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IMPLEMENTATION OF GOOD CORPORATE GOVERNANCE AND PRUDENTIAL PRINCIPLES (PRUDENTIAL BANKING REGULATIONS) IN BANKING

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Abstract- Banks are required to improve bank health in accordance with the provisions of the aspects of capital adequacy, asset quality, management quality, liquidity, profitability, solvency, and other aspects related to bank business, and are required to conduct business activities in accordance with the principles of prudence. The principle of trust is the main, basic, and most important principle of banking activities. Banks are institutions based on trust by taking advantage of fiduciary obligations from customers to banks in the form of trust in customer data and money from customers. The method used in this research is the normative legal writing method. The bank has a function as an intermediary institution that assists in the smooth operation of the payment system, as well as as an institution that becomes a vehicle for Government Policy policies, namely monetary policy. The application of the precautionary principle has a wide scope, not only in relation to the process of providing credit or corporate financing by banking financial institutions as stated in the Banking Act but also all aspects of banking company services. The aim of this research is to know the governance of the bank in order to prevent public doubts about the financial system of the bank.

Keywords*: Banking, Good Corporate Governance, Prudential principles, Regulation*

I. INTRODUCTION

In July 2019, an issue arose from a national bank, namely Bank Mandiri, which is a state-owned company. The issue is in the form of a case of balance error in Bank Mandiri customer accounts. This is related to the presence of several customer accounts that have an enlarged nominal and some even have a reduced nominal value than they should. Quoted from Kompas on Saturday (20/7/2019), Dozens of Bank Mandiri customers in Pekanbaru, Riau, experienced errors in their customer balances due to a problematic system (Tanjung, 2019). this case could make people doubt to the bank. This is in line with the explanation of Sutedi that the occurrence of an error in the company's system can result a lack of people's trust to bank itself (Sutedi, 2007). A big question mark has arise regarding the issues that occur, this is related to how a bank leads to a higher value than a bank through the application of banking principles, namely the principle of trust, the principle of prudence (prudential banking regulation), the principle of knowing your customers and the principle of bank secrecy. Good or bad the performance of a bank (company) can be determined by several factors namely, the application of the principles of good corporate governance and organizational commitment (Windiarto, 2015).With the case that occurred in mid-2019, a question arises as to how a company which is a BUMN should fulfill the principles of Good Corporate Governance of a company and the principle of prudence in this case concerns the basic principles of banking institutions. Hence, having prudential regulation is important as the substitute protector for the depositors (White, 2011). Thus, it is necessary to do a study to discuss the case.

There is a classification of the activities that a business in the banking sector may and may not carry out, where the classification refers to the twenty-five (25) basic principles of bank supervision that need to be in place for the creation of an effective supervisory system known as 25 The Basel Core. This principle is intended as a basic reference for supervisors and other public authorities in all countries internationally established by The Basel Committee on Banking Supervision, namely the banking supervisory committee established by the Governor of the G-10 Central Bank in 1975 covering seven aspects, namely: institutional aspects, licensing, provisions on prudence, methods of supervision, information, issues of authority, and cross-border supervision.

A statement from Bank Indonesia that a company engaged in the banking sector should have participated execute or implementing the precautionary principle in all of its activities, it shows that the standart of regulation is weak and poor management of a company hence, one of the ways considered capable of creating healthy banking activities and having a positive impact for society of Indonesia (Febrianto, 2013). Based on the background this study provides the focus research such as:

1. What are the basic principles in banking institutions?
2. How is the application of the principles of Good Corporate Governance and the principles of prudence in banking companies?

II. RESEARCH METHODS

The method used in this research is the normative legal writing method, where the author investigates with the help of legal theory, library research, and legislation (Tackema, 2018). The approach uses a statutory approach, which is also known as a conceptual approach. The author uses two data processing techniques to analyze, namely descriptive techniques and legal interpretation techniques. The primary data of this research is statutory regulations, and the secondary data used in this research were literature books about the good corporate governance in a bank which is further regulated in Law No. 10 of 1998 Article 29 paragraph (4) which contains amendments to the Banking Law No. 7 of 1992 which was later referred to as the Banking Law.

III. RESULTS AND DISCUSSION

3.1. Good Corporate Governance (GCG) in a Bank and Prudential Principles as the Basic Principles of Banking

a. Good Corporate Governance (GCG) in a Bank

Cadbury Report defines Corporate Governance as follows "The system by which organizations are directed and controlled." (A system that functions to direct and supervise organizations) (Tjager & et.al., 2003). The principles of Good Corporate Governance are the basic principles of Good Corporate Governance, namely: (1) Transparency, namely openness to the decision-making process within the company and in conveying information regarding all aspects of the company, especially those relating to the interests of stakeholders and the public correctly and on time; (2) Accountability, namely the clarity of the company's accountability system (check and balances system), the clarity of the division of duties, powers and responsibilities of each company organ that is appointed after going through a fit and proper test, so that company management can be carried out in an appropriate manner. effective and efficient; (3) Responsibility, which is the embodiment of the company's organ obligation to report the conformity of company management with the prevailing laws and regulations, public order, morality and its success or failure in achieving the vision, mission, goals and objectives of the company that have been set, in other words, not only legal obligations but also social obligations, not only normative but also code of ethics; (4) Independence, which is a condition, the company is managed in a professional manner without conflict of interest and influence or pressure from any party, especially the majority shareholder, which is contrary to the prevailing statutory regulations and sound corporate principles. every decision is made based on objectivity to avoid conflicts of interest; (5) Fairness, namely fairness and equality in fulfilling the rights of stakeholders arising from agreements and laws in force, actions by company managers in placing the parties on an equal footing.

Article 29 paragraph (2) of the Banking Law states that “Banks are required to maintain the soundness level of banks in accordance with the provisions on the aspects of capital adequacy, asset quality, management quality, liquidity, profitability, solvency, and other aspects related to bank business, and are required to carry out business activities in accordance with the precautionary principle. Based on these provisions, there is no reason whatsoever for the bank not to apply the prudential principle in running its business.

Banking principles that are used as the basis for banking activities, including trust, prudence, confidentiality and knowing customers, are a form of the embodiment of the principles of Good Corporate Governance in the company. Then to realize these goals, the safety and soundness of the banking system and its finances cannot be achieved only by regulating the bank's capital adequacy. According to The Basel Committee, there are three pillars that must be implemented simultaneously, namely (Gandapradja, 2004): Pillar 1: Minimum Capital Requirements; Pillar 2: Supervisory Review Process; and Pillar 3: Market Discipline.

A good institution is able to practice good corporate governance in their corporate management (Firmansyah & Devi, 2017). In implementing good corporate governance in banking, a supportive element is needed. The following are the elements of Good Corporate Governance in a company: a. Corporate governance- internal company. The elements that come from the company are: 1) Shareholders; 2) Directors; 3) Board of commissioners; 4) Managers; 5) Employees; 6) Performance-based remuneration system; 7) Audit committee.

Apart from these, several basic things are needed that can fulfill the elements that are always required in the company, some of which include: 1) Openness and confidentiality; 2) Transparency; 3) Accountability; 4) Equality; 5) Rules of code of conduct.

In addition to the elements that are required to exist in a company originating from the bank itself. There are also elements originating from outside the company, which are divided into: 1) Adequacy of the law from legal instruments; 2) Investors; 3) Information provider institutions; 4) Public accountant; 5) the lender; 6) Institutions that favor the interests of the public, not groups; 7) Institutions that legalize legality.

To fulfill the elements, there are several things that are required by a company that is outside the company to ensure the continuity of a Good Corporate Governance, these include: 1) Rules of code of conduct; 2) Equality; 3) Accountability; 4) Legal guarantees.

b. The Principle of Prudence as a Basic Principle of Banking

The main objective of the trust principle is for the bank to maintain and maintain the trust given to it by its customers. This is due to the customer's willingness to save their money in the bank solely because of trust. Customers believe that the bank is able to provide their money whenever needed or according to the agreement. If the trust in the bank decreases, it is possible that a riot will occur with the money deposited by customers in the bank. Legal Basis of Trust Principles.

This fiduciary principle has been described in detail in Law No. 10 of 1998 Article 29 paragraph (4) which contains amendments to the Banking Law No. 7 of 1992 which was later referred to as the Banking Law. The Banking Law clearly states that banks, especially those that work to collect and save public funds, are based on the principle of trust. Hence, every bank needs to have banking principles such as norms of efficiency, effectiveness, bank soundness, professionalism of banking actors, the aims and objectives of banking institutions, relationships, bank rights and obligations (Djumhana, 2012). Regarding implementation to guarantee the principle of trust, banks are required to be able to provide customers with necessary advice related to risks that may occur while the customer deposits his money with the bank. The principle of trust is the main, basic, and most important principle of banking activities. The bank is an institution based on trust by using rather than the existence of fiduciary duties from customers towards the bank in the form of trust in customer data and money from customers. The bank has a function as an intermediary institution that assists in the smooth operation of the payment system, as well as an institution that becomes a means of implementing Government policies, namely monetary policy.

As an institution that collects public funds, it cannot be excluded from the existence of agency theory which forms the basis for banking companies in carrying out their business activities. David Band provides an explanation of the relationship between agency theory and corporate governance, especially in this case related to the banking sector, an agency theory can provide a clear relationship in the body of a banking company, either between an agent with a principal or a principal with other principals (Ariyanto, 2000). In banking, the activities of agency theory, one example of this is fiduciary duty, in which customers give bankers confidence in a bank to be able to manage their money properly.

The prudential principle is a principle which states that financial institutions in carrying out their business functions and activities are required to apply the principle of prudence by knowing customers in order to protect public funds entrusted to them. Prudent, which means prudence or prudential principle, is not a new term, but contains a new conception in responding more firmly, in detail, and effectively to various risks inherent in bank business. Prudent is a concept that has elements of attitude, principles, policy standards and bank risk management techniques, in such a way as to avoid even the slightest impact that can harm stakeholders, especially depositors and creditors.

The principle of prudence in banking law also contains the same meaning as the definition of prudence above. The precautionary principle according to the explanation of Law No. 24 of 1999 concerning Foreign Exchange Trading and conversion rate System states that: "The principle of prudence is one of the efforts to minimize business risk in bank management, both through the provisions stipulated by Bank Indonesia and the internal provisions of the bank concerned."

Black's Law Dictionary provides an understanding of the definition of the precautionary principle as follows: "Carefulness, precaution, attentiveness, and good judgment, as applied to action or conduct that degree of care, required by the exigencies or circumstances under wich is to be exercised, this termr in the language of law, is commonly associated with care and diligence and contrased with negligence. " must be exercised, this term is in the language of law, usually associated with caution and perseverance, distinguished from negligence). Meanwhile, according to the explanation of Law no. 24 of 1999 concerning Foreign Exchange Flows and the Exchange Rate System, it is stated that the prudential principle is one of the efforts to minimize business risks in bank management, both through the provisions stipulated by Bank Indonesia as well as the internal regulations of the bank concerned. Based on these two definitions, a precautionary principle is a principle based on the prudence of the banking sector regarding the actions that banks will take, this is closely related to guaranteeing the trust of customers and the confidentiality of customer data.

The relationship that exists between the bank and its customers is not an ordinary contractual relationship. However, in this relationship, the bank has an obligation not to divulge the secrets of its customers to other parties unless determined by other applicable laws. In the banking industry, the principle of confidentiality is the soul of all bank business activities, so it is very important to always be maintained. The main objective of the principle of confidentiality is that customers get legal protection and guarantees that are commensurate with the trust given by customers to banks to store and manage the funds they deposit. This principle of confidentiality or secrecy principle only applies to customer deposits. In a credit loan, the bank will generally provide information about the debtor. This is so that all parties know that the debtor's business is a loan from bank credit. This is also a moral burden for debtors to always be consistent in carrying out the credit agreement. In addition, bank disclosure regarding debtor information is also a motivation for other entrepreneurs to further develop their business through bank credit.

The principle of knowing the customer in which the bank has the discretion or right to know further and to know the identity of the customer, to monitor every customer financial transaction and to report any suspicious transactions. In applying the principle of knowing your customer, both lending and depositor customers will be equally seen and monitored by the bank. This is because banks need to see the identities of the two groups of customers clearly to provide protection to the bank itself and also to maintain the good name of the bank. The purpose of applying the Know Your Customer Principle is to avoid the possibility of a bank or financial institution being used as a vehicle for crimes and illegal activities by customers, and to maintain the reputation and good name of the financial institution.

In carrying out its activities, the bank strictly adheres to the four principles of banking business activities. With the existence of the principles of banking business activities, both banks and customers alike benefit and also protect their rights.

3.2 The application of the principles of good corporate governance and prudential principles in banking companies

a. Implementation of Good Corporate Governance in Banking Companies

The need to apply the principles of good corporate governance also felt very strong in the banking companies, external and internal situation of increasingly complex banking (Thobby, 2015). The successful implementation of good corporate governance also has its own prerequisites. There are two factors that play a role, including:

1. External Factors

What is meant by external factors are several factors originating from outside the company that greatly influence the successful implementation of good corporate governance, including: (a). There is a good legal system that is able to guarantee a consistent and effective rule of law. (b). Support for the implementation of good corporate governance from the public sector / government institutions is expected to be able to actually implement good governance and clean governance. (c). There are examples of the implementation of good corporate governance that are appropriate (best practices) can become the standard for the implementation of good corporate governance that is effective and professional. In other words, a kind of brenchmark (d. The development of a social value system that supports the implementation of good corporate governance in society. This is important because through this system it is hoped that the active participation of various groups of society will emerge to support the application and socialization of good corporate governance on a voluntary basis.

Another thing that is no less important as a precondition for the successful implementation of good corporate governance, especially in Indonesia, is the anti-corruption spirit that develops in the public environment where companies operate accompanied by improvements in educational quality problems and expansion of job opportunities. It can even be said that the improvement of the public environment greatly affects the quality and rating of companies in the implementation of good corporate governance.

2. Internal factors

The purpose of internal factors is the driving force for the successful implementation of good corporate governance practices originating from within the company. Some of these factors include:

a. The existence of a corporate culture (corporate culture) that supports the implementation of good corporate governance in the mechanisms and management work systems in the company.

b. Various regulations and policies issued by the company refer to the implementation of the values of good corporate governance.

c. The management of corporate risk control is also based on the principles of good corporate governance standards.

d. There is an effective audit (inspection) system in the company to avoid any possible irregularities.

e. There is information disclosure for the public to be able to understand every move and step of management in the company so that the public can understand and follow every step of the development and dynamics of the company from time to time.

Good corporate governance can provide a frame of reference that allows supervision to run effectively, so as to create a check and balance mechanism in the company. The implementation of good corporate governance needs to be supported by three interconnected pillars, namely the state and its instruments as regulators, the business world as market players, and the community as users of the products and services of the business world.

In connection with the implementation of good corporate governance, Bank Indonesia has issued Bank Indonesia Regulation (PBI) No. 8/4 / PBI / 2006 dated 30 January 2006 concerning the Implementation of Good Corporate Governance for Commercial Banks as amended by PBI No. 8/14 / PBI / 2006 dated 6 October 2006 as well as Bank Indonesia Circular Letter (SEBI) No. 9/12 / DPNP dated May 30, 2007. The general rules are contained in Bank Indonesia Circular Letter (SEBI) No. 9/12 / DPNP, among others:

1. Implementation of Good Corporate Governance in the banking industry must always be based on five basic principles. First, transparency (transparency), which is openness in conveying material and relevant information and openness in the decision-making process. Second, accountability, namely clarity of functions and implementation of accountability of bank organs so that management runs effectively. Third, responsibility, namely the conformity of bank management with the prevailing laws and regulations and the principles of sound bank management. Fourth, independency, namely the professional management of the bank without any influence / pressure from any party. Fifth, fairness, namely fairness and equality in fulfilling the rights of stakeholders that arise based on agreements and laws in force. In order to apply the five basic principles mentioned above, banks must be guided by the various prevailing laws and regulations relating to the implementation of good corporate governance.

2. Banks are required to implement the principles of good corporate governance in all business activities at all levels or levels of the organization. What is meant by all levels or levels of the organization are all management and employees of the bank, starting from the board of commissioners and directors to employees at the executive level.

3. Banks are required to implement the principles of good corporate governance in all business activities at all levels or levels of the organization. What is meant by all levels or levels of the organization are all management and employees of the bank, starting from the board of commissioners and directors to employees at the executive level.

4. In implementing the transparency principle as referred to above, banks are required to submit reports on the implementation of good corporate governance. The existence of this report is needed to educate and increase check and balance of bank stakeholders and competition through market mechanisms.

5. In an effort to improve and improve the quality of the implementation of good corporate governance, banks are required to periodically carry out a comprehensive self-assessment of the adequacy of the implementation of good corporate governance, so that if there are still deficiencies in its implementation, banks can immediately determine an action plan that includes actions. corrective (corrective action) as needed.

b. Application of the Principle of Prudence in Banking Financial Institutions

Refer to the prudential banking principle in the Banking Law, the implementation of this prudential principle can be seen from several aspects, namely:

1. Application of the prudential principle by banks as an institution, which includes bank institutions, business activities, and methods and processes for carrying out their business activities. This means that the bank's obligation to apply the prudential principle has been inherent since the bank was founded. A simple example, for example a Bank in the form of a Limited Liability Company, all applicable regulations in establishing a Bank in the form of a Limited Liability Company must be considered. Furthermore, the precautionary principle must be applied in the processes and methods that are reflected in the guidelines or standard operating procedures established by the bank. The precautionary principle here must be interpreted as the bank's compliance with all applicable regulations since the Bank was founded, operated and carried out its business activities.
2. Application of the precautionary principle in the provision of credit, with the aim of avoiding problematic or non-performing loans or financing. The application of the precautionary principle here emphasizes the objective of the bank to meet the required bank soundness level. The implementation of the principle of prudence in lending, embodies the bank's obligation to conduct in-depth analysis of the character, ability, capital, collateral and business prospects of customers before lending or financing based on sharia principles. Implicitly, the application of the precautionary principle here also means being careful in determining prospective customers.
3. Application of the prudential principle imposed on the organs of the bank itself to prevent the bank from losing and to safeguard the interests of customers who entrust their funds to the bank. Thus, banks are required to ensure that every legal action taken by the bank complies with all applicable laws and regulations (regulatory compliance).

Based on the description of the scope of application of the precautionary principle above, the application of the precautionary principle has a broad scope, not only in relation to the process of extending credit or corporate financing by banking financial institutions but all aspects of banking company services. Therefore, the careless actions of the Bank Mandiri company in terms of system errors cannot be said to still fulfill the implementation of banking principles, especially the principles of prudence in banking and the principles of Good Corporate Governance which also provide direction that prudence. is one of the characteristics of Good Governance Corporate.

IV. CONCLUSION

1. Banking principles, namely the principle of trust, the principle of prudence, and the principle of confidentiality are fundamental principles in creating the existence of Good Governance Corporate in a banking company. This is closely related, especially regarding to the position of a bank which is a collector of funds from the public.
2. The application of the prudential principle has a broad scope, not only in relation to the process of providing credit or corporate financing by banking financial institutions as stated in the Banking Law but also all aspects of banking company services. Implementation of Good Corporate Governance in the banking industry must always be based on five basic principles. First, transparency, Second, accountability, Third, responsibility, Fourth, independency, Fifth, fairness.

REFERENCES

Djumhana, M. (2012). *Hukum Perbankan di Indonesia*. Bandung: Citra Aditya Bakti.

Febrianto. (2013). *Analisis Pengaruh Kepemilikan Institusional, Komite Audit, Komisaris Independen, dan Audit Report Lag terhadap Integritas Laporan Keuangan (Studi empiris pada perusahaan manufaktur yang terdaftar di bursa efek Indonesia pada tahun 2011-2012)*.

Firmansyah, I., & Devi, A. (2017). The Implementation Strategies of Good Corporate Governance for Zakat Institutions in Indonesia. *International Journal of Zakat*, *2*(2).

Gandapradja, P. (2004). *Dasar dan Prinsip Pengawasan Bank*. Jakarta: PT Gramedia Pustaka Utama.

Sutedi, A. (2007). *Hukum Perbankan: Suatu Tinjauan Pencucian Uang, Merger, Likuidasi, dan Kepailitan*. Jakarta: Sinar Grafika.

Tanjung, I. (2019). Kasus saldo hilang bank mandiri akui terjadi error hanya menimpa 10 persen. Retrieved November 23, 2019, from https://regional.kompas.com/read/2019/07/20/11383151/kasus-saldo-hilang-bank-mandiri-akui-terjadi-error-hanya-menimpa-10-persen

Thobby, W. (2015). The Role of Good Corporate Governance Risk Management Principles as the Implementation of Prudential. *European Journal of Business and Management. 7*(35).

Tjager, I. N., & Et.al. (2003). *Corporate Government: Tantangan dan Kesempatan bagi Komunitas Bisnis Indonesia*. Jakarta: Prenhallindo.

White, B. (2011). *Employee engagement report 2011*. New Jersey.

Windiarto, R. I. (2015). *Analisis Pengaruh Penerapan Prinsip-Prinsip Good Corporate Goernance Dan Komitmen Organisasi Terhadap Kinerja Aparatur Pemerintahan*. Universitas Muhammadiyah Surakarta.

Law Number 24 of 1999 concerning Foreign Exchange Flows and the Exchange Rate System, State Gazette No. 67 of 1999.

Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.

