetary crises that occurred in Indonesia in 1997-1999 due to the failure to implement Good Corporate Governance in every activity in the company and in banking. Good Corporate Governance is intended to ensure the health of the national banking system so that mistakes will not occur that will cause an economic and monetary crisis as in the past and can provide confidence to stakeholders and shareholders.

[7] Arsasi Ibrahim, *Penilaian Good Corporate Governance bagi Bank Umum*, *https://arsasi.wordpress.com/2013/12/02/penilaian-good-corporate-governance-bank-umum/* Pukul 12.28 WITA

The legal consequences for Commercial Banks that do not apply Good Corporate Governance in their banking activities are regulated in Bank Indonesia Regulation Number 8/14 / PBI / 2006 Article 69, namely administrative sanctions such as written warnings, a decrease in the level of health in the form of a downgrade of management factors in assessing the level of health, prohibition to participate in clearing activities, freeze certain business activities, terminate the management of the Bank and then appoint and appoint a temporary replacement until the General Meeting of Shareholders or Meeting of Cooperative Members appoints permanent replacements with the approval of Bank Indonesia, and the inclusion of members of the management, employees, and shareholders of the Bank on the list did not pass through the fit and proper test mechanism. There are no criminal sanctions for Commercial Banks that do not apply Good Corporate Governance in their banking activities.

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