

## Juridicial Review of the Appointment of An Ex-Convict of Corruption to Be A Commissioner of BumN and Subsidiary Company of BumN and Its Implication for Good Corporate Governance (Gcg)

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### ABSTRACT

*This research aims to analyze the appointment of an ex-convict of corruption to be a Commissioner of BUMN and the subsidiary company of BUMN from a legal perspective and its implication for Good Corporate Governance Practices. The result showed that the appointment of an ex-convict of corruption to be a Commissioner of BUMN and the subsidiary company of BUMN is considered as a violation of law because it doesn't fulfill the Integrity aspect. The violation of integrity showed that Good Corporate Governance is not fully materialized in a corporate practice, especially BUMN and the subsidiary company of BUMN.*

**KEYWORDS** BUMN, commissioner, ex-convict, Integrity, Good Corporate Governance.



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### INTRODUCTION

State-Owned Enterprises (SOEs) as stipulated in Law Number 19 of 2003 concerning State-Owned Enterprises are business entities in which all or most of the capital is owned by the state through direct participation from separated state assets. SOEs are divided into two, namely Persero and Perum (Riant Nugroho, 2005). Furthermore, Article 13 of the BUMN Law stipulates that the organs in a BUMN company consist of the General Meeting of Shareholders, Board of Directors and Commissioners. Commissioners are an important organ in SOEs because they function as internal supervisors. Article 108 paragraph (5) of Law No. 40 of 2007 concerning Limited Liability Companies requires companies whose business activities are related to collecting and / or managing public funds,

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companies that issue debt recognition letters to the public, or public companies to have at least two commissioners (Harun, 2019).

Indonesia's 2023 *Corruption Perception Index* (CPI) score of 34/100 has stagnated or is the same as last year's score, in 2020, which was 34/100. The stagnation of the CPI score in 2023 indicates that the response to corruption is still slow and likely to worsen due to a lack of substantive support from stakeholders. In developing countries, a major corporate governance concern in public companies is the takeover of controlling shareholders, where controlling shareholders pursue their personal interests at the expense of company performance and the interests of minority shareholders (Chen, 2011).

In February 2020, the convicted corruptor in the corruption case of the Tarahan PLTU project, Lampung, Izedrik Emir Moeis, was appointed as one of the Commissioners at PT Pupuk Indonesia's subsidiary, PT Pupuk Iskandar Muda (PIM). This appointment is considered a form of the government's lack of commitment to the eradication of corruption and a form of failure to provide a deterrent effect to corruptors.

Regulations regarding the appointment of SOE Commissioners are contained in the Regulation of the Minister of State-Owned Enterprises Number PER-03/MBU/03/2023 concerning Organs and Human Resources of State-Owned Enterprises. The regulation stipulates that there are 3 (three) requirements to be appointed as commissioners, namely formal requirements, material requirements, and other requirements. Article 16 stipulates that one of the requirements for the appointment of prospective Commissioners of SOEs is that they have not committed a criminal offense that is detrimental to state finances within the five years prior to nomination. Although the appointment of Emir Moeis fulfills the formal requirements, it is considered that it does not fulfill the material requirement, namely "integrity".

The SOE Law requires the creation of a management and supervision system based on the principles of efficiency and productivity in order to improve the performance and value of SOEs and prevent SOEs from exploiting actions that deviate from the principles of good corporate governance. GCG aims to ensure good corporate governance so that fraud can be minimized. As mentioned by Alberto Redondo in his journal entitled "*The Substance of Good Corporate Governance*", that the approach to the behavior of executives in the company is a new paradigm in *corporate governance* (Alberto, 2018). So, the Commissioner's behavior is one of the important aspects in the creation of *Good Corporate Governance*. However, the existence of a "loophole" in the legislation, which provides an opportunity for former corruption convicts to hold positions in government in both state-owned companies and state-owned subsidiaries, shows bad practices in SOE governance, and also raises doubts about whether the Commissioners are able to do their job properly in supervising and becoming an anti-corruption *role model* for society in general.

Because of the above, it is necessary to study the appointment of former corruption convicts as Commissioners of BUMN and BUMN subsidiaries in terms of legislation, and its influence on the practice of *Good Corporate Governance* (GCG) in the company. With a normative legal research method, this research uses

a regulatory approach to analyze the appointment of former corruption convicts to become Commissioners of BUMN and BUMN subsidiaries in terms of legal regulations and their implications for *Good Corporate Governance* (GCG).

## RESEARCH METHOD

The methodology of this article writing is juridical-normative research. Juridical research is different from sociological research. In juridical research, there are no phrases of data, qualitative, and quantitative. There are different objectives between juridical research and sociological research. Juridical research has an objective to prescribe, while sociological research has an objective to describe. These differences make juridical research as *sui generis* in types of research methods (Philipus, 2018). Because of the prescription characteristic of juridical research, the output of this research is legal opinion/recommendation based on elaboration of statute, legal theory, legal principle, so that results in legal arguments regarding the research object (Muhaimin, 2020).

In this article writing, the material of research that is used is legal material. There are several types of legal material that I will use, namely primary and tertiary (Soetandyo, 2013). For primary material, there is analyzing of ASEAN Charter, EU Charter, UNCITRAL Model Law on Cross-Border Insolvency, and EU 848/2015. And for tertiary, there is analyzing of sovereign and non-interfere principle, universalism theory, territorialism theory, and modified universalism theory.

Moreover, there are several legal approaches that will be used in this article, such as statutory approach and comparative approach (Marzuki, 2022). With comparative approach, I will compare the legal personality of ASEAN and EU with comparison between ASEAN Charter and EU Charter. With statutory approach, I will describe and analyze the UNCTIRAL Model Law on Cross-Border Insolvency and EU Regulation 848/2015 on Insolvency Proceedings.

## RESULT AND DISCUSSION

According to Peter Fischer's theory of international organizations, regional organizations are essentially formed with an intergovernmental nature, because there are agreements to form them, similar backgrounds, and have organs/structures (Fischer, 2012). However, this nature can develop into supranational if the organization has authority over its member states, especially in making and enforcing international agreements without requiring consideration from its member states.

### A) Basic Concepts of GCG and the relationship between the Position of Commissioner and *Good Corporate Governance* (GCG)

*Good Corporate Governance* (GCG) is a structure related to the responsibilities of stakeholders, directors, commissioners and managers. These parties motivate competitive performance to achieve the company's main objectives. The Indonesian Institute for Corporate Governance (IICG) said that good corporate governance is basically the structure, systems and processes used by corporate organizations to provide long-term added value to the company. Furthermore, GCG is the

relationship between the company's organs consisting of Management, Board of Directors, Board of Commissioners, Shareholders, and other stakeholders. Each of these organs has a different important role, however, they interact with each other to achieve company goals.

According to Monks (2003), *Good Corporate Governance* (GCG) is a system that regulates and supervises companies that generate added value for all parties involved. This concept emphasizes two things: first, that shareholders should have the right to obtain information correctly and in a timely manner; second, that companies should disclose all information about company performance, ownership, and stakeholders in an accurate, timely, and transparent manner. According to Kaen (2003) and Shaw (2003), *Good Corporate Governance* consists of four main elements: *fairness, transparency, accountability, and responsibility*. These four components are important because good corporate management principles have been proven to improve the quality of financial statements and can also inhibit performance engineering, which results in financial statements not showing the true value of the company.

There are five general principles of *Good Corporate Governance* as follows:

- 1) *Transparency*, which means openness in the decision-making process and openness in providing important information about the company.
- 2) *Accountability*, which refers to clear functions, structures, systems, and accountability in carrying out corporate governance.
- 3) *Responsibility*, which means compliance in the management of the company with sound corporate principles and applicable regulations.
- 4) *Independency* is when the company is managed professionally without being influenced or affected by management. This is not in accordance with applicable laws and regulations and sound corporate principles.
- 5) *Fairness*, (equality and fairness) is the fair and equal treatment of rights.

The essence of the concept of *Good Corporate Governance* aims to improve company performance through supervision and monitoring of management performance and management accountability to other stakeholders within the applicable legal framework.

In Indonesia, the implementation of *Good Corporate Governance* aims:

- 1) Maximizing the value of SOEs by improving the principles of openness, accountability, trustworthiness, responsibility, and fairness so that the company has strong competitiveness, both nationally and internationally;
- 2) Encourage the management of SOEs in a professional, transparent and efficient manner, and aim to strengthen and improve their functions;
- 3) Encouraging Organs to make decisions and carry out their actions based on high moral values and pay attention to compliance with applicable laws and regulations, as well as awareness of the social responsibility of BUMN to *stakeholders* and environmental sustainability around BUMN;
- 4) Increase the contribution of SOEs in the national economy
- 5) Improving the national investment climate; and

6) Make the privatization program a success.

The initial purpose and objective of the Company's GCG implementation roadmap is to strengthen management's commitment to GCG implementation and continue to strive for improvement and consistent implementation. The Company has set an overview of the stages of the Company's GCG implementation with the aim of becoming an ethical and responsible company, by making good governance practices a culture in managing the company as follows:

An Ethical and Responsible Company		
Infrastructure & <i>Soft Structure</i>	Continuous Improvement	Im-Target
<ul style="list-style-type: none"> <li>- Company Organs</li> <li>- Supporting Organ of the Board of Commissioners</li> <li>- GCG Guidelines</li> <li>- Code of Conduct Guidelines</li> <li>- Board of Commissioners &amp; Directors <i>Manual (Manual Board Charter)</i></li> <li>- IT Governance</li> <li>- Guidelines for <i>Whistleblowing (White Blowing Policy)</i></li> <li>- System &amp; Procedure</li> </ul>	<ul style="list-style-type: none"> <li>- Application</li> <li>- <i>Review</i></li> <li>- <i>Assessment</i></li> <li>- Audit</li> </ul>	GCG becomes a culture in managing the Company

*Good Corporate Governance (GCG)* is closely related to the function of commissioners in a company. Commissioners have an important role in implementing GCG principles and ensuring that companies under their supervision and management operate in a transparent, ethical and responsible manner. The role of the commissioner in a company is very strategic in implementing GCG principles, and good cooperation between commissioners and executive management can provide a strong foundation for good corporate governance.

This relationship can be closely related to the two main theories of GCG, namely *stewardship theory* and *agency theory*. *Stewardship theory* is built on the philosophy of human nature, namely that humans are inherently trustworthy, able to act responsibly, have integrity and honesty towards other parties (Thomas, 2006). Furthermore, *stewardship theory* views that management is an entity that can be trusted to be able to act in the best interests of the public and *stakeholders*. In *stewardship theory*, managers will behave in the context of mutual interests. When the interests of the *steward* and the owner are not the same, the *steward* will try to cooperate and oppose it, because the *steward* feels the common interest and behaves in accordance with the owner's behavior is important because the *steward* looks more at efforts to achieve organizational goals. Stewardship theory assumes a close relationship between organizational success and owner satisfaction. Stewards will

protect and maximize the wealth of the organization with the Company's performance, so that the utility function will be maximized (Raharjo, 2007).

Meanwhile, *agency theory* is a theory that studies the relationship between the *principal* (owner or giver of power) and the *agent* (executor or recipient of power) in an organization or company. This theory tries to explain how conflicts of interest between owners and agents can arise and how control mechanisms can be used to resolve these conflicts. *Agency theory* proposed by Michael Johnson views that company management is an agent for shareholders, will act with full awareness of its own interests, not as a wise and prudent party and fair to shareholders. Furthermore, agency theorists reduce corporate governance to a *cost and benefit* calculation, which only describes what companies and shareholders do to add value without considering moral values (Jonathan, 2013).

*Agency theory* assumes that contracts will be effective if the goals of the *principal* and *agent* are aligned. In reality, of course, these goals are often different (Raesah, 2023). The main problem in the relationship between *principal* and *agent* is opportunistic behavior. When the goals in the *principal-agent* relationship are different, it can lead to information hiding behavior. This is known as *information asymmetry*. Agency theory states that *information asymmetry* encourages opportunistic behavior. For example, *agents do not* actually perform the Efforts that the principal thinks they have performed, and the principal does not have complete knowledge of the *agent's* behavior. Because the *agent* pursues its own interests by providing *information asymmetry*, it harms the principal. This is referred to as *moral hazard*. Therefore, this agency theory advocates the use of control and incentive mechanisms to ensure that principals and agents work towards the same outcome.

The two theories are two approaches in dealing with the dynamics between the relationship between shareholders and company management. From the explanation of the *stewardship agency* and *agency theory* above, the relationship between GCG and the function of the Commissioner as company management can be explained as follows:

1) Oversight and Decision Making

GCG emphasizes the need for effective oversight of company policies and operations to ensure adherence to ethical and legal principles. Commissioners have an oversight role over executive management and strategic decision-making. They must ensure that decisions are in the long-term interests of the company and its shareholders.

2) Transparency and Accountability

GCG emphasizes the importance of transparency and accountability in financial reporting and decision-making and the Commissioner is responsible for ensuring that the company's financial statements are accurate, transparent and provide a clear picture of financial performance.

3) Relationship with Shareholders

GCG underscores the need for fair treatment of all stakeholders, especially shareholders, and Commissioners must ensure that shareholders' interests are recognized and considered in corporate decision-making. They also have a responsibility to ensure that minority shareholders are properly engaged.

#### 4) Risk Management

GCG includes effective risk management as part of good corporate governance. Commissioners are involved in assessing and ensuring that enterprise risk management is integrated into the decision-making process and business strategy.

#### 5) Leadership and Corporate Culture

GCG emphasizes the importance of ethical leadership and a corporate culture that supports the values of good corporate governance. Commissioners are involved in assessing the effectiveness of leadership and overseeing the culture of the organization, as well as ensuring that these values are in line with GCG principles.

### **B) Legal arrangements for the appointment of former corruption convicts as Commissioners of SOEs and SOE Subsidiaries**

Based on the definition in article 1 of the Law of the Republic of Indonesia, State-Owned Enterprises, hereinafter referred to as SOEs, are business entities in which all or most of the capital is owned by the state through direct participation from separated state assets. It is also stated that the organs of BUMN companies are the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners.

Policies regarding the appointment of SOE commissioners refer to at least 3 laws and regulations, namely Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the PT Law), Law Number 19 of 2003 concerning State-Owned Enterprises (hereinafter referred to as the SOE Law), and Regulation of the Minister of SOEs Number PER-03/MBU/03/2023 concerning Organs and Human Resources of State-Owned Enterprises. In PER-03/MBU/03/2023 Part Two regarding the Requirements for Members of the Board of Commissioners / Supervisory Board of State-Owned Enterprises and Members of the Board of Commissioners of Subsidiaries, it is stipulated that to be appointed as a member of the Board of Commissioners / Supervisory Board of BUMN or a member of the Board of Commissioners of a Subsidiary, a person must meet the material requirements and format requirements. The formal requirements are regulated in article 15, namely: 1) Integrity; 2) Dedication; 3) Understand corporate management issues related to one of the management functions; 4) Have sufficient knowledge in the business field in which he/she is nominated; and 5) Can provide sufficient time to carry out their duties.

Meanwhile, the formal requirements are regulated in Article 16, namely: 1) Natural person; 2) Capable of performing legal acts; 3) Never declared bankrupt within 5 (five) years prior to appointment; 4) Never been a member of the Board of Directors or a member of the Board of Commissioners / Supervisory Board who was found guilty of causing a BUMN, Subsidiary and / or other business entity to be declared bankrupt within 5 (five) years before appointment; and 5) Never been convicted of a criminal offense that is detrimental to the finances of the State, BUMN, Subsidiaries, other business entities and/or those related to the financial sector within 5 (five) years prior to appointment.

Then in article 28 of Law No.19 of 2003 concerning State-Owned Enterprises, it is regulated as follows: 1) Commissioner members are appointed based on considerations of integrity, dedication, understanding of company management issues related to one of the management functions, having sufficient knowledge in

the Persero's business field, and being able to provide sufficient time to carry out their duties. 2) The composition of the Board of Commissioners should be determined in such a way as to enable decision-making to be carried out effectively, appropriately and quickly, and to act independently. 3) The term of office of a Commissioner is set at 5 (five) years and may be reappointed for 1 (one) term. 4) In the event that the Commissioner consists of more than one member, one of the members of the Commissioner shall be appointed as the main commissioner. 5) The appointment of members of the Board of Commissioners shall not coincide with the appointment of members of the Board of Directors, except for the first appointment at the time of incorporation.

Furthermore, Regulation of the Minister of SOEs No. PER-3/MBU/03/2023 on Organs and Human Resources of State-Owned Enterprises article 8 stipulates that to be appointed as a member of the Board of Commissioners of SOEs or subsidiaries of SOEs, a person must also fulfill the following other requirements:

- (1) Not a political party manager, legislative candidate, and/or legislative member in the House of Representatives, Regional Representative Council, Provincial Representative Council, and Regency / City Regional Representative Council;
- (2) Not a candidate for regional head/deputy head and/or regional head/deputy head, including acting regional head/deputy head;
- (3) Not currently holding a position that has the potential to cause a conflict of interest with the BUMN / Subsidiary concerned;
- (4) Not serving as a member of the Board of Commissioners / Supervisory Board at BUMN or the Board of Commissioners at the relevant Subsidiary for 2 (two) periods;
- (5) Not currently holding a position that based on laws and regulations is prohibited to be concurrently held by a member of the Board of Commissioners;
- (6) For candidates from technical ministries or other government agencies, it must be based on a proposal letter from the head of the agency concerned.

In 2021, Izedrik Emir Moeis was appointed as a Member of the Board of Commissioners of PT Pupuk Iskandar Muda (PT PIM) based on Notarial Deed Number 4 Dated February 18, 2021.<sup>1</sup> In addition, based on Notarial Deed Number 4 Dated February 24, 2021, Emir Moeis was appointed as Chairman of the Audit Committee. Emir Moeis is known to be a former convict of bribery for the construction of 6 sections of the 1000 MW Steam Power Plant in Tarahan, Lampung when he was Deputy Chairman of Commission VIII of the Indonesian Parliament in 2000-2003. Emir Moeis was proven to have received money amounting to USD 423,985 or around Rp6.3 billion from the Alstom Power Inc. Consortium (Marubeni Corp, Alstom Power Inc, and Alstom Power ESI) for helping the consortium of companies in the tender for the construction of the Tarahan Lot 3 PLTU (Steam Generator and Auxiliaries).

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<sup>1</sup>*Annual Report* PT Pupuk Iskandar Muda, "Enhance Performance for a Better Future, 2022.



There are provisions stipulating that Commissioners of SOEs and SOE subsidiaries must meet the requirements of integrity and good ethics. In the Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number Per-3/MBU/03/2023 concerning Organs and Human Resources of State-Owned Enterprises, integrity is one of the elements in assessing the fulfillment of material requirements for candidates for members of the Board of Commissioners, as stipulated in paragraph 3, Article 41 paragraph (5) b as follows:

*"Specifically to assess integrity, it is done with a written statement from the candidate concerned as stated in Appendix VI which is an integral part of this Ministerial Regulation.*

Furthermore, article 56 paragraph (3) a regulates the weighting of the assessment of the material requirements of the Candidate for the Board of Commissioners of a Subsidiary as follows:

- (1) Integrity is given an assessment weight of 40% (forty percent) with details as follows:
  - (a) has never been involved in engineering and deviant practices at the place where the person concerned worked before the nomination (acting dishonestly), given a weight of 15% (fifteen percent);
  - (b) has never been involved in a breach of promise that can be categorized as not fulfilling the commitments agreed upon at the place where the person concerned worked before the nomination (misbehaving), given a weight of 5% (five percent);
  - (c) has never been involved in an act that is categorized as being able to provide unlawful benefits to the person concerned and / or other parties before the nomination (bad behavior), given a weight of 10% (ten percent); and
  - (d) has never been involved in an act that can be categorized as a violation of the provisions relating to the principles of good corporate governance (bad behavior), given a weight of 10% (ten percent).

Furthermore, Article 56 paragraph (5) stipulates that the assessment of integrity requirements is given with the calculation that if the person concerned is involved in the actions in question, the value given is getting smaller according to the level of involvement concerned.

Then, in Per-3/MBU/03/2023 concerning Organs and Human Resources of State-Owned Enterprises, honesty and good behavior are points of assessment for Candidates for Members of the Board of Directors as stipulated in article 56 points (2) e and f, but the two points on the material requirements as stated in article 3 do not become material requirements for candidates for Members of the Board of Commissioners as stipulated in article 15. However, as stipulated in paragraph 3, Article 41 paragraph (5) b, that Candidates for the Board of Commissioners must fill out a written integrity statement which at assessment point no.2 there is a statement that must be filled in "YES" or "NO" as follows:

*"I have committed ethical violations that apply to the organization where I previously/currently work".*

Thus, the appointment of former corruption convicts as Commissioners of SOEs and SOE subsidiaries violates the material requirements of the Regulation of

the Minister of SOEs Number Per-3 / MBU / 03/2023 concerning Organs and Human Resources of State-Owned Enterprises, namely the Integrity aspect, which requires that prospective Commissioners have never been involved in acts that are categorized as providing unlawful benefits to the person concerned and / or other parties before nomination, and have never been involved in acts that can be categorized as violations of provisions relating to the principles of good corporate governance (bad behavior).

In addition, in Per-3/MBU/03/2023 there are differences in the material requirements to be appointed as a member of the Board of Commissioners / Supervisory Board of BUMN or a member of the Board of Commissioners of a Subsidiary and the material requirements required for members of the Board of Directors of BUMN or members of the Board of Directors. The material requirements to be appointed as a member of the Board of Commissioners / Supervisory Board of BUMN or a member of the Board of Commissioners of a Subsidiary as stipulated in article 15 are as follows: 1) Integrity; 2) Dedication; 3) Understand corporate management issues related to one of the management functions; 4) Have sufficient knowledge in the business field in which he/she is nominated; and 5) can provide sufficient time to carry out their duties.

Meanwhile, to be appointed as a member of the Board of Directors of BUMN or a member of the Board of Directors of a Subsidiary, a person must fulfill the following material requirements:

- (1) Skills;
- (2) integrity;
- (3) leadership;
- (4) Experience;
- (5) honestly;
- (6) good behavior; and
- (7) high dedication to advancing and developing the company.

When viewed from the two material requirements required for Commissioners and Directors respectively, the Honest and Good Behavior aspect is not a point required in the material requirements for Candidates for the Board of Commissioners. Of course this is a question, whether it is then justified that to become a Commissioner it is not necessary to have honesty and good behavior.

### **C) Implications of the Appointment of Former Corruption Convicts as Commissioners of SOEs and SOE subsidiaries on *Good Corporate Governance* (GCG)**

GCG is important in helping reduce corporate problems, assisting in enforcing the law. Good corporate governance is expected to be particularly high for developing countries where developing countries tend to have unclear economic and legal institutions, are underdeveloped or plagued by enforcement problems (Norden, 2019). GCG mechanism refers to the control mechanism of the company to fulfill *stakeholder* expectations. The concept of *Corporate Governance* aims to improve company performance through supervision and monitoring of company management performance and to ensure company accountability to stakeholders based on *framework* rules (Purwanto, 2020). The higher the company's commitment to

corporate governance standards will result in a positive impact on the company in the long term (Louis, 2019).

This control mechanism is the duty of the Board of Commissioners. The BOC has a very important role in achieving good corporate governance as they have the responsibility to ensure that management has implemented adequate internal control procedures and prepared financial statements reliably. Therefore, the presence of a Board of Commissioners that performs its supervisory function effectively can improve the quality of the company's financial statements (Intan, 2017).

In the context of *Good Corporate Governance*, GCG has a framework designed to reduce the problems caused by *agency theory*, and supports the importance of the role of management in carrying out its duties as described in the *stewardship theory*. In *agency theory*, by implementing GCG principles, the Company seeks to improve transparency, accountability, fairness and sustainability in its decision-making and operations. GCG principles help reduce agency conflicts by regulating the relationship between shareholders, directors, management and other related parties.

GCG and *stewardship theory* complement each other in an effort to ensure that management acts responsibly and considers the long-term interests of the company and all stakeholders. In the *stewardship agency*, GCG reinforces management's duty to be accountable to all of the company's stakeholders, including shareholders, employees, customers, and society, places an important role on the board of directors in ensuring the adoption of good practices and compliance with ethical and legal standards, encourages practices that support corporate sustainability, such as sustainability reporting, risk management, and fulfillment of corporate social responsibility, encourages companies to adopt practices that increase transparency and ensure management accountability for their actions.

Both *stewardship theory* and *agency theory* can be used as a basis for developing structures and processes that can ensure transparency, accountability, and protection of shareholders' interests in the company, and that companies need to consider frameworks that can promote integrity and minimize conflicts of interest between parties, thus creating an environment that is in accordance with GCG principles. Integrity plays a key role in ensuring effective GCG practices, not only including compliance with regulations and procedures, but also involving moral and ethical aspects in the management of the company.

So Integrity is an important aspect that is required to be owned by Candidates for BUMN Commissioners and Candidates for BUMN Subsidiary Commissioners, as regulated in several regulations, including Per-3 / MBU / 03/2023 concerning Organs and Human Resources of State-Owned Enterprises requires integrity requirements to be a material requirement, then POJK No.55 / POJK.03 / 2016 concerning Implementation of Governance for Commercial banks regulates that the Committee must have integrity, morals, and good morals. Then in SEOJK No. 13/SEOJK.03/2017 concerning Governance for Commercial Banks, integrity becomes one of the *self-assessment* criteria in point 2. Implementation of Duties and Responsibilities of the Board of Commissioners states that all members of the Board of Commissioners have adequate integrity, competence and financial

reputation. *Good Corporate Governance* is implemented to encourage the creation of conditions that are efficient, transparent, and consistent with laws and regulations. *Good Corporate Governance* is key to the development of SOEs. Transparency, data disclosure/completeness, independence, accountability, are the four basic principles that must be put in place in SOE activities before running a business and pursuing profit. Without GCG, SOEs will not be able to become the driving force of the country's economy.

Article 6 paragraph (3) of Law Number 19 of 2003 concerning State-Owned Enterprises stipulates that in carrying out their duties, commissioners comply with the principle of *fiduciary duty* by complying with the articles of association of BUMN and the provisions of laws and regulations and are required to implement the principles of professionalism, efficiency, transparency, independence, accountability, responsibility, and fairness. Commissioner members are also prohibited from providing benefits directly or indirectly from BUMN activities other than legal income. The personal gain referred to here is abusing his authority as a commissioner for the benefit of himself, group, and group. In carrying out their supervisory duties, commissioners are prohibited from giving or receiving, directly or indirectly, anything of value to or from a customer or as a government official to influence or in return for what they have done and other actions in accordance with statutory provisions. If they violate these provisions, commissioners can be charged with Law Number 31 of 1999 concerning Eradication of Corruption as amended by Law Number 20 of 2001 for harming state finances or criminal sanctions in other laws and regulations.

There are professionalism constraints within the Board of Commissioners that have prevented GCG practices in SOEs from running smoothly. This is related to the competence of the Board of Commissioners, as they are the ones who run and oversee the implementation of GCG. There are 3 (three) conditions needed by SOEs to run the company well, including professionalism, depoliticization, and debureaucratization. Professionalism means that the entire management team, from the Board of Directors to the Board of Commissioners, is competent in their positions. The Board of Commissioners is responsible for overseeing all steps taken by the Board of Directors in accordance with *Good Corporate Governance* (GCG). Therefore, it needs people who know about the business itself, GCG, and have the discipline to keep the steps of the Board of Directors in accordance with GCG practices. Depoliticization and debureaucracy means that good corporate governance can only be implemented if SOEs are not intervened by political forces and power holders in government.

So, a strict selection process is indispensable considering that the quality of commissioners is one of the main illustrations of the implementation of *Good Corporate Governance* (GCG). Meanwhile, corruption is closely related to integrity. Based on the 5 (five) basic principles of *Good Corporate Governance*, namely *Transparency, Accountability, Responsibility, Independency, and Fairness*, in essence, *Good corporate governance* (GCG) is definitively a system that regulates and controls companies that create *value* added for all stakeholders (Monks, 2003). If one of these principles is violated, there are risks that arise, especially reputational risks that can affect *stakeholder* trust.

Based on the explanation above, the aspects of integrity, morals and ethics cannot be separated from the concept of GCG itself. Thus, the opinion that the appointment of former corruption convicts to government positions, in this case Commissioners of BUMN and BUMN subsidiaries, does not violate the laws and regulations, cannot be justified, because in principle the moral and ethical aspects are part of the integrity that is one of the material requirements for Candidates for the Board of Commissioners. In other words, the appointment of former corruption convicts as Commissioners of BUMN and BUMN subsidiaries does not fulfill the legal aspects and aspects of *Good Corporate Governance* (GCG). In addition, the appointment of former corruption convicts as Commissioners raises doubts that the Commissioners are able to provide *value* added to the company and *stakeholders*. It also raises doubts that the Commissioner is able to perform his duties properly in supervising and also becoming an anti-corruption role model for all employees in the company.

## CONCLUSION

In the context of the two main theories of GCG, namely stewardship theory and agency theory, the position of the Commissioner plays an important role. In the context of stewardship theory, commissioners are considered as representatives of company owners who are tasked with overseeing and providing direction to management. Meanwhile, in agency theory, the Commissioner acts as a supervisory mechanism to reduce conflict. The appointment of former corruption convicts as Commissioners of SOEs and subsidiaries has implications for defective Good Corporate Governance (GCG) practices. In other words, the process of appointing Commissioners does not take into account GCG principles, especially the principle of integrity, where aspects of integrity, moral and ethical aspects cannot be separated from the concept of GCG, thus raising doubts that the Commissioners are able to perform their duties and roles properly in supervising for the long-term sustainability and health of the company and fulfilling the interests of shareholders and other stakeholders.

The appointment of former corruption convicts as Commissioners of SOEs and SOE Subsidiaries violates integrity, as stipulated in the Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number Per-3/MBU/03/2023 concerning Organs and Human Resources of State-Owned Enterprises where "integrity" is one of the material requirements for the appointment of commissioners of SOEs and SOE subsidiaries, and violates the Law of the Republic of Indonesia Number 19 of 2003 concerning State-Owned Enterprises which stipulates that Commissioners are appointed based on considerations of "integrity". In addition, the Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number Per-3/MBU/03/2023 concerning Organs and Human Resources of State-Owned Enterprises does not require the aspects of "honesty" and "good behavior" in the material requirements of a person to be appointed as a member of the Board of Commissioners of BUMN

and Subsidiaries and does not regulate the obligation to conduct a track record in the assessment of prospective Commissioners, as the aspects of "honesty" and "good behavior" have become material requirements for a person to be appointed as a member of the Board of Directors of BUMN or a member of the Board of Directors of Subsidiaries, and have become an obligation to conduct a track record in the assessment of prospective Directors of BUMN and Subsidiaries.

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