



# Application of Good Corporate Governance Principles in the Appointment of the Board of Commissioners in State-Owned Enterprises to Actualize Sustainable Development

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**Abstract.** This perspective paper presents the existence of State-Owned Enterprises (SOE) as business entities that have an important role in economic development in Indonesia related to the livelihood of many people, whose entire or most of the capital is owned by the state through direct investment originating from separated state assets. After the COVID-19 pandemic, the existence of SOEs became more important in order to be the driving force for Indonesia's economic recovery. The organs of SOEs generally consist of the General Meeting of Shareholders (GMS), the Board of Commissioners, and the Board of Directors. The Board of Commissioners generally plays an important role, namely the supervisory function on the management of SOEs that is adjusted to the principles of Good Corporate Governance (GCG), therefore the appointment must be made through an election in accordance with the laws and regulations. However, in practice, the nomination and appointment of the Board of Commissioners in SOE in some cases is not in accordance with the provisions, causing the elected Commissioner to have concurrent positions. The purpose of this study is to prevent concurrent positions in SOEs, with a comparison to other countries law and implementation on this matter. This study highlights the limitations/criteria for the placement of the Board of Commissioners in SOEs based on GCG principles, and regulatory reformulation regarding the placement of the Board of Commissioners in SOEs in accordance with GCG principles.

**Keywords:** State-Owned Enterprises · Concurrent Positions · the Board of Commissioners · Good Corporate Governance

## 1 Introduction

State-Owned Enterprises (SOE) in Indonesia have an important role in Indonesia's development since they are a part of and at the same time the driving force behind national economic development [1]. SOE is a constitutional mandate as state intervention in guarding the national economy related to the lives of many people. Based on Law Number 19 of 2003 concerning State-Owned Enterprises (hereinafter referred to as the SOE

Law), SOE are business entities whose capital is wholly or most of the capital is owned by the state through direct investment originating from separated state assets [2]. SOEs purpose is to achieve sustainable development.

Good management and implementation of SOE can be realized if the organs in the SOE carry out their duties with the mandate and do not conflict with the laws and regulations. Referring to the provisions in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as Limited Liability Company Law), the company's organs consist of the General Meeting of Shareholders (GMS), the Board of Commissioners and the Board of Directors. Likewise, the SOE Law also states that Public Company organs are the Minister, the Board of Directors and the Supervisory Board [3].

The Board of Commissioners is an organ that has the functions and duties to supervise and provide advice to the Board of Directors in carrying out company management activities. The Board of Commissioners has an important role to ensure that state-owned companies are well managed, trustworthy and bring benefits to the stakeholders.

The Board of Commissioners prior to carrying out their duties must go through a process of filling positions (recruitment) and appointment that is selective and as good as possible in accordance with applicable regulations in Indonesia. Currently, the recruitment process for members of the Board of Commissioners in SOEs is often carried out without going through clear mechanisms and fulfilling requirements. This certainly has the potential to weaken the condition of the SOE. As a result, the goal of SOE as a driving force for the economy will not be achieved.

Based on research, in fact, the nominations of the Board of Commissioners in SOEs is currently not carried out with adequate selection and competence, especially those from the State Civil Apparatus (SCA), does not yet have clear indicators. The authority of the Board of Commissioners is so broad and the income is almost equal to that of the Board of Directors, therefore should be held by a professional figure so that SOEs in Indonesia can compete with other state-owned companies whose majority shares are controlled by the private sector [4].

Taking into account the provisions on SCA, since the ratification of Law no. 5 of 2014 concerning State Civil Apparatus (hereinafter referred to as the SCA Law), SCA is recognized as a profession, so that in carrying out its profession, it must incorporate behavior such as integrity, honest, trustworthy, and responsible. The problem that often afflicts SCA in their profession or position is the threat of a conflict of interest. Conflict of interest is the existence of a conflict of economic interest between the SCA and the public interest. One example of this is when an SCA official is appointed as a member of the Board of Commissioners in a SOE, where the nomination automatically results in the SCA having concurrent positions.

An example of a case that was found was the existence of a Director General in a ministry who was appointed to be a member of the Board of Commissioners in a SOE, causing criticism from various parties. The criticism is usually directed at the performance of the SCA in SOE, whether it can perform its supervisory functions and duties optimally. Another thing that is also highlighted is related to double income. In addition, the things that are highlighted are also related to integrity and professionalism, related to preventing corruption that can occur.

This study will discuss the concurrent positions of SCA and SOE Commissioners from the perspective of conflicts of interest. For this reason, after the Introduction section, it is necessary to first describe the theory of conflict of interest which will be used as an analytical tool to dissect the concurrent position phenomenon. Furthermore, empirical data on concurrent positions of SCA and Commissioner of SOE that occurred in Indonesia were disclosed, followed by regulations that regulate the concurrent positions. The research is continued with an analysis of laws and regulations related to concurrent positions, especially from the perspective of conflicts of interest. In the closing section, the research ends by providing relevant recommendations to resolve the problem of conflict of interest in the phenomenon of concurrent positions of SCA and Commissioner of SOE.

Comparative approach method will also be used in this research, with a comparison to the recruitment and appointment process of the Board of Commissioners in other countries like France, Sweden, and Canada. France and Sweden take their corporate governance seriously, so therefore the appointment of the board of commissioners is carried out according to the corporate governance [5]. France and Sweden provide sufficiently clear limits for shareholders to be able to decide on the appointment of the board of commissioners in the company so that there are also clear limits for the board of commissioners in carrying out their positions to avoid concurrent positions [6]. Canada has also provided a regulation regarding conflict of interest and concurrent positions [7].

Based on the background stated above, this study will raise matters on the limitations/criteria for the placement and/or appointment of the Board of Commissioners in SOEs based on GCG principles, and the regulatory reformulation regarding the placement and/or appointment of the Board of Commissioners in SOE in accordance with GCG principles. The problem formulated above will produce an overview of the problems above, which is expected to be useful for every reader.

Overall, the whole research in this paper is organized as follows, in Sect. 2 we introduce the methodology used in this research. In Sect. 3 we start to discuss the main matters in this research, with a summary and conclusion explained in Sect. 4.

## 2 Methodology

This type of research is normative legal research because there is a study on the legality of the dual positions of the Board of Commissioners originating from SCA in SOEs seen from the perspective of the applicable laws and regulations as well as the literature related to the problems studied [8]. Furthermore, this research is also analytical prescriptive [9]. This research will review and analyze the rules of Indonesian and other countries law concerning commissioners, concurrent positions, and conflict of interest, as well conducting a comprehensive analysis of Indonesian and other countries Law [10].

The approaches used to solve the problems raised in this research are the statute approach [11], the conceptual approach [12], and the comparative approach [10], which in this research will explore the comparison of law and constitution between Indonesia, French, Sweden, and Canada.

### 3 Results and Discussion

#### 3.1 Concurrent Positions in Numbers

Referring to data from the Ombudsman of the Republic of Indonesia, in 2019 there were around 397 state/government administrators indicated to have concurrent positions in SOE and 167 people in SOE subsidiaries. Based on this data, 64% came from the Ministry or around 254 people, from Non-Ministry Institutions it reached 112 people or about 28% and from universities it reached 31 people (8%) [13].

Furthermore, data from agencies from the ministry, there are 5 (five) ministries that dominate up to 58%, namely: Ministry of SOEs (55 people), Ministry of Finance (42 people), Ministry of Transportation (17 people), Ministry of Public Works and Public Housing (17 people), and the Ministry of State Secretary (16 people). Meanwhile, for agencies from non-ministerial institutions, 65% are dominated by five agencies, namely: Indonesian National Armed Force (27), Police (13 people), Prosecutor's Office (12 people), Regional Government (11 people), State Intelligence Agency (10 people) and Financial and Development Supervisory Board (10 people). Furthermore, for institutions from higher education, it was recorded that all of them came from 16 universities with the most from the University of Indonesia (9 people) and followed by Gajah Mada University (5 people). Based on the investigation carried out by the Ombudsman together with the Anti-Corruption Commission, an analysis was carried out on 397 people who were indicated to have concurrent positions. Profiling analysis was carried out on 281 active Commissioners.

The results of further profiling found that there were 138 Commissioners or 49% whose competence background did not match the position they held. In addition, there are several members of the Board of Commissioners with political volunteer backgrounds, from state-owned banks, active Indonesian National Armed Force/Police, active SCA in SOE subsidiaries, to political party administrators.

The implementation of GCG in France, Sweden and Canada has basically been well implemented, therefore in practice, it is rare to find cases of concurrent positions on the Board of Commissioners or Supervisors. However, even if a case is found, the concurrent positions that occur often do not cause a conflict of interest because this issue has become a concern to the government and awareness has been increased.

Based on the explanation above, it can be concluded that these Indonesian sample figures are still quite high for members of the Board of Commissioners who are concurrently holding the SCA position. This matter will be discussed in the next discussion regarding the potential for conflicts of interest in concurrent positions associated with applicable regulations.

#### 3.2 Regulations of the Board of Commissioners' Appointment and Concurrent Positions

The board structure is generally divided into two models, namely the single-board system and the dual-board system. Single-board systems are widely used in Anglo-Saxon countries such as the US, UK, and Canada while dual-board systems are widely used in mainland European countries such as Germany, the Netherlands. Indonesia adheres to a

dual-board system. France is one of the countries that actually adheres to a dual-board system, but in practice, most French companies choose a one-tier or single-board system [14]. Sweden and Canada is also one of the countries that adheres to a single-board system.

Single-board system consists of one Board of Directors (BOD) as an executive (implementation) and non-executive directors (supervision functions). The dual board system consists of two boards, namely the supervisory board or known as the Board of Commissioners, and the executive board or known as the Board of Directors. In a dual-board system, the roles of the board of commissioners and the board of directors are clearly separated. The board of commissioners will oversee the work of the board of directors [15].

In Indonesia, the SOE Law also states that the SOEs organs are the GMS, Directors and Commissioners [2]. The Board of Commissioners is an organ that has the functions and duties to supervise and provide advice to the Board of Directors in managing the company. The Board of Commissioners has an important role to ensure that state-owned companies are well managed and trustworthy and bring benefits to the stakeholders.

Currently, In Indonesia, the recruitment process for members of the Board of Commissioners in SOEs is carried out by appointing members of the Board of Commissioners at the GMS of SOEs. The Board of Commissioners are selected people who are appointed and elected for several reasons, such as work experience or educational history, work performance history which will be used as an assessment for the GMS to determine whether or not it is appropriate to be positioned as the Board of Commissioners, so that the legal relationship that occurs between the company and the Board of Directors Commissioners can be sourced from their performance based on good faith. However in reality, the recruitment process for the Board of Commissioners in SOE is carried out by the Minister of SOE as a shareholder and often carried out without going through clear mechanisms and fulfilling requirements [16].

The placement of members of the Board of Commissioners in SOE can come from various sources, one of which comes from the SCA. The phenomenon of having concurrent SCA positions occupying positions as members of the Board of Commissioners of SOEs will of course cause pros and cons. Why is that? This is because at the policy level there are actual regulations that allow public officials to hold concurrent positions, but on the other hand there are also regulations that explicitly prohibit concurrent positions in the government. The following explanation will explain which regulations support and prohibit concurrent positions, as follows:

1. Law Number 40 of 2007 concerning Limited Liability Companies (Article 110 paragraph 1), in Article 110 paragraph (1) it is not explicitly explained regarding the prohibition of concurrent positions, so that SCA is allowed to become a member of the Board of Commissioners in SOE. However, the provisions of Article 93 paragraph (2) and Article 110 paragraph (2) state that in the context of SCA they must pay attention to the provisions of other applicable regulations in Indonesia.
2. Law Number 19 of 2003 concerning State-Owned Enterprises (Article 33), in Article 33 it can be understood that there is a prohibition on concurrent positions for members of the Board of Commissioners. Article 33 letter b states that an inspection is required regarding the existence of other laws and regulations for SCA.

3. Law Number 25 of 2009 concerning Public Services (Article 1 paragraph 2 and Article 17), if Article 17 is linked to Article 33 of the SOE Law, therefore SCA should not be able to hold concurrent positions as members of the Board of Commissioners of SOE because it can cause a conflict of interest. This is the key provision for SCA.
4. Regulation of the Minister of SOEs Number PER-01/MBU/2011 concerning Requirements and Procedures for Nomination and Dismissal of Members of the Board of Commissioners and Supervisory Board of State-Owned Enterprises (Chapter V).
5. Regulation of the Minister of SOE Number PER-02/MBU/2015 concerning Requirements and Procedures for Nomination and Dismissal of Members of the Board of Commissioners and Supervisory Board of State-Owned Enterprises (Chapter III letter A), in point c of this provisions conclude opportunities for Structural Officials and Officials Functional Government to become a member of the Board of Commissioners of SOEs. This provision can be used as a justification for the nomination of SCA as a member of the Board of Commissioners of SOEs and can be used as the basis for setting concurrent positions in the central government.

Based on the various provisions of the laws and regulations mentioned above, it can be concluded that some of those provisions above is in line with each other, although in other provisions contradictory occurs and causes a disharmony and confusion between those provisions. As a consequence of this fact, the argument for the refusal of concurrent positions cannot be based on formal legal reasons because in fact there are regulations that actually allows it. Therefore, regulatory arrangements to clarify the position of whether or not SCA can serve as Commissioners of SOE in a coherent view are urgent to be carried out. In connection with that, regulatory arrangements and limitations must be made regarding the recruitment process and nomination of the Board of Commissioner in Indonesian SOE's is also urgent to be carried out.

Many parties have no problem with the existence of concurrent government officials who occupy the position of Commissioner of SOEs for various reasons. However, looking back at Article 28 of the SOE Law which states that in addition to being appointed based on considerations of integrity, dedication, and competence, SOE Commissioners must also provide sufficient time to carry out their duties. This is impossible if concurrent positions are carried out. However, the strongest and most legitimate reason for the refusal of concurrent positions is that this condition is prone to conflict of interest.

France carried out a corporate governance reform through the Code of Best Practices. Under French law, companies can choose a one-tier board system by combining the Chair & Chief Executive Officer, or a dual-board structure – which has separate management and supervisory boards – and also separates the chairman and CEO [17].

In its appointment process, the French Law regulates, a commissioner's mandate may not exceed six years unless the GMS decides to renew this mandate, and Commissioners older than 70 years may not exceed one-third of Board membership. The French Corporate Governance Code (Vienot II) in accordance with the Hellebuyk Commission provides in turn that the duration of a Commissioner's term of office, set by the internal regulations, should not exceed a maximum of four years, in order to enable shareholders to rule upon their appointment with sufficient frequency. Reappointment should not be

automatic, but a conscious decision by the shareholders and the Commissioners concerned [18]. This regulation was initiated to avoid concurrent positions by the board members.

Furthermore, the Canadian Law has regulated that the Board of Commissioners in Canada is commonly referred to as the Chair of Board. Canada is currently applying the single-board system. Companies concern on the board accountability and process has resulted in a separation of the Chair of Board and the Chief Executive Officer so therefore the board is able to carry out its responsibilities independently of management, although Canada is one of the countries that chooses to apply the single-board system. Companies hereby want to prevent concurrent positions cases that may occur along the way, while there is no legal requirement to separate the two functions, National Policy 58-201 regarding Corporate Governance Guidelines (hereinafter referred to as the NP 58-201) recommends that the Chair of the Board should be an independent director.

The appointment of the Chief Executive Officer and other members of senior management and the relationship of management to the board are critical. Canada has a nominating committee that recommends individuals as directors, while considering their competencies and skills that the board, as a whole, should possess; the competencies and skills of each existing director; the competencies and skills of each new nominee; and whether the new nominee can devote sufficient time and resources to his or her duties as a director [19].

Furthermore, in Sweden, a Swedish limited liability company is organized as a unitary structure in line with the Anglo-Saxon one-tier and/or single-board system. The general meeting of shareholders, acting as the company's supreme decision-making body, *inter alia* elects a board that appoints a managing director [20]. In general, the board in Swedish listed companies includes five to 10 members and primarily consists of non-executive directors. According to the Code, a majority of the directors of the board elected by the general meeting must be independent from the company and its executive management.

Thus, in Sweden, boards of listed companies normally consist of non-executive directors only. The managing director of the company may not be the chair of the board but may however be a board member. The chair of the board has no specific duties or powers other than a responsibility for convening the board and leading the work of the board [21].

The appointment of the board members is regulated with the provision that the shareholders meeting elects the company's board of directors and decides on discharge of liability for members of the board and the managing director. The meeting's decision on the appointment of the board of directors is therefore normally prepared under a process controlled by the owners. The appointment process involves a nomination committee. The nomination committee is a body of the shareholders' meeting with a duty to present and give reasons for its recommendations given regarding the board members [22].

### **3.3 The Influence of Conflict of Interest in Concurrent Positions**

Conflict of interest is a concept that is widely used to examine the ethical risks of a profession and its actions. In general, a conflict of interest arises when the interests of one person are not the same as the interests of another person or organization. In addition,

a conflict of interest can also arise when a person has to respond to the conflicting interests of two individuals, groups, or organizations. If only the interests of one party are accommodated, then the interests of the other party are harmed. Conflicts of interest may arise as a result of malicious motivations but more often arise as an effect of the structural features of a relationship or practice. In the context of the profession, MacKenzie and Cronstein define it as a condition in which professional judgments regarding the primary interests of the profession (e.g. the health of patients for doctors or the validity of research for researchers) are overly influenced by secondary interests (e.g. obtaining financial benefits) [23].

However, an institution with an interest in maintaining its integrity will identify any interests that can hinder its members from carrying out their duties and achieving institutional goals. Not only interests that exist in a real and clear way, but also potential interests. This is in line with the OECD instrument (2005) which distinguishes conflicts of interest into three types: real or actual conflicts of interest (true to occur), conflicts of interest that seem real or actual (apparent) (seems to occur but cannot be ascertained), and conflicts of interest. Potential (not happening now but likely to happen in the future).

Another point that must be considered wisely related to conflicts of interest is the provisions in the SCA code of ethics and code of conduct as regulated in Article 5 (2) letter h of the SCA Law which emphasizes that SCA must ensure that there is no conflict of interest in carrying out their duties [24]. Conflicts of interest in concurrent positions of SCA with Commissioners of SOE are possible because by holding both positions simultaneously, it means that someone has double loyalty and commitment. SCA is a public office so that it is oriented to the public interest. The SOE Commissioner has a strong private orientation because he works for an entity that is required to make a profit. The dissimilarity of goals among the organizations where the dual position holder works is a valid factor behind the emergence of a conflict of interest [25].

Related to the GCG principles, it can be concluded that concurrent positions of the Board of Commissioners, both in private companies and state-owned enterprises, are actions that do not have a strong legal basis or can be said to be illegal. Various losses can occur if concurrent positions are still being carried out, including, conflicts of interest that will harm the company, the supervisory function carried out by the Board of Commissioners does not run optimally due to the loss of the essence of *checks and balances* between the functions of the Board of Directors and the Board of Commissioners. These are the influences of conflict of interest in concurrent positions that occur in Indonesian SOEs, in France, in Canada, and also in Sweden.

### **3.4 Solution to the Problem of Concurrent Positions of the Board of Commissioners in SOE**

The problem with the concurrent positions of Board of Commissioners originating from SCA in SOE, needs to be resolved immediately. If allowed to drag on, then this will affect the legitimacy of the Board of Commissioners in the SOE. SOEs in running their business must refer to the 5 (five) principles of Good Corporate Governance or the so-called Good Corporate Governance (GCG) principles. GCG principles include Transparency, Accountability, Accountability, Independence, and Fairness.



The French corporate governance acts as a corporate code that regulates the rules and principles for board members to carry out their positions in the company. French corporate governance does not explain good corporate governance implementation in detail but implements it in carrying out their duties [26].

Furthermore, Canada is often cited for its world-class corporate governance practices, directors and leading experts in this space continue to contemplate strategies for improving performance. The marker of good corporate governance is not having good processes; it's having a healthy business. As much as corporate governance in Canada has evolved in recent years, the fundamental principles remain the same [27].

Purdy Crawford notes that the practice in Canada of separating the CEO position from the Chair of the Board position, rather than combining these roles in one person, has in many ways set the tone for a more principle rich approach to governance. This approach is inherently more balanced and adaptable to evolving governance issues than a rules-based, ticking-the-box approach. The relationship between the board and senior management—some of whom typically also sit on the board—is critical to good corporate governance and to minimizing the risk of liability to directors. Therefore, Canada also has a special committee that is established to consider a particular issue, involving a conflict of interest for the board members. Special committees have long been used as a matter of good corporate governance [28].

In Sweden, Swedish corporate governance is closely linked to how corporate governance has developed internationally in recent decades. The Swedish corporate governance framework is significantly guided by the principle of equal treatment and a strong requirement for the board always to act in the best interests of the company and its shareholders. The currently applicable Code is the revised version of the Swedish Code of Corporate Governance (January 1, 2020). If a company chooses to deviate from a certain provision of the Code, it must state its reasons for doing so (the comply or explain principle) [29].

Based on all the comparative studies mentioned above, it can be concluded that the implementation of the GCG concept in accordance with Indonesian culture is to strengthen the 5 principles of GCG (*Transparency, Accountability, Responsibility, Independency, and Fairness*) which are implemented continuously and continuously and periodically evaluated by each pillar of GCG implementation itself, namely the government, business actors and the community. In general, the explanation of the five basic principles of GCG is as follows:

1. *Transparency*, namely transparency in carrying out the decision-making process and transparency in presenting material and relevant information about the company.
2. *Accountability*, namely clarity of functions, structures, systems, and accountability of company organs so that company management is carried out effectively.
3. *Responsibility*, namely conformity (compliance) in the management of the company to sound corporate principles and applicable laws and regulations.
4. *Independency*, which is a condition where the company is managed professionally without conflict of interest and influence/pressure from the management that is not by applicable laws and regulations and sound corporate principles.

5. *Fairness* (equality and fairness), namely fair and equal treatment in fulfilling the rights of stakeholders arising based on agreements and applicable laws and regulations.

If those appointments of the Board of Commissioners regulations and those concurrent position matters are related to the principles of GCG, then clear boundaries can arise for each of the rules mentioned above [30]. The problem of concurrent positions, apart from being reviewed based on facts, is reviewed based on regulations, in addition to causing conflicts of interest, it can also lead to legal conflicts. Therefore, in addition to implementing GCG in the implementation of SOEs, the inconsistency between these creates a conflict of norms that can be resolved by the theory of legal preference using the principle of *lex superior derogate legi inferior* [31]. This principle explains that laws and regulations that have a lower degree in the hierarchy of laws and regulations must not conflict with those that are higher.

The 5 principles of GCG can direct SOEs to the best possible management of the company, so that the organs within the company will also automatically apply these principles to the best of their ability to avoid harming the company. Related to the GCG, there are several alternatives that can be done to solve this problem. These alternatives can be applied to overcome the concurrent position problem, related to the GCG principles when applied in SOE. Those alternatives are as follows:

1. First, public officials who occupy positions as members of the Board of Commissioners in SOE should be required to leave their SCA positions while they are serving as Commissioners, or vice versa, so that they can focus on carrying out one of their positions. This is in accordance with the Independence principle contained in the GCG principle so that SOEs can move independently without intervention from other parties.
2. The second alternative, public officials who occupy the position of members of the Board of Commissioners of SOEs should go through a mechanism that has been regulated by laws and regulations related to SCA management, for example by using the assistance mechanism so that the salary of the official concerned only comes from the original agency and does not become a double income. This is in accordance with the principles of Equality and Fairness contained in the principles of GCG so that justice for the company for every employee can be achieved.
3. The third alternative is to revise the regulations that allow SCA to occupy the position of Commissioner of SOE. The appointment of the Commissioners must be reformulated in Indonesian regulations, and nomination committee may be a solution to supervise the recruitment process. These regulations can avoid the potential for permanent conflicts of interest that SCA may face. The regulation can be issued in a form equivalent to a law or a Government Regulation in Lieu of Law (Perppu). This is in accordance with the principle of Responsibility contained in the principles of GCG so that SOEs in recruiting the Board of Commissioners do not conflict with the laws and regulations.
4. The fourth alternative is to leave this situation (*status quo*). This means that SCA officials can hold concurrent positions as members of the board of commissioners of SOEs in order to mitigate the risk of conflict of interest by providing capacity building for concurrent position holders to be prudent towards conflict-of-interest situations that they may face: identify existing risks, handle them appropriately, and

resolve them appropriately. Effective. Institutions also need to assist dual incumbents in dealing with these situations by providing a realistic regulation framework, enforceable compliance standards (including provisions for sanctions for violating them) and establishing systems. This is in accordance with the principles of Transparency and Accountability contained in the GCG principles so that SOEs in carrying out their positions are transparent and have a clear, efficient, and orderly system.

Related to the reformulation of regulations in the nomination of the Board of Commissioners in SOE, there may be some alternatives to solutions to overcome this matter. When viewed based on the laws and regulations that govern it, and based on applicable principles, it is clear that the concurrent position is not allowed for the Board of Commissioners in SOEs.

Board of Commissioners which derive from SCA if indeed allowed to hold concurrent positions in SOE, then the Public Service Law needs to be revoked, so that there are no more regulations that prohibit an SCA from holding concurrent positions on the Board of Commissioners. Commissioner in SOE. Therefore, all applicable laws and regulations relating to SOE and SOE Organs must contain provisions regarding the prohibition of concurrent positions and strict sanctions for those who violate these provisions. Hereinafter, the government must establish a special committee or supervisory agency specifically to assist in supervising the recruitment process for members of the Board of Commissioners in SOE, so that in its implementation it can be carried out selectively to avoid cases of concurrent positions in SOE.

Every country should implement a law that explains that conflict of interest is strictly prohibited. So that concurrent positions should not be carried out, both in dual-board and single-board system countries.

## 4 Summary and Conclusion

Based on the results of the research that has been done, it can be concluded that concurrent positions of the Board of Commissioners in Indonesian SOEs, especially those from SCA are an act that is prohibited (illegal). This is because it can cause a conflict of interest (conflict of interest) which results in the ineffective implementation of the duties of the Board of Commissioners, if related to the GCG principles. This discrepancy has led to disharmony from various laws and regulations, where in the law it has been prohibited, but at the level of technical regulations it turns out that this is allowed, namely at the level of a Ministerial Regulation. This conflict of norms can be resolved by the theory of legal preference using the principle of *lex superior derogate legi inferiori*.

With a legal approach in completing concurrent positions, the solution that can be done is through legal instruments of right or wrong, violating or not violating the law which in the end will lead to the loss of one of the concurrent positions. Applying the GCG principles must be done in order to actualize a sustainable development in SOE. Therefore, the conflicting regulations must be repealed or revised. The formation of a special committee or committee tasked with supervising the recruitment process for members of the Board of Commissioners in SOEs can also be a preventive measure to avoid cases of concurrent positions in SOEs.

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