

Legal Analysis of Appointment of Former Corruption Convicts As Commissioner Of BUMN

Muhammad Mutawalli¹, Abdul Rahman², Ismail Iskandar³

Abstrak

Penelitian ini bertujuan untuk mendeskripsikan secara jelas pengaturan tentang pengangkatan mantan narapidana korupsi sebagai komisaris di BUMN dan memberikan pemahaman tentang implikasi hukum yang dapat terjadi dalam pengangkatan narapidana korupsi di BUMN. secara teoritis penulisan ini dibangun dengan perspektif hukum tentang pengangkatan mantan narapidana korupsi sebagai komisaris BUMN dan didukung oleh Teori Kewenangan, dan Tinjauan terhadap prinsip-prinsip good governance. Seluruh argumentasi, fakta, dan kerangka teori dalam penelitian ini diungkapkan dengan menggunakan metode penelitian hukum normatif empiris. Data diperoleh dan dikumpulkan melalui buku, jurnal, makalah dan makalah. Terakhir, hasil wawancara dan artikel yang berkaitan dengan masalah. Metode penelitian kasus ini menggabungkan unsur-unsur hukum normatif yang kemudian ditambah dengan data atau unsur empiris. Penelitian ini merupakan penelitian kualitatif dengan sifat deskriptif analitis. Hasil penelitian ini yaitu dimana pengangkatan mantan narapidana korupsi sebagai dewan komisaris pada anak perusahaan BUMN telah sesuai dengan ketentuan yang berlaku. Namun menurut Undang-Undang Nomor 19 Tahun 2003 pasal 28 ayat (1) disebutkan bahwa anggota Dewan Komisaris diangkat berdasarkan pertimbangan integritas, dalam hal ini penulis menganggap ada celah hukum yang dapat digunakan. sebagai dasar hukum pengangkatan dewan komisaris pada BUMN. Persyaratan integritas sebagai persyaratan material hanya digunakan sebagai persyaratan pendukung pengangkatan seorang komisaris. Sedangkan integritas merupakan syarat penting yang harus diperhatikan dengan seksama oleh deputy sebagai asesor terhadap calon komisaris yang akan diangkat. Integritas sangat mempengaruhi keberlanjutan dan penerapan prinsip-prinsip tata kelola perusahaan yang baik di lingkup BUMN. Pemenuhan integritas merupakan syarat dan unsur penilaian dimana integritas menyangkut rekam jejak calon komisaris yang bersangkutan.

Kata kunci: BUMN, Mantan Narapidana Korupsi, Pengangkatan Komisaris

Abstract

This study aims to clearly describe the regulation on the appointment of former corruption convicts as commissioners in BUMN and provides an understanding of the legal implications that can occur in the appointment of corruption convicts in BUMN. Theoretically, this writing is built with a legal perspective on the appointment of former corruption convicts as commissioners of BUMN and is supported by the Theory of Authority, and a Review of the principles of good governance. All arguments, facts, and theoretical frameworks in this study are expressed using empirical normative legal research methods. Data was obtained and collected through books, journals, papers, and papers. Finally, the results of interviews and articles related to the problem. The research method of this case combines elements of normative law which are then added with data or empirical elements. This research is qualitative research with analytical descriptive nature. The results of this study, namely where the appointment of former corruption convicts as the board of commissioners in a subsidiary of a BUMN has been in accordance with applicable regulations. However, according to Law No. 19 of 2003 article 28 paragraph (1), it is stated that members of the Board of Commissioners are appointed based on integrity considerations, in this case, the author assumes that there is a legal loophole that can be used as a legal basis for the appointment of the board of commissioners in BUMN. The integrity requirement as a material requirement is only used as a supporting requirement for the appointment of a commissioner. Meanwhile, integrity is an important requirement that must be carefully considered by the deputy as an assessor of the prospective commissioner to be appointed. Integrity greatly affects the sustainability

¹ Universitas Islam Negeri Alauddin Makassar, Jl. H. M. Yasin Limpo No. 36 Kelurahan Romang Polong Kecamatan Somba Opu Kabupaten Gowa Provinsi Sulawesi-Selatan | mutawallimuhammad22@gmail.com, muhammad.mutawalli@uin-alauddin.ac.id

² Sekolah Tinggi Agama Islam Negeri Majene, Jl. BLK Totoli, Kecamatan Banggae Kabupaten Majene Provinsi Sulawesi-Barat | rahman_kanang@stainmajene.ac.id

³ Universitas Hasanuddin, Jl. Perintis Kemerdekaan No. KM 10 Tamalanrea Indah, Kecamatan Tamalanrea, Kota Makassar | ismailiskandar@unhas.ac.id

and application of good corporate governance principles in the scope of SOEs. Fulfillment of integrity is a requirement and element of assessment in which integrity concerns the track record of the prospective commissioner concerned.

Keywords: Appointment Of Commissioner; BUMN; Former Corruption Convicts

Introduction

In the sustainability of a country, people's welfare can be measured by the sustainability of the country's economy. Business actors, They work in the economic field as individuals or as businesses, whether they are legal or non-legal entities. The company is a continual, transparent, and complete attempt to achieve achievements in a certain area. One of Indonesia's primary economic engines.⁴ One of the drivers of the Indonesian economy, a limited liability company (hereinafter referred to as PT) is a common form and is widely used in the business world in Indonesia because a limited liability company is an independent capital and legal association.⁵

Previously, a limited liability company was called "Naamloze Vennotschap" or NV (unnamed partnership). This will later become the forerunner of the birth of a limited liability company in Indonesia. The Dutch, who at that time colonized Indonesia, applied the KUHD based on the principle of concordance.⁶ Naamloze Vennotschap (unnamed partnership) is defined as a legal entity established with the delivery of shares divided into authorized capital where the stakeholders are not personally responsible for the losses suffered by the Company, except only limited to the paid-up capital. This means that shareholders (shareholders) are only responsible for the amount of paid-in capital.⁷

A limited liability company is a partnership with a legal entity. This legal entity is called a "company", because the capital of this legal entity consists of holdings or shares. Therefore, some say that a limited liability company is an association or capital association. The term "limited" refers to the liability of a shareholder, which is limited to only the nominal value of the shares they own.⁸ A limited liability company, according to another definition, is a legal entity with share capital formed under an agreement to conduct business with legal capital divided into shares.⁹ Because of this, the existence of BUMN as a state agency that is required to accommodate all state business activities is very important in the sustainability of a country so that it can accommodate all business activities owned by the state or government.

State owned enterprises, hereinafter referred to as state-owned enterprises, re operating entities that use independent government assets to participate directly in operations, with the government owning all or most of the capital.¹⁰ BUMN in its function and position is to uphold the principle of people's prosperity which is one of the ideals of the Indonesian nation.¹¹ In the provisions, the lives of the people are implicitly controlled by the state through BUMN which act as business actors to meet the basic needs of the people's lives. This can be seen in the

⁴ Ridwan Khairandy, *Pokok-Pokok Hukum Dagang Indonesia* (Yogyakarta: FH UII Press, 2013).

⁵ Zarman Hadi, *Karakteristik Tanggung Jawab Pribadi Pemegang Saham Komisaris dan Direksi dalam Perseroan Terbatas* (Malang: Universitas Brawijaya Press, 2011).

⁶ Mulhadi, *Hukum Perusahaan Asuransi di Indonesia* (Bogor: Ghalia Indonesia, 2010).

⁷ M. Teguh Pangestu dan Nurul Aulia, "Hukum Perseroan Terbatas dan Perkembangannya di Indonesia," *Business Law Review* 1, no. 3 (2017).

⁸ S H Adrian Sutedi, *Buku Pintar Hukum Perseroan Terbatas* (Jakarta: PT Niaga Swadaya, 2015).

⁹ Christine S T Kansil, *Pokok-Pokok Pengetahuan Hukum Dagang* (Jakarta: Sinar Baru, 2017).

¹⁰ Undang-Undang Badan Usaha Milik Negara, UU No 19 Tahun 2003, LN no 70 Tahun 2003, TLN No 4297, Pasal 1 butir 1.

¹¹ Pasal 33 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

important sectors controlled by BUMN such as in the electricity, oil, health or other sectors which are not purely functioning as the fulfillment of basic needs, but have the aim of seeking profit.

Before the promulgation of Law No. 19 on BUMN in 2003, according to Law No. 9 of 1969, BUMN was divided into three business entities, namely:¹² service company, public company (Perum); and company company (Persero). Then according to Law No. 19 of 2003 on BUMN, state-owned enterprises are only grouped into 2 (two) corporate business entities, namely: Limited Liability Companies and Public Companies. BUMN Persero (in the form of PT) is one form of BUMN where the company's regulation is directly related to its form as a limited liability company.¹³ BUMN Persero is also carried out with special arrangements regarding State-Owned Enterprises (BUMN) which is regulated in Law no. 19 of 2003 concerning State-Owned Enterprises. The arrangement also includes arrangements regarding the Board of Directors as one of the organs of a PT. Regulations regarding the board of directors include, among others: position, authority, appointment and dismissal. The Regulation Number 19 of 2003 concerning state owned enterprises states that there are two organs that have the authority to run a company, namely the board of directors and the board of commissioners.¹⁴

In the context of SOEs, the board of commissioners as a supervisory organ is often seen as elected without going through a clear mechanism and based more on political interests than as an effort to maximize the potential of SOEs. Whereas with such great authority and income that is almost equivalent to the board of directors, the position of commissioner should be held by a professional figure so that BUMN in Indonesia can compete with other state-owned companies whose majority shares are controlled by the private sector.¹⁵ The board of commissioners is a state-owned company that has general and/or specific supervisory duties to the board of directors and provides advice in accordance with the articles of association.¹⁶ In the administration of a state and government, accountability is very much attached to the position which is also of course attached to the authority. So that responsibility can be interpreted as "liability" because responsibility arises from the provisions of the applicable legislation.¹⁷

¹² Aminuddin Ilmar, *Hak Menguasai Negara dalam Privatisasi BUMN* (Jakarta: Kencana Prenada Media Group, 2012), hlm. 78.

¹³ UU Perseroan terbatas No. 40 Tahun 2007, hal ini dijelaskan juga dalam Pasal 1 angka 2 jo. Pasal 11 UU BUMN dinyatakan bahwa pada Persero berlaku prinsip-prinsip hukum perseroan.

¹⁴ Inda Rahadiyan, "Kedudukan BUMN Persero sebagai Separate Legal Entity dalam Kaitannya dengan Pemisahan Keuangan Negara pada Permodalan BUMN," *Jurnal Hukum Ius Quia Iustum* 20, no. 4 (2013): 624-640.

¹⁵ Ahmad Gelora Mahardika, "Rekonstruksi Syarat Pengangkatan Jabatan Komisaris BUMN: Antara Idealita dan Realita," *Majalah Hukum Nasional* 50, no. 1 (2020): 45-59.

¹⁶ Risanti Suci Pratiwi, "Legalitas Rangkap Jabatan Direksi dan Dewan Komisaris pada Badan Usaha Milik Negara yang Berbentuk Perseroan Terbatas," *Lex Renaissance* 4, no. 2 (2019): 266-284.

¹⁷ Azheri Busyra, *Corporate Social Responsibility: Dari Voluntary Menjadi Mandatory* (Jakarta: Raja Grafindo, 2011).

The concept of BUMN based on Article 2 paragraph (1) letter b of Law Number 19 of 2003 concerning BUMN is that the pursuit of profit is not strictly regulated regarding sanctions if the target is not achieved.¹⁸ This is different from private companies that rely on profits for the life of the company, if profits are not achieved there are sanctions in the form of dismissal of directors, reduction of employees or salary cuts. Therefore, the composition of the board of commissioners and the board of directors in private companies is always filled by competent people, because the fate of the company is in their hands.¹⁹

The board of commissioners or the so-called supervisory board is a position that is considered to have less effective role in the sustainability of the organization, therefore the position of commissioner sometimes becomes a political position given to people who are considered to have played a major political role, be it the President, or Ministers who have been appointed by the President or even high-ranking political parties. Article 1 point 7 of Law no. 19 of 2003 concerning SOEs states that: The Commissioner is an organ of the State-Owned Enterprise in charge of supervising and providing advice to the Board of Directors in carrying out the management activities of the Persero.

Reflecting on the case of the appointment of a former corruption convict of the Tarahan Lampung steam power plant (PLTU) construction project, Izedrik Emir Moeis as a BUMN commissioner at PT. Pupuk Iskandar Muda is considered a setback from the management of BUMN in Indonesia. Emir Moeis was found guilty of violating Article 11 of Law Number 31 of 1999 concerning the eradication of criminal acts of corruption which was amended by Law Number 20 of 2011. The judge's decision at the Jakarta Corruption Court (TIPIKOR) assessed that Emir had received a bribe of USD 400,000 along with interest from Alstom Power Incorporated (United States) through the president director of Pacific Resources Incorporated, Pirooz Muhammad Sharafih to later win three companies including Alstom Inc (USA), Marubeni Corporation (Japan), and Alstom Energy system (Indonesia) regarding the construction of PLTU in Tarahan Lampung in 2004. The appointment is a phenomenon that again eliminates aspects of the implementation of the AKHLAK program in implementing values that are in accordance with the principles of implementing and managing clean SOEs. According to Corruption Watch, the appointment of SOE commissioners from former SOEs is more of an appointment with an emotional closeness aspect. The goal of creating a clean governance of an institution will increasingly escape attention as the main aspect to eliminate practices that are indicated as corrupt, collusive and nepotism up to the central government level.

The polemic of the appointment presents different views. in the aspect of applying the rules of appointment, it is considered not to violate the applicable rules. the appointment of directors or commissioners in BUMN companies is regulated in Ministerial Regulation (Permen) PER-04/MBU/06/2020. Article 3 of the regulation regulates the legal status of a person who may be appointed as a director or commissioner of a BUMN subsidiary. The regulation states that the requirements to be nominated as a member of the board of directors of a subsidiary are: 1. Formal requirements, namely individuals who are capable of carrying

¹⁸ Muhammad Insa Ansari, "Badan Usaha Milik Negara dan Kewajiban Pelayanan Umum pada Sektor Pos," *Jurnal Penelitian Pos dan Informatika* 8, no. 1 (2018): 1–20.

¹⁹ Mahardika, "Rekonstruksi Syarat Pengangkatan Jabatan Komisaris BUMN: Antara Idealita dan Realita."

out legal actions, except within 5 (five) years prior to appointment. Based on these rules, there are no rules that the SOE Ministry has violated normatively regarding the appointment of Emir Moeis. Because, Emir Moeis has been free since early 2016. The same rules are also contained in Article 110 of Law Number 40 of 2007 concerning Limited Liability Companies.

The terms of appointment as Directors and Commissioners have been stated in PT Law No.40 of 2007 article 110 paragraph (1) and Law No.19 of 2003 article 57 concerning BUMN or Persero, explaining that prospective commissioners have never been punished for committing criminal acts that are detrimental to the state and/or related to the financial sector. Until now, the position of a BUMN commissioner is closely related to political elements, so the phenomenon that occurs is that the appointment of ex-convicts being appointed as commissioners of a subsidiary of a State-Owned Enterprise is still happening.

The commissioner is the organ of the company in charge of supervising and providing advice to the directors in carrying out the management of the company. Supervision by the commissioner is needed so that the board of directors does not do things that deviate, such as committing criminal acts of corruption that can harm the company. The supervision carried out by the commissioners is expected to limit the emergence of bribery and corruption practices.²⁰

Therefore, Referring to the description above, how can a former corrupt company be appointed as a commissioner of a subsidiary where the authority can be exercised to supervise how corruption does not occur. Based on the description above, the authors conducted research related to "Legal Analysis of Appointment of Former Corruption Convicts as Commissioner of BUMN". In this case, previous researchers have conducted a search on several previous studies, but this research has a different analytical review and a different approach from several previous studies that also examined BUMN commissioners, including, (i) journal articles by Muhammad Syaifuddin and Vegitya Ramadhani Putri with the article title "Analysis of Political Intervention in the Appointment and Dismissal of Directors of Company Companies in the Legal Framework of BUMN in Indonesia" which discusses how the tendency of political interests is involved in the appointment and dismissal of directors in BUMN; (ii) a journal article by Ahmad Gelora Mahardika with the title "Reconstruction of Terms for the Appointment of a BUMN Commissioner: Between Ideality and Reality" which discusses the requirements for the appointment of a BUMN commissioner to be professional, but very contradictory because it is often filled by politicians and political volunteers; (iii) a journal article by Risanti Suci Pratiwi with the title "The Legality of Multiple Positions of Directors and Board of Commissioners in BUMN in the Form of a Limited Liability Company" which discusses how the practice of concurrent positions is a problem that is repeatedly carried out within BUMN, where it is not allowed and clearly prohibited (illegal) in accordance with the mandate of the legislation to ministerial regulations.

²⁰ Afrizal Rachmat Nugroho, S Deasy, dan M M Mercy, "Pengawasan Komisararis Badan Usaha Milik Negara (BUMN) Persero terhadap Direksi dalam Rangka Pencegahan Tindak Pidana Korupsi," *LEX ADMINISTRATUM* 9, no. 1: 115 (2021).

Method Research

The research conducted by the author is normative research, focusing more on second-hand data or library materials, and focusing on the analysis of applicable laws and regulations or norms in positive law in every particular legal event that occurs in society.²¹ The approach to this research is carried out by applying a statutory approach (legal/juridical approach) is done by reviewing all laws or regulations related to the legal issues faced. To review and analyze the applicable laws and regulations in order to see the consistency between one regulation and another.²² In addition, this study also uses a case study research method that focuses on examining and examining the appointment of the board of commissioners in BUMN.

The research conducted by the author is normative research, so the most important data type used by the author is the second-hand data obtained from library materials composed of original legal materials composed of laws and other regulations and other legal materials. Applicable laws and secondary legal materials are documents that can provide in-depth explanations of primary legal materials,²³ reference books, and journals related to the research theme and further elaborate on primary legal materials in relevant theoretical and implementation contexts. Data related to the position of commissioners in BUMN In accordance with the approach method applied, the data obtained for writing in this research is a qualitative juridical analysis, the analysis can be formulated as a systematic and consistent decomposition process against certain symptoms.²⁴

Results and Discussion

Analysis of The Arrangements for The Appointment of The Position of The Commissioner Of BUMN

Talking about the appointment of the board of commissioners within the scope of BUMN, of course, the authority is in the hands of the executive government in this case the Minister of BUMN in accordance with Law No. 19 of 2003 article 27 paragraphs 1 and 2 which reads: by the RUPS, (2) In the event that the Minister acts as the RUPS, the appointment and dismissal of commissioners shall be determined by the Minister", the arrangement of Persero commissioners in the BUMN Law mostly only repeats the provisions of the Company Law. Article 16 of the BUMN Law, which is carried out by the RUPS, also mentions the appointment and firing of commissioners; in other words, the minister determines the appointment and dismissal of commissioners. In a position like the RUPS, a ministerial decision is adequate for the appointment and firing of commissioners because it has the same legal power as judgments made officially at the RUPS. So that the minister can legitimately designate commissioners using the attributive authority granted by the legislation. Other legal umbrellas of authority are listed in Regulation No. PER-02/MBU/02/2015 of the Minister of State-owned Enterprises of the Republic of Indonesia on the requirements and procedures for the appointment and

²¹ Muhammad Abdulkadir, *Hukum dan Penelitian Hukum* (Bandung: PT. Citra Aditya Bakti, 2004).

²² J L K Valerine, *Modul Metode Penelitian Hukum, Edisi Revisi* (Jakarta: Fakultas Hukum Universitas Indonesia, 2009).

²³ Soerjono Soekanto dan Sri Mamudji, *Pengertian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2006).

²⁴ Soerjono Soekanto, *Kesadaran Hukum & Kepatuhan Hukum: Suatu Percobaan Penerapan Metode Yuridis-Empiris untuk Mengukur Kesadaran Hukum dan Kepatuhan Hukum Mahasiswa Hukum terhadap Peraturan Lalu Lintas* (Jakarta: Rajawali, 1982).

removal of members of the committee and the national supervisory committee-owned enterprises, in which the regulation contains 5 (five) articles related to the requirements for BUMN commissioners and are only shown in the attachment to the regulation. The Minister legally has formal powers, powers that come from the Legislative Powers (given by Law) or from the Executive Powers of an administrative nature. Authority is the power over a certain group or a round government field (or affairs field), and authority is the power over certain parts. There is power in authority. Authority is the power to perform public legal actions.²⁵

In the appointment of a commissioner within the scope of BUMN, of course there are conditions that must be met before the GMS, in this case the Minister of BUMN appoints someone as a commissioner of BUMN. As stated in Law Number 19 of 2003 article 28 paragraph (1) which reads:²⁶ "Members of the Board of Commissioners are appointed based on considerations of integrity, dedication, understanding of company management issues related to one of the management functions, having adequate knowledge in the Persero's line of business, and being able to provide sufficient time to carry out their duties". In Article 28 of Law No. 19 of 2003 it is stated that one of the requirements for the appointment of a BUMN commissioner is the need to pay attention to the integrity aspect as the basis for the appointment of a commissioner in BUMN.

The above rules do not regulate in detail the requirements for the appointment of commissioners, therefore in practice, derivative rules that explain the formal and material requirements for the appointment of BUMN commissioners in detail are contained in the Minister of BUMN Regulation No. Per-02/MBU/02/2015 Chapter II letter A point 1 letter e which reads:²⁷ "have never been convicted of a criminal act that is detrimental to state finances and or related to the financial sector within 5 (five) years prior to nomination". It is also stated in letter B number 1 that the members of the board of commissioners have integrity.²⁸ The condition that states that "they have never been convicted of a criminal act that is proven to have harmed the state's finances or can be interpreted as a criminal act of corruption within the last 5 years prior to the nomination period is a formal requirement for nomination for commissioner positions.

This can be interpreted that the formal requirements contained in Ministerial Regulation No. 02 of 2015 are related to the fulfillment of the career path of prospective commissioners which will later become an objective assessment that will be carried out by the Deputy in evaluating the fulfillment of appointment requirements. Furthermore, in letter B number 1 it is stated that the candidate for the board of commissioners must have integrity. These conditions are material requirements that need to be fulfilled by each candidate for the board of commissioners who will be appointed. The material requirements are conditions that are more specific to the individual qualifications of the candidate's persona which are also the criteria for meeting the requirements for appointment. Material requirements related to

²⁵ Prajudi Atmosudirdjo, *Hukum Administrasi Negara* (Bogor: Ghalia Indonesia, 1981).

²⁶ Undang-Undang No. 19 Tahun 2003 pasal 28 Ayat (1).

²⁷ Peraturan Menteri BUMN No. PER-02/MBU/02/2015.

²⁸ Peraturan Menteri BUMN No. PER-02/MBU/02/2015.

integrity become an important point. Integrity concerns a person's credibility in carrying out a mandated task or responsibility. In fact, integrity becomes a barometer of measurement and assessment of a person in several series of filling a certain position that is a requirement and is administrative in nature

If we refer to the previous rule, namely Ministerial Regulation no. PER-03/MBU/2012 in article 4 number 2 letter a number brackets 3 as a material requirement it is stated that:²⁹ "the prospective commissioner has never been punished for an act that is categorized as being able to provide an unlawful advantage to the person concerned and or against another party prior to his candidacy", then this can be an obstacle to appointing a commissioner directly. This is because by having a track record of legal actions, especially those actions that are a form of criminal offense and against the law to enrich oneself (corruption), this is considered bad behavior. If the regulation does not change to Permen No. 02 of 2015 then it is certain that the appointment of former corruption convicts as commissioners will not occur.

So based on the description above, of course there are no rules that prohibit former corruption convicts from occupying the position of commissioners of BUMN. However, there is an integrity requirement to appoint someone as a commissioner of a state company which is also important to fulfill. The appointment of a company commissioner in a BUMN needs to prioritize the career path of the prospective commissioner concerned. When referring to the appointment of Emir Moeis as a company commissioner at PT. Pupuk Iskandar Muda is the appointment of a commissioner with certain political interests.

Legal Implications for Appointment of Former Corruption Convicts As Commissioners of BUMN

The appointment of former corruption convicts as commissioners of subsidiaries in BUMN by the Minister of BUMN is considered not in line with the principles of good corporate governance. BUMN as business administration bodies in the state economic sector are certainly required to realize their role as state administrative bodies that are consistent and consistent with the country's economic growth in order to achieve social welfare. In addition, BUMN are also required to fulfill good governance in the sustainability of a state agency in order to be able to improve performance in a sustainable manner.

In realizing this role, BUMN has implemented one of the strategic steps that are internal to the agency by internalizing the core values of human resources within the BUMN scope by issuing a circular letter from the Minister of BUMN No.7/MBU/2020. It is stated in letter E of the circular that the contents of the main values of BUMN human resources include: trustworthy, competent, harmonious, loyal, adaptive and collaborative which is then shortened to AKHLAK. AKHLAK as "core values" and not "lip service" is a concept applied to make BUMN stronger and more advanced. This is intended so that BUMN in their sustainability are able to give birth to daily behavior and form a work culture of BUMN that is progressive, adaptive and characterized.

Refers to the aspect of implementing the AKHLAK program as the implementation of values which in principle are a norm that prioritizes ethical and moral aspects. Seeing the phenomenon of the appointment of former corruption convicts as commissioners of BUMN is a form of deviation from the AKHLAK program itself which was proclaimed by the Minister of BUMN. Even if we look at the aspect of the rules there are no rules that are violated, but the

²⁹ Peraturan Menteri No. PER-03/MBU/2012

inspiration and meaning of an application of a regulation or law is not only seen from a juridical aspect, but must also prioritize the ethical aspects contained in a rule. when the spirit of law (*law*) and ethics (*behavior*) can be carried out and fulfilled in a balanced manner, that will give birth to ethical values in the constitution, both at the regional to central level.

The application of the core values of human resources in BUMN is a step that is able to improve both the work culture, the character of workers in this case from the highest to the lowest positions, as well as synergy between fields. So it can be said that in the implementation stage, BUMN is making improvements for the sake of improving the internal state of BUMN. SOEs that do not improve their management will usually face various difficulties, especially in the financial sector. AKHLAK will become the organizational values of the SOE ministry to move forward.

In its implementation, members of the Board of Commissioners and Supervisory Board of BUMN are asked to supervise the implementation and participate in implementing the core values of human resources. The appointment of former corruption convicts as commissioners of BUMN certainly raises a polemic. The appointment or appointment of BUMN commissioners should refer to the "core values" that have been implemented by the BUMN themselves. Of course, this appointment is considered to violate the principles in the application of the main values of human resources (core values) in BUMN.

If in the continuation of the implementation of these "core values" then those who oversee the implementation of the main values of human resources are ex-corruption convicts, of course it will be very worrying, that no one can guarantee that a former corruptor will not repeat the same mistakes when occupying or occupying a position in state instruments. Even if referring to the applicable rules, the appointment does not violate the rules and as long as the right in question to occupy a position is not revoked by the court and the formal requirements have been met, there are also material requirements that must be met regarding the integrity that the candidate for the board of commissioners must possess. lifted. Integrity will always involve a person's credibility in carrying out and carrying out a task entrusted by the state to him.

The appointment of former corruption convicts on the board of commissioners of subsidiaries in BUMN also shows the eroding moral values within the BUMN. Giving a strategic position to former corruption convicts in state instruments, it can be said that BUMN open up opportunities for corruption and residue acts in the future. Of course, the appointment of former corruption convicts as commissioners in BUMN will greatly harm the reputation of BUMN as a state instrument engaged in advancing the country's economy.

The appointment of former corruption convicts as commissioners in BUMN is also an indication of the non-fulfillment of the material requirements for candidates for commissioners as stated in Law Number 19 of 2003 article 28 paragraph (1) which requires consideration of the integrity of the candidates for the board of commissioners. So seeing the appointment of former corruption convicts as commissioners, in principle, it does not meet the consideration of the integrity of the candidates for the board of commissioners.

So that the appointment of former corruption convicts as commissioners of BUMN also presents a different interpretation of the interpretation of Article 28 paragraph (1) of the Law on BUMN, where the interpretation of the phrase "integrity considerations" will certainly differ between the interpretation of the law and the interpretation of its implementers. The author assumes that the appointment of former corruption convicts to fill the position of commissioners in a state institution also violates the application of one of the general principles of good governance (AUPB), namely the principle of organizing the public interest. This principle requires the government to carry out its duties and work always prioritizing the public interest. The public interest in question is covering all aspects of people's lives. And of course the government acts on the basis of policy to carry out the public interest.

The importance of an integrity consideration before determining and appointing a candidate for commissioner within the scope of a BUMN is so that later when he is appointed as a definitive commissioner, the person concerned is able to carry out his duties properly, and maintain the dignity of the position or position held. Meaning this consideration of integrity needs to be expanded, not just talking about whether a person is moral or immoral to be appointed as a commissioner, but more about how to prioritize maintaining the public's sense and trust in who is given the mandate of the position. the aspect of integrity referred to by the author is how the considerations include, consistency, belief, knowledge, sensitivity, readiness, and one's behavior. If this then becomes a benchmark against which to consider appointing a commissioner, the writer thinks that the positions will be filled by qualified people.

If you look at the appointment of former corruption convicts as commissioners of BUMN, of course the application of the principles of good governance has not been fully implemented by BUMN as a government agency. The principle of good general governance is used as a basis for assessment in administrative efforts as well as an unwritten law for government actions. In fact, AUPB is not only a basis for judgment for judges but also as a guiding norm for government organs.

The primary function of the AUPB is not only as a basis for the cancellation of lawsuits by administrative judges and as a basis for lawsuits, but also has other primary functions, namely as a direction for the implementation of authority that must be considered by the government. The function of AUPB is increasingly important primarily as a direction and guidance for administrative bodies or officials when exercising the authority to freely consider, in the process of forming and implementing policy regulations. At the government level, the implementation of AUPB will further realize the actual functions and objectives of the law and as an instrument or tool for the government or government agencies in considering making a policy.

The government, both from the legislative council, in this case members of the DPR and the executive government, in this case the Minister of SOEs, must pay close attention to the application of the law, regardless of the interests of a particular group. The need for changes to existing regulations related to the procedures for appointing the board of commissioners in SOEs either through laws or Ministerial Regulations so that there are no legal loopholes that can indicate the appointment of commissioners who have certain political interests, as well as how the requirements of candidates in terms of meeting the integrity aspect need to become a reference in determining the candidates for commissioners. Even though the applicable

regulations still have shortcomings, Indonesia as a state of law, of course, the government, both executive and legislative, has a central task to prioritize the rule of law above any special interests and pay attention to ethical aspects in the appointment of the board of commissioners in the BUMN scope. The application of general principles of good governance is also very important to be used as a source of policy making in appointing a commissioner in BUMN in order to achieve a clean and accountable state administration.

It is undeniable that the problem that has occurred internally in BUMN so far is the practice of filling the position of commissioner in a BUMN subsidiary which seems to prioritize emotional closeness. by ignoring the application of good governance principles, in which the application of good governance principles in the context of state administration is a fundamental institutional activity, both internally and externally. It can also be said that the implementation of the principles of good governance is consistently able to maintain and realize the rule of law in a concrete way.³⁰

Minister of BUMN as the technical implementer of presidential programs in the field of business under the state needs to prioritize the principles of clean government. in addition to implementing the principles of good governance.

Conclusion

From the description of the discussion above, the authors draw a conclusion from this study, namely; the appointment of ex-corruption convicts as board of commissioners in BUMN subsidiaries is in accordance with applicable regulations. However, according to Law No. 19 of 2003 article 28 paragraph (1), it is stated that members of the Board of Commissioners are appointed based on integrity considerations, in this case the author assumes that there is a legal loophole that can be used as a legal basis for the appointment of the board of commissioners in BUMN. The integrity requirement as a material requirement is only used as a supporting re-quirement for the appointment of a commissioner. The position of the commissioner is a position that is full of risks and problems related to decision-making. this is because the Company Law applies and regulates strict requirements for a person who wish to serve as commissioners. a commissioner should have fiduciary duties to the company regarding the ownership of his shares in the company. Integrity is an important requirement that must be carefully considered by the deputy as an assessor of the prospective commissioner to be appointed. Integrity greatly affects the sustainability and application of good corporate governance principles in the scope of BUMN. Fulfillment of integrity is a requirement and element of assessment in which integrity concerns the track record of the prospective and also suggested that the government, especially the minister of SOEs, develop a recruitment and appointment model for state-owned commissioners that prioritizes aspects of integrity.

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