Supervision Strategy in Decision Making of Business Cooperation Contracts by Director of Regional Companies (BUMD) Through the Implementation of Legal Due Diligence (Legal Audit), Financial Due Diligence, and Feasibility Study

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ABSTRACT
Commissioner is an organ of a limited liability company that is responsible for supervising and providing advice to the Board of Directors in carrying out the management activities of a Regional Owned Company (BUMD). Management and representation by the board of directors in running the company, one of which must be in accordance with the principles of Duty of care (prudential duty). The Board of Directors as a trustee with the principle of fiduciary duty must always prioritize prudence in running the company's business, therefore every management action must always be carried out in good faith and full of responsibility. This paper will discuss the importance of the supervisory function of the commissioners in order to realize the professionalism of the duties of the directors by implementing three components of assessment that must be carried out by the directors before deciding to conduct transactions/business cooperation with third parties. As a legal paper, the juridical basis used to discuss is the laws and regulations concerning regional companies and limited liability companies in Indonesia. Supervision strategy through the implementation of Legal Due Diligence (Legal Audit), Financial Due Diligence, and Feasibility Study before conducting business cooperation is important to avoid the negligence of the board of directors in their duties.

Keywords: *BUMD, supervision, business cooperation contracts.*

1. INTRODUCTION

Realizing people's welfare through the implementation of the national economy is an important pillar in the development of a country. The implementation of the national economy is carried out by the Government, both acting as a regulator and as the actor itself. Local governments can play a role as economic actors through the establishment of Regional Owned Enterprises (BUMD). Local governments establish BUMD with two main objectives, namely economic goals and social goals. BUMD is another term for Regional Government-Owned Enterprises (LGOEs). Regional-Owned Enterprises (BUMD) are business entities who's entire or most of the capital is owned by the Regional Government through direct investment originating from separated State assets.

The company's obligation to run its business with the precautionary principle is an obligation. The measure of the precaution nary principle that has been applied by a company in running its business can be determined if the business carried out is in accordance with and does not violate the rules, the Company's Articles of Association and other laws and regulations. The principles of good corporate governance are also used in the framework of running the Company. The implementation of good corporate governance has been regulated in Article 4 of the Limited Liability Company Law and the explanation of Article 4 of the Limited Liability Company Law. There are still many regional companies in Indonesia that do not implement and understand the function of Good Corporate Government, making companies not optimal in achieving their goals. This is as found in the research results of Rita Syofyan Defriko Gusma Putra who concluded that the company's management in order to be optimal must use management in accordance with Good Corporate Governance (GCG). Two things here, the first is the importance of shareholders getting accurate

information in a fast time. Second, the company's obligation to submit all data related to the management and disclosure of all company activities. Not implementing GCG principles in Indonesia by companies is influenced by organizational culture.[1]

Regional-Owned Enterprises in the form of a limited liability company whose capital is divided into shares which are wholly or at least 51% to 100% owned by the regional government whose main purpose is to pursue profit. The use of the form of Persero as a government business with the same legal construction as a Limited Liability Company, of course, has certain reasons. An interesting character in a Limited Liability Company is its status as a legal entity that has separate legal entities and capital which is divided into shares.

The Board of Directors of the company in carrying out the management of the company is based on the mandate given by the company. This mandate is called fiduciary duty, which requires the directors to be careful and have good intentions in carrying out their management as stipulated in Article 97 paragraph (2) of the Limited Liability Company Law. Article 4 of the Limited Liability Company Law stipulates that to this law (PT), the Company's articles of association, and other statutory provisions apply Company. And it is explained in the explanation of Article 4 of the Limited Liability Company Law that the enactment of this law (PT), the articles of association of the Company, and the provisions of other laws and regulations, do not reduce the obligation of each company to comply with the principle of good faith, the principle of propriety, the principle of propriety, and the principle of the Company's good corporate governance (GCG)in running the Company. It is very clear that the authority possessed by the board of directors must be exercised in good faith and with full responsibility, must not override the company's goals and objectives contained in the Limited Company's Articles of Association (ADRT) (duty of loyalty) and must not conflict with the laws and regulations.

In terms of making business development decisions, studies on business development decisions such as legal due diligence (Legal audit), financial due diligence, feasibility studies must be considered carefully. The studies before deciding on the development of this business are to limit the decisions of the board of directors so as not to exceed their authority. The duties of the board of directors to carry out the management of the company must be in accordance with the aims and objectives of the company as regulated in Article 92 Paragraph (1) of the Law on PT. Business development will pose a business risk if it is not decided with careful consideration. These studies reflect that the development of this business has complied with the precautionary principle. (Duty of care /prudential duty)

The above business studies must be the main basis for the Commissioner in supervising the Board of Directors in carrying out the Company's operations and being responsible for every action taken in the implementation of decision-making Business cooperation with third parties/business partners. From the explanation above, the discussion of this paper is "How is the juridical construction of Supervision in Decision Making of Business Cooperation Contracts by Directors of Regional Companies (BUMD) through the Implementation of Legal Due Diligence (Legal Audit), Financial Due Diligence, and Feasibility Study?"

2. RESEARCH METHOD

The type of research used is normative legal research, namely research that is focused on examining the application of rules or norms in positive law. The problem approach used by researchers in writing this paper uses the method statue approach (legal approach). The statutory approach is a method of collecting normative law and becoming a reference for the suitability of the entire existing positive law.[2]

3. RESULT AND DISCUSSION

A. The task of the Board of Directors In Frame Prudential Principle (principle of prudence)

This research is sociological juridical research, which moves from laws and regulations as legal issue then to be tested its validity in society. As research locations are 8 (ten) tourism objects, each 2 (two) objects in Bangkalan, Sampang, Pamekasan, Sumenep regencies, which are trying to develop tourism villages and FBESD UMT in Malaysia.

Respondents of this study: Local Heads in 4 (four) Regencies, Officials at the Education and Tourism Office in 4 (four) Regencies, Village Heads, and local migrant workers. As legal research, this research used prescriptive approach, namely the requirements that stipulated in the law and factual approach by examining the validity of the law in society.

B. Supervision Function by the Company's Commissioners within the framework of thePrinciples Collective Collegial

Article 108 Paragraph (1) of the Limited Liability Company Law regulates the duties of the commissioners, namely to supervise and provide advice to the directors. In Article 114 of the Limited Liability Company Law, the main duties and functions of the commissioners are as follows:

1. supervise the policies that will be carried out by the company. The Board of Commissioners can also provide advice to the Board of Directors in accordance with the interests of the company.

2. In providing advice to the Board of Directors, do so in good faith, with prudence and responsibility for the interests of the Company.
3. Personally responsible for the loss of the Company if the person concerned is proven guilty or negligent in carrying out his duties properly.

Thus, the commissioners have the duties and functions as supervisors and advisers to the directors of the company. This means that the Commissioner is not tasked with running the company's operations. This is the main thing that distinguishes the Commissioners and Directors in a company. However, the negligent commissioners can jointly be held accountable for the actions of running the company by the directors that harm the company not because of business risks or business decisions that are in accordance with the law and the articles of association. Thus accountability the existing is collective collegial. The commissioner is not collegially responsible if in carrying out his duties it is in accordance with what is stipulated in Article 114 paragraph (5) of the Limited Liability Company Law, namely he has supervised carefully, has no personal interest and has prevented losses that arise through the advice given.

The magnitude of the responsibility of the commissioner with the collegial principle requires a strategy, therefore the components of legal due diligence, financial due diligence and feasibility study need to be applied in supervisory duties before deciding to cooperate with third parties/business partners.

C. The Importance of Legal Due Diligence (Legal Audit), Financial Due Diligence, and Feasibility Study Considerations in Business Cooperation Decisions with Third Parties

Increasing business competition and demanding companies to make various efforts in order toto lead survive has begunto company expansion by means of business cooperation. To carry out such business cooperation, interested parties need certainty regarding the prospects, strengths, and weaknesses of the company that will become a business partner. There are 3 components that can be used in order to carry out the duties and functions of supervision. These components include Legal Due Diligence (Legal Audit), Financial Due Diligence, and Feasibility Study. The explanation below will show the importance of these components before deciding on a business partnership.

Legal due diligence/Legal audit has the objective of conducting an assessment of the company's security level, especially in terms of legal risk aspects that can endanger the assets owned by the company. This legal audit will then become the basis for consideration for the client to make decisions about the next steps in relation to the transaction.[6] For some business interests that are subject to the Capital Market Law and Bapepam Regulations, it is necessary to involve supporting professions, namely Capital Market/Company legal expert consultants to conduct Legal Due Diligence/Legal Audits. Legal due diligence/ audit is carried out by a Legal Consultant and is bound by a statement as a profession, which is requested and authorized by the client to carry out due diligence. Things that are tested in due diligence such as the physical company, completeness of documents, as well as the condition of the object of the transaction with the object: Establishment documents and all changes, Capital and share structure, Composition of shareholders, directors and commissioners, Licensing and approvals, Assets, Insurance, Manpower, Agreements with third parties, Cases and disputes

Due diligence is mandatory and very important for a prospective buyer in the business world. This is because the buyer or new owner of an asset needs to be responsible for everything that happens in the business. In addition to Legal Due Diligence as described above, in order to consider business cooperation, the company must also implement Financial Due Diligence. Buying an ongoing business is more time and effort efficient than building a business from scratch. That's why an investor often does it. However, they certainly will not necessarily buy a business without doing some research first. The process of investigating the financial history as well as problems in the business to be purchased is what is meant by financial due diligence. A thorough investigation really needs to be done by a potential investor so as not to make a wrong move. Due diligence is also useful for measuring the risk of the business to be purchased.

The Capital Market, Accounting, Finance and Banking Terms Dictionary explains the meaning of due diligence as follows: A thorough and in-depth study in terms of various aspects including finance, business structure, and planning. When a company is going to go public, interested parties, such as underwriters, will do their due diligence. It also means a meeting convened by the underwriters of a new securities offering, where brokers can ask questions about the background and financial reliability of the issuer, and what the proceeds from the sale of the securities are used for.

A form of audit that is carried out in depth and carefully on the operating and financial activities of a company to meet specific objectives such as an initial public offering by a company that will go public, takeover or bussiness combination such as partnership, merger, acquisition, joint venture., sales of units or company assets, and corporate restructuring, to achieve these specific objectives are not based on existing audit standards but on an agreement.[7]

The core of the auditor's activities in this assignment due diligence lies in the implementation of audit procedures, which are reflected through fieldwork activities consisting of fact finding, analysis, and

interpretation. What should be underlined is that the audit procedures in due diligence are audit procedures that are agreed upon between the client and the auditor. The point is, audit procedures in due diligence must be able to reveal and produce information or recommendations needed for decision making related to the implementation of the due diligence. For a merger, for example, the audit procedure carried out must be able to reveal the true asset value of the target company, the company's market prospects, the target, and other information that can be the basis for the client to decide whether or not to carry out the merger. The Role and Responsibilities of Auditors in Due Diligence It is clear that auditors play a very important role in due diligence. A business person or in this case is a client who assigns due diligence to the auditor will not be able to make a decision without the information or recommendations produced by the auditor through due diligence.

Another consideration that must be considered by the company when deciding to cooperate with a third party is the feasibility study of the prospective partner company (Feasibility Study). According to Hasan and Muhammad [8], a business feasibility study, which is also often called a project feasibility study, is a study that explains whether or not a project (business which is usually an investment project) can be implemented successfully. The term project is defined as a form of establishing a new business or the introduction of a new product, product modification. In essence, a feasibility study is an in-depth study of a business idea, to determine whether the idea is feasible or not. At this point, I'm sure you already have a little idea about the feasibility study that is still being discussed. If you think that a feasibility study is very useful for running a business. Well, I totally agree with your opinion, because you could say this feasibility study will save your business before it suffers too much loss.

According to Husnan and Muhammad (2000), the purpose of conducting a feasibility study is to avoid too large an investment for activities that turn out to be unprofitable. Of course, a feasibility study costs money, but it's relatively small considering the large amount of investment to be made. Objectives The conduct of Feasibility Study according Kamsir and Jafar feasibility study has five goals and then make the feasibility study is recommended to be done. Well, here are the points: [9] Avoiding the risk of loss, Easing Planning, Easing Work Execution, Easing Supervision, Easing Control.

Auditors are only responsible for the opinion they give. The role and responsibility of the auditor in due diligence is that of a business person or in this case the client who assigns due diligence to the auditor will not be able to make a decision without the information or recommendations produced by the auditor through due diligence. Likewise, in assessing the feasibility of a company through a feasibility study. A clear and definite set of rules is needed for consideration before making business decisions.

D. Juridical Construction Supervision of Business Transaction Decision Making Through the Implementation of Legal Due Diligence (Legal Audit), Financial Due Diligence, and Feasibility Study

Cooperation between BUMD and third parties must be interpreted first with Cooperation in general in business activities. Therefore, in general it can refer to Article 1320 BW as a general condition, and then refer to the provisions of BUMD Cooperation as regulated in the Minister of Home Affairs Regulation Number 118 of 2018 concerning Business Plans, Work Plans and Budgets, Cooperation, Reporting and Evaluation of Business Entities Regional property as a special condition.

Article 26 of the Regulation of the Minister of Home Affairs 118/2018 regulates BUMD cooperation at the initiative of partners with required documents, including:

a. cooperation proposals;

b. cooperation feasibility study;

c. third party Business Plans; and

d. third party risk management and cooperation.

Companies that are prospective business partners are not necessarily incapable and worthy of running a business, for that BUMD which has the aim of seeking profit must really consider that potential business partners are Visible, Reliable and have a track record. the good one. The company's financial considerations and the professionalism of the human resources behind the prospective partner company must be a concern for considering the decision to cooperate. These components are needed as a basis for consideration to decide whether to cooperate or not, here necessary legal due diligence, financial due diligence and feasibility studies are absolutely to carry out before making a business contract decision.

Thus, the components of supervision mentioned above will be a tool to realize the goals to be achieved by BUMD through good corporate governance. In order to have legitimacy and be binding on the board of directors, these components must be constructed into the Good Corporate Governance Manual, including the management manual (board manual) and code of conduct (code of conduct). These rules of the game must be followed and used as a reference in managing BUMD when entering into a Cooperation contract with a third party/business partner.

4. CONCLUSION AND SUGGESTION

Conducting business contracts with third parties is one of the business fields carried out by BUMD. However, in order to make a profit and not suffer a loss, the board of directors is required to exercise prudence in making business decisions. The implementation of these principles is a form of fiduciary duty for the board of directors in managing and representing the company. The supervision of the commissioners becomes important when the directors will terminate the business cooperation contract. The board of directors and commissioners will be collectively and collectively responsible for losses that are not considered business risk or are not carried out in good faith and with full responsibility. Implementation of components are legal due diligence, financial due diligence and feasibility study required by the commissioner to assess the business cooperation plan. The arrangement of the supervisory components into the management manual (board manual) and ethical conduct (code of code of conduct) as the basis for making business contract decisions will bind the board of directors to carry it out.

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