

# Juridical Review of Good Corporate Governance Principle in Law Number 40 of 2007 Concerning Limited Liability Company

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**Abstract.** The connection between the Directorate and Great Corporate Administration (GCG) is viewed as the essential key to the effective execution of GCG standards. Hypothetically, it should be recognized that by carrying out GCG standards there are a few advantages that can be taken. Practically speaking in the field, it just so happens, not all organizations in Indonesia have carried out the standards of Good Corporate Administration because of the absence of comprehension of Good Corporate Administration itself and the absence of socialization from the public authority with respect to the significance of carrying out the standards of Good Corporate Administration.

**Keywords:** state finances; corruption; prosecutor's role

## 1 Introduction

Corporate governance is a new concept that until now has not been reached by mutual agreement in interpreting it. Experts, both legal experts, and economists, international organizations and bodies formed in several countries as well as committees that focus on examining corporate governance have different views on the nature of corporate governance [1].

In general, the implementation of concrete Good Corporate Governance principles has the following objectives for the company [2]:

- 1) Facilitate access to domestic and foreign investment;
- 2) Get a cheaper cost of capital;
- 3) Provide better decisions in improving the company's economic performance;
- 4) Increase the confidence and trust of stakeholders in the company;
- 5) Protecting the directors and commissioners from lawsuits”.
- 6) The main principles of Good Corporate Governance as indicators, offered by the Organization for Economic Cooperation and Development (OECD), are:
  - 1) Fairness (Fairness);
  - 2) Disclosure/Transparency (Openness/Transparency);
  - 3) Accountability (Accountability);
  - 4) Responsibility (Responsibility).

Normatively, the position of the company as a legal entity and an independent legal entity has been regulated in the 2007 Company Law. The company as a legal entity is explicitly regulated in Article 1 number 1 of the 2007 Company Law which states:

*"Limited Company, hereinafter referred to as Company, is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this Law and its implementing regulations."*

While the company as an independent legal entity is not explicitly regulated in the 2007 Company Law, its character can be found in Article 3 paragraph (1) of the 2007 Company Law which states that:

*"The shareholders of the company are not personally responsible for the agreements made on behalf of the company and are not responsible for the company's losses above the shares owned."*

For all intents and purposes the use of these GCG standards can assist organizations with escaping the financial emergency. The continuous financial emergency has demonstrated how feeble the execution of GCG in strategic approaches in Indonesia is. As per Achmad Santosa, it is brought about by a bad organization, a lawmaking body that isn't optimistic and responsive, and the shortfall of a positive and valuable corresponding control system [3].

The Directorate is completely answerable for the administration of the organization. Every individual from the top managerial staff is completely and by and by capable assuming that he is liable or careless in doing his obligations. In doing their obligations, the top managerial staff should conform to the organization's articles of affiliation and pertinent regulations and guidelines. For this situation, the directorate should complete their obligations sincerely and brimming with liability.

The connection between the Top managerial staff and Great Corporate Administration (GCG) is viewed as the fundamental key to the effective execution of GCG standards. Hypothetically, it should be recognized that by executing the standards of GCG a few advantages can be taken, in particular [4]:

- 1) Improve organization execution through the production of a decent dynamic cycle.
- 2) Make it more straightforward to get less expensive supporting finances which will eventually increment corporate worth
- 3) Restore financial backer certainty to put resources into Indonesia
- 4) Shareholders will be happy with the organization's exhibition on the grounds that simultaneously it will increment investors.

By and by in the field, it just so happens, not all organizations in Indonesia have carried out the standards of Good Corporate Administration because of the absence of comprehension of Good Corporate Administration itself and the absence of socialization from the public authority with respect to the significance of executing the standards of Good Corporate Administration.

## **2 Problem**

Before long in the field, coincidentally, not all associations in Indonesia have done the principles of Good Corporate Organization in light of the shortfall of perception of Good Corporate Organization itself and the shortfall of socialization from the public authority as for the meaning of executing the norms of Good Corporate Organization.

### **3 Methodology**

#### **3.1 Method**

The method used in writing this applied paper is descriptive-analytical, namely by using data that clearly describes the problems directly in the field, then analyzing and then concluding to reach a problem solution. The collecting data techniques are through observation and literature study to obtain problem-solving in the paper preparation.

#### **3.2 Approach**

The normative juridical approach, namely the juridical approach method used to examine the problem from a legal and systematic point of view, and as a guide to legal rules, norms, or other legal regulations that apply to the implementation of the principles of good corporate governance in Law Number 40 of 2007 concerning Limited Liability Companies.

### **4 Result and Discussion**

#### **4.1 Good Governance Principles**

In Unofficial law Number 101 of 2000 the standards of good administration comprise of:

- a. Professionalism, working on the capacity and spirit of government heads to give simple, quick, exact administrations at reasonable expenses.
- b. Accountability, expanding the responsibility of leaders in all fields concerning the local area interests.
- c. Transparency, making shared trust between the public authority and people in general through the arrangement of data and guaranteeing the simplicity of acquiring precise and satisfactory data.
- d. Excellent administration, the execution of public administrations that incorporate all around good strategies, lucidity of duties, the sureness of time, straightforward entry, culmination of offices and framework as well as cordial and trained administrations.
- e. Democracy and Cooperation, empowering each resident to practice the option to offer viewpoints in the dynamic cycle, which concerns the interests of the local area, either straightforwardly or in a roundabout way.
- f. Efficiency and Adequacy, guaranteeing the execution of administrations to the local area by utilizing accessible assets ideally and capably.
- g. The law and order can be acknowledged by the entire local area, understanding the presence of fair policing all gatherings regardless, maintaining basic liberties, and focusing on the qualities that live in the public arena.

Sedarmayanti [5] infers that there are four fundamental components or rules that can portray a policy implementation described by great administration, specifically as follows:

- a. Accountability:  
Government authorities ought to go about as the individual in control and be answerable for all activities and approaches they set.
- b. Transparency:  
Great administration will be straightforward to its kin, both at the focal and territorial levels.

- c. Openness:  
Needs to open up open doors for individuals to submit remarks and reactions of the public authority which is viewed as not straightforward.
- d. Rule of regulation:  
Great administration has qualities as certifications of legitimate conviction and a feeling of local area equity for each open strategy taken.

#### **4.2 Norms that Regulate the Principles of Good Corporate Governance in Law Number 40 of 2007 Concerning Limited Liability Companies**

The standards of GCG are directed in Regulation Number 40 of 2007 concerning Restricted Responsibility Organizations, Regulation Number 8 of 1995 concerning Capital Business sectors, Regulation Number 10 of 1998 on Banking, Regulation Number 19 of 2003 with respect to BUMN, and Regulation Number 25 2007 concerning Speculation. Be that as it may, this proposition centers around Great Corporate Administration with regards to Regulation No. 40 of 2007 concerning Restricted Risk Organizations and Regulation No. 19 of 2004 concerning State-Possessed Undertakings.

Besides, the utilization of the standards of Good Administration is controlled in Article 4 of Regulation Number 40 of 2007 concerning Restricted Responsibility Organizations, as follows:

“The enactment of this law, the articles of association of the company, and the provisions of other laws and statutes do not reduce the obligation of each company to comply with the principles of good faith, the principles of propriety, the principles of propriety, and the principles of good corporate governance in carrying out their duties. Company. What is meant by “other statutory provisions” are all laws and regulations relating to the existence and operation of the company, including its implementing regulations, banking regulations, insurance regulations, and financial institution regulations. If there is a conflict between the articles of association and this law, this law shall prevail.”

The utilization of the standards of Good Administration is managed in a few articles in Regulation Number 40 of 2007 concerning Restricted Responsibility Organizations, with respect to the presence of the Leading body of Chiefs and the Directorate as a sign of the acknowledgment of the standards of Good Administration, as follows:

##### Article 117

- (1) In the articles of affiliation, it very well might be specified that the conceding authority of the Leading group of Magistrates is allowed to give endorsement or help to the Directorate in doing specific legitimate activities.
- (2) If the articles of affiliation specify the necessities for conceding endorsement or help as alluded to in section (1), without the endorsement or help of the Leading group of Chiefs, the legitimate activity stays restricting on the Organization as long as the other party in the lawful activity means well.

##### Article 118

- (1) Based on the articles of affiliation or the choice of the GMS, the Leading group of Chiefs might make moves to deal with the Organization in specific situations for a specific period.
- (2) The Leading group of Magistrates which in specific situations for a specific period plays out the administration activities as alluded to in passage (1), will apply all arrangements with respect to the privileges, specialists, and commitments of the Governing body towards the Organization and outsiders.

#### Article 119

Concerning the dismissal of members, the provisions concerning the discharge of directors under Article 105 shall apply by analogy.

#### Article 120

- (1) The Organization's articles of affiliation might specify the presence of 1 (one) or more Free Magistrates and 1 (one) Appointed Chief.
- (2) The free magistrates as alluded to in section (1) are delegated in light of the choice of the GMS from parties who are not subsidiary with the significant investors, individuals from the Top managerial staff, and additionally different individuals from the Leading group of Chiefs.
- (3) The designated chief as alluded to in section (1) is an individual from the Leading group of Magistrates who is delegated in light of the choice of the gathering of the Leading body of Officials.
- (4) The obligations and specialists of the designated officials are gone ahead in the Articles of Fuse of the Organization, furnished that they are not conflicting with the obligations and powers of the assigned advisory group and don't restrict the regulatory obligations of the chiefs.

#### Article 121

- (1) In completing the administrative obligations as alluded to in Article 108, the Leading group of Chiefs might shape a council, whose individuals are at least one individuals from the Leading body of Magistrates.
- (2) The council as alluded to in section (1) is capable to the Leading body of Magistrates. Notwithstanding the presence of the Directorate and Chiefs, there are standards in Regulation Number 40 of 2007 concerning Restricted Obligation Organizations, which control straightforwardness/receptiveness, as follows:

#### Article 92 paragraph 4

- (4) Companies whose business activities are related to collecting and/or managing public funds, companies issuing debt acknowledgments to the public, or public companies must have at least 2 (two) members on the Board of Directors.

Other Transparency Principles can also be found in the process of Merger, Consolidation, Acquisition, and Separation, which is regulated in the following Article:

#### Article 135

- (1) Separation should be possible by: a. Unadulterated partition; or b. Partition isn't unadulterated.
- (2) The unadulterated partition as alluded to in section (1) letter brings about all resources and liabilities of the Organization being moved by regulation to 2 (two) different organizations or more that get the exchange, and the Organization leading the business division closes by regulation.
- (3) Improper detachment as alluded to in section (1) letter b prompts part of the resources and liabilities of the Organization to be moved by regulation to 1 (another) Organization or more that gets the exchange, and the Organization that plays out the Division remains.

#### Article 136

Further provisions regarding Separation shall be regulated by government regulation.

Other Transparency Principles also be found in the Audit process of a Limited Liability Company, which is regulated in the following Article:

#### Article 138

- (1) An assessment of the Organization might be completed to acquire information or data assuming there is a charge that:

- a. The Organization commits an unlawful demonstration that is unfavorable to investors or outsiders; or
  - b. a individual from the Top managerial staff or the Leading group of Magistrates commits an unlawful demonstration that is adverse to the Organization or its investors or outsiders.
- (2) The assessment as alluded to in passage (1) is done by presenting a composed application alongside the motivations to the region court whose ward covers the residence of the Organization.
- (3) The application as alluded to in passage (2) might be presented by:
- a. 1 (one) investor or really addressing somewhere around 1/10 (one-10th) of the complete offers with casting a ballot rights;
  - b. different gatherings who in view of regulations and guidelines, the articles of relationship of the Organization or a concurrence with the Organization are approved to present a solicitation for assessment; or
  - c. public prosecutor's office.
- (4) The application as alluded to in passage (3) letter will be submitted after the candidate has first mentioned information or data from the Organization at the GMS and the Organization has not given such information or data.
- (5) Applications for getting information or data in regards to the Organization or solicitations for assessment to get such information or data should be founded on sensible reasons and sincerely.
- (6) The arrangements as alluded to in passage (2), passage (3) letter a, and section (4) don't preclude the likelihood that the regulations and guidelines in the capital market area will decide in any case.

## 4 Conclusion

Corporate governance is a new concept that until now has not been reached by mutual agreement in interpreting it. The continuous financial emergency has demonstrated how feeble the execution of GCG in strategic approaches in Indonesia is. The connection between the Directorate and Great Corporate Administration (GCG) is viewed as the essential key to the effective execution of GCG standards. Hypothetically, it should be recognized that by carrying out GCG standards there are a few advantages that can be taken. Practically speaking in the field, it just so happens, not all organizations in Indonesia have carried out the standards of Good Corporate Administration because of the absence of comprehension of Good Corporate Administration itself and the absence of socialization from the public authority with respect to the significance of carrying out the standards of Good Corporate Administration. Further research on the hospital renewal is needed.

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