



Implementation of Investigative Audit in the Principles of Good Corporate Governance in PT. Garuda Indonesia, Tbk (Persero)

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Abstract

Introduction to the Problem: This study aims to determine the implementation of investigative audits in accordance with the principles of Good Corporate Governance (GCG) in State-Owned Enterprises (SOEs/*Badan Usaha Milik Negara*, BUMN) Persero in calculating state losses.

Purpose/Objective Study: This study uses a statutory approach and a case approach. The case study is exemplified in the case of PT. Garuda Indonesia (Persero) Tbk ("Garuda Indonesia"). The research specification used is the explanatory legal study which aims to test a theory or hypothesis in order to strengthen or reject the existing theory or hypothesis of the research results.

Design/Methodology/Approach: This is a normative juridical research, thus it is necessary to have an approach to the existing problems.

Findings: According to the findings of the study, it is shown that by conducting an investigative audit based on the Good Corporate Governance (GCG) principles after the decision No. 425/Pdt.Sus.PKPU/2021/PN.Niaga.Jkt.Pst., Garuda Indonesia can improve its financial management and performance. An investigative audit that is conducted in a transparent, accountable and independent manner will increase public trust in the company and ensure that the company adopts GCG principles in managing its finances.

Paper Type: Research Article

Keywords: Investigative Audit; Good Corporate Governance; SOEs Losses

Introduction

The performance of State-Owned Enterprises (SOEs/*Badan Usaha Milik Negara*, BUMN) in its development, seems to be viewed negatively. SOEs are often accused of being inefficient and having low profitability. It can be said that the creation of such an impression and condition is influenced by the orientation of the establishment of SOEs, which were initially prioritized on meeting the public needs and improving the social welfare. If seen from the profitability aspect, this is where SOEs are often regarded as social entities. In order to play its role optimally, SOEs can no longer move solely to meet the public needs due to the demands of the business environment in

the era of globalization. Hence, the management of SOEs is more competitive for them to be able to provide public facilities with better quality and affordable prices for the community. In addition, it is also realized that the monopoly rights that have been granted to SOEs have made it difficult for SOEs to adapt to changes that occur due to the ongoing competitive market mechanism.

SOEs as one of the backbones of the national economy (productive assets owned by the government) is expected to be able to make a positive contribution to the government in the form of dividends and taxes. The government is highly interested in the wellbeing of SOEs, considering SOEs are also economic entities. However, the reality is that many SOEs suffer losses due to unprofessional management, not being run based on company economic principles, and not being transparent. The mandate of the 1945 Constitution explains that national economic actors consist of three forms of business: SOEs, private sector, and cooperatives. That is, the Constitution has provided information that in Indonesia there are companies owned by the state (both State-Owned Enterprises and Regional-Owned Enterprises), in addition to private businesses and cooperatives.

Indonesia is one of the countries that face the aforementioned problems regarding its SOEs. Thus, as one of the efforts to overcome the problems faced, as well as to expand the economies of scale, the steps taken by most of the poor performing SOEs is to privatize. Entering the era of globalization as it is now, several SOEs that have made management improvements, particularly operating efficiency, will be able to face market competition. The corrective measures taken include business restructuring, reduction in the number of employees, implementation of management control systems, and other strategic policies. SOEs that do not improve their management will usually face various difficulties, especially in the financial sector. The description describes the state losses caused by the operations of BUMN Persero. The loss of BUMN Persero results in reduced state finances, this is because the State does not get a share of company profits (dividends), but there is a possibility of loss of state money in the company if the company goes bankrupt and no longer operates. In this study, the focus is on the case of PT. Garuda Indonesia (Persero) Tbk (Garuda Indonesia), which faced the Postponement of Debt Payment Obligations through a Commercial Court Decision at the Central Jakarta District Court.

Aslam's research shows that corruption is prone to occur in the public service sector, including the SOEs sector as one of the actors in providing public services. Corruption practices that occur in SOEs are caused by the principles of Good Corporate Governance (GCG) which have not been implemented properly. There are several policies that can be taken to minimize SOEs corruption cases, including: The Board of Directors oversees the routine habits of SOEs employees, enables the public to participate in the context of external supervision through the electronic public service mechanism. In addition, it is necessary to socialize the Pancasila Ethics to SOEs employees as the moral basis for state administrators (Aslam, 2021).



The principles of Good Corporate Governance within SOEs in Indonesia began in the early 2000s. In 2001, the Government of Indonesia through the Ministry of BUMN issued The Ministry of BUMN Regulation Number PER-01/MBU/2001 on the Implementation of GCG principles in BUMN. Garuda Indonesia as a BUMN claims to have been implementing the GCG principles for the last few years. GCG implementation in Garuda Indonesia began in 2012 when the company joined the Indonesia Institute for Corporate Governance (IICG), an independent institution that develops the GCG principles in Indonesia ([Saptono, P. B., & Purwanto, D., 2022](#)).

Research on the failure of the implementation of GCG principles by Garuda Indonesia has been conducted by Rotinsulu, stating that corporate governance has become an important issue in business activities from time to time. Especially in 1997, the monetary crisis occurred in Asian countries, including Indonesia, which was caused by weak corporate governance practices. Corporate governance has evolved towards various corporate failures as a result of poor corporate governance. Corporate governance is an effort to make the Good Corporate Governance principles as the binding rules and guidelines for company management. Article 5 of the Law on State-Owned Enterprises states that SOEs are required to implement GCG in their company, As the national airline owned by the Indonesian Government, Garuda Indonesia is thus bound under such obligation. SOEs are required to implement the GCG principles consistently and sustainably based on Ministerial Regulations while still taking into account the provisions, applicable norms and the articles of association of SOEs. However, as the state-owned airline, Garuda Indonesia was instead suspected of violation of the GCG principles when publishing the 2018 annual financial report. This shows that in the case of SOEs not obeying the rules and the implementation of GCG principles, they have not been able to handle losses so far in return. Derived from this point, it appears that the financial management of SOEs has not been carried out effectively and efficiently. With the implementation of GCG principles, SOEs should be able to manage their business and company performance well. The results of this study indicate that the principles of transparency and accountability in the GCG principles are not applied in the case of Garuda Indonesia based on the review on the Limited Liability Company Law, BUMN Law, Capital Market Law ([Rotinsulu, 2020](#)).

Viewed from the economic side, especially the price in terms of the influence of internal audit variables and company performance on stock prices in the research done by Christina, Dheny Biantara, Sri Handayani, it is shown that internal audit has a negative effect on stock prices, company performance with several sub-variables is inversely proportional and has an effect on stock prices. In the research concerned, the Internal Audit Variable is measured by measuring the GCG Components, namely the Board of Commissioners and the Board of Directors. Company performance variables are measured through the components contained in the financial statements, namely current assets, non-current assets, short-term debt, long-term debt, comprehensive profit (loss), operating income, operating expenses and other components ([Christina et al., 2020](#)).

Although the data released by Garuda Indonesia through its official website states that in 2019 the company has carried out an evaluation (review) of the implementation of GCG principles for the 2018 financial year with the assistance of MUC Consulting. In the evaluation (review), the Company achieved the score of 93,850 from a maximum sector of 100 or 93,850% with the predicate of "Very Good" (Rotinsulu, 2020).

With that being said, if the report on the results of the evaluation (review) is connected to the implementation of GCG principles by Garuda Indonesia, and with the case of Postponement of Debt Payment Obligations that has been decided by the Commercial Court at the Central Jakarta District Court on December 9, 2021 in Case Number 425/Pdt.Sus.PKPU/2021 /PN.Niaga.Jkt.Pst., it is necessary to carry out an in-depth investigative audit regarding the implementation of the said GCG principles in Garuda Indonesia.

The description of the example of the case is the loss to the State originating from Fraud (cheating, crime or abuse of authority) contained in BUMN Persero (Siringo-Ringo et al., 2021). In cases related to BUMN Persero so far, proof of elements of state losses is generally based on expert calculations, but in practice at trial there are often differences in perceptions between prosecutors and judges who are also still accurate and often calculate state losses based on existing facts regarding proof of the element of state financial loss, especially when interpreting state money and state financial losses.

As widely known, SOEs are business entities whose capital is wholly or mostly owned by the State through direct participation originating from separated State assets (Khalimi & Susanto, 2017). After the enactment of Law Number 19 of 2003 on SOEs, Article 9 explains that the grouping of SOEs is in two classifications, namely Public Company (Perum) and Limited Liability Company. Bureaucratic Companies (Perjan) is no longer known and is given a maximum of two years to switch to Perum or Persero (Kurniawan, 2014).

The issuance of Law No. 17 of 2003 on State Finance, which was followed by Law No. 19 of 2003 on State-Owned Enterprises, Law No. 1 of 2004 on the State Treasury and Law No. 15 of 2004 on Audit of State Financial Management Responsibilities and Law No. 40 of 2007 on Limited Liability Companies, should be able to provide a clearer perspective to calculate state losses due to SOEs problems that are detrimental to state finances. This element of State loss becomes a slightly contradictory phenomenon when applied to criminal acts that occur in SOEs Persero because there is no similarity in the mindset of both experts and law enforcement officials regarding whether losses in SOEs Persero can be equated with losses to the State or vice versa whether losses in SOEs Persero is not a loss to the State but the loss to the SOEs Persero itself.

The focus of this research is to analyse the implementation of investigative audits in the principles of Good Corporate Governance in State-Owned Enterprises (BUMN)



Persero, namely in Garuda Indonesia, related to the potential for state losses wherein Garuda Indonesia faced Postponement of Debt Payment Obligations through a Commercial Court Decision at the Central Jakarta District Court in case Number 425/Pdt.Sus.PKPU/2021/PN.Niaga.Jkt.Pst.

The researcher's temporary view is that the Postponement of Debt Payment Obligation case proves Garuda Indonesia does not implement the principles of Good Corporate Governance, even though the implementation of GCG principles in BUMN including Garuda Indonesia is crucial, apart from being related to Garuda Indonesia's services as a BUMN company it is also Garuda Indonesia's efforts to gain company profits. GCG exists to oversee contractual relationships and direct the course of the company in accordance with applicable regulations to achieve management contracts.

The relationship between Investigative Audit and the principles of Good Corporate Governance refers to the presence or absence of fraud in the management of the company with the dimensions of company profits or company capabilities caused by not properly and maximally implementing the principles of Good Corporate Governance. The legal facts show that Garuda Indonesia is in a lawsuit related to the payment of company debts in the Commercial Court, this has implications for managing legal consequences.

Investigative Audit is a process of seeking, finding, and collecting evidence systematically with the aim of disclosing whether or not an act occurred and the culprit for further legal action. Meanwhile, the Good Corporate Governance principles are the set of principles that underlie a process and mechanism for managing a company based on laws and regulations and business ethics.

The importance of an investigative audit according to the researcher is implied in the Constitutional Court Decision No. 25/PUU/XIV/2016 dated January 25, 2017 which principally granted the applicant's request in part, namely "Stating the word 'can' in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 on Eradication of Corruption Crimes as amended with Law Number 20 of 2001 on Amendments to Law Number 31 of 1999 on Eradication of Criminal Acts of Corruption (State Gazette of the Republic of Indonesia of 2001 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 4150) contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force. This shows that state losses are calculated using the conception of actual loss which provides more fair legal certainty and is in accordance with efforts to synchronize and harmonize national and international legal instruments, such as the Government Administration Law (Constitutional Court, 2017). with the Implementation of Investigative Audits in the Principles of Good Corporate Governance in State-Owned Enterprises (SOEs) Persero with a focus on the object of study by Garuda Indonesia.

Methodology

This research is a normative juridical legal research, hence it is necessary to have an approach to the existing problems. A juridical normative research is the research that focuses on examining the application of rules or norms in positive law (Christiani, 2016). Normative juridical, namely an approach that uses a positivist legislative conception. This concept views law as identical with written norms made and promulgated by authorized institutions or officials. This conception views law as a normative system that is independent, closed and detached from real community life (Susanto et al., 2020). The normative juridical research method is library law research which is carried out by examining library materials or secondary data (Zulyadi, 2020). The data that has been obtained is then analyzed with through a qualitative analysis approach (Nassaji, 2015). namely by observing the data obtained and linking each data obtained with the provisions and legal principles related to the problem under study with inductive logic, namely thinking from the specific to the more general matters, by using normative tools, namely the interpretation and construction of law and then analyzed using qualitative methods so that conclusions can be drawn using a deductive method which produces a general conclusion regarding the problem and research objectives.

This study uses a statutory approach and a case approach. The statutory approach is used to identify all legal regulations, especially criminal law in Indonesia. The case approach aims to study the application of legal norms or rules in legal practice. Especially regarding cases that have been decided as seen in the jurisprudence of cases that are the focus of research (Susanto, 2017) namely criminal cases, especially cases regarding the loss of BUMN Persero, in this case Garuda Indonesia, which does not apply the principles of GCG properly that it is detrimental to the state as an indicator that Garuda Indonesia is currently in a condition of Postponing Debt Payment Obligations (PKPU) as decided by the Commercial Court at the Central Jakarta District Court through a decision dated December 9, 2021 in Case Number 425/Pdt.Sus.PKPU/2021/PN.Niaga.Jkt.Pst. The research specification used is the explanatory legal study that aims to test a theory or hypothesis in order to strengthen or reject the existing theory or hypothesis of research results (Chilton & Versteeg, 2015).

The hypothesis of this research is that the case of Suspension of Debt Payment Obligations proves that Garuda Indonesia has not implement the principles of Good Corporate Governance, even though the implementation of GCG principles in BUMN, including Garuda Indonesia, is crucial, apart from being related to Garuda Indonesia's services as a BUMN company it is also Garuda Indonesia's efforts to gain company profits. The principles of good corporate governance exist to oversee contractual relationships and direct the course of the company in accordance with applicable regulations to achieve management contracts.

Results and Discussion



The legal purpose of establishing PT. Garuda Indonesia, Tbk (Persero)

The main function of SOEs is as a tool to find sources of state finance. In fact, a number of state companies that have been established have actually functioned as supporting private activities, pioneered in reviving private activities for the future. Another fact is that SOEs however, often do not make profits, instead they bring losses. Ironically, the government as a shareholder must bear the losses suffered by SOEs.

The purpose of establishing SOEs is based on the provisions of Article 2 of the BUMN Law, namely: to contribute to the development of the national economy in general and state revenues in particular; pursuit of profit; organize public benefits in the form of providing goods and/or services of high quality and adequate for the fulfillment of the needs of many people; be a pioneer in business activities that cannot be implemented by the private sector and cooperatives; and actively participate in providing guidance and knowledge to entrepreneurs from economically weak groups, cooperatives and the community.

The objective is basically the same as the function of SOEs. In carrying out its duties, based on the provisions of Article 66 of the SOEs Law, the government can give special assignments to SOEs to carry out public benefit functions while taking into account the aims and objectives of SOEs activities (Puslitbang, 2010). In its development, after the enactment of the SOEs Law, SOEs only consists of PERUM (public company) and PT. Persero. Specifically, regarding a company when viewed from the perspective of its shareholders, the company can be divided into 2 (two) types, namely a public company and a closed company. This difference affects the writing of the name and the public will know the position of the company as a public company or a closed company.

Especially for the establishment of a Persero whose shares are wholly owned by the State in the Limited Liability Company Law, there are special arrangements that are different from the 1995 Limited Liability Company Law which was revoked. There is one special arrangement which is an exception setting that applies to the company whose shares are wholly owned by the State, which manages stock exchanges, clearing and guarantee institutions, depository and settlement institutions, and other institutions regulated by the Capital Market Law. Article 7 paragraph (7) of the Limited Liability Company Law stipulates that the provisions requiring the Company to be established by 2 (two) or more persons as referred to in paragraph (1), and the provisions in paragraph (5) and paragraph (6) do not apply to: a) Persero whose shares are wholly owned by the State; or b) Companies that manage stock exchanges, clearing and guarantee institutions, depository and settlement institutions, and other institutions as regulated in the Law on Capital Markets.

Based on this arrangement, it can be said that the provisions of Article 7 paragraph (1) of the Limited Liability Company Law regarding the conditions for the establishment of a PT "two or more" are not required for the establishment of a



Persero whose shares are wholly owned by the State, but remain valid for a Public Company or with a minimum capital of 51%. The regulation of Article 7 paragraph (7) of the Limited Liability Company Law is an exceptional regulation. Such arrangement certainly deviates from the concept of the company as a capital association. In the elucidation of Article 7 paragraph (7) of the Limited Liability Company Law, it is emphasized that such an arrangement is based on the special status and characteristics of the established company.

As a temporary assumption, the establishment of a Persero which the whole shares is owned by the State, was deliberately not based on the reason of capital association, but only took advantage of the character of a company. For this reason, the establishment procedure is exactly the same as the general company establishment procedure. Such a Persero can be equated with the establishment of a closed company or a one man business, which does not want the participation of outside parties. This is what is meant in the Elucidation of Article 7 paragraph (7) of the Limited Liability Company Law which states that it has "special status and characteristics" ([Pusltbang MA, 2010](#)).

In this regard, Article 1 point 7 of Law Number 40 of 2007 on Limited Liability Companies provides the definition of a public company, is a public company or company that conducts a public offering of shares, in accordance with the provisions of the laws and regulations in the capital market sector. To be considered a public company, the company must meet the criteria for the number of shareholders and paid-in capital in accordance with the provisions of Law Number 8 of 1995 on Capital Market. According to the provisions of Article 1 number 22 of the Capital Market Law, for a public company, its shares are owned by at least 300 shareholders and have a paid-up capital of at least 3 billion rupiah.

Such companies are usually called as the "go public" companies, because their capital is open to anyone. The company's shares are sold on the stock exchange. With shares sold on appointment, the purchaser of shares is not bothered to change the name of the old shareholder to the new shareholder.

Even though it is open in nature, it does not mean that all of the company's shares can be sold to the public, especially if the company always earns significant profits from year to year, and does not want the majority of its shares to be owned by other parties. Usually, the shares that are allowed to be sold are still below 50%, so that the majority of the core shareholders hold the control or discretion in determining the company.

The difference in the nature of the company affects the writing of the company name. In writing the name of the company in accordance with the provisions of Article 16 paragraph (2) of the 2007 Company Law, the name of the company must be preceded by the phrase "Limited Company" or abbreviated as "PT". For writing the name of a public company, at the end of the company name is added the abbreviated word "Tbk" which is the acronym for "terbuka" (opened) ([Suparmono, 2016](#)).



Implementation of Investigation Audit on BUMN Persero Asset in Indonesia

The position of the results of the Investigative Audit on the Assets of BUMN Persero in the Indonesian Evidence Law are: as witness statement, as documentary evidence, as evidence of expert testimony, as evidentiary hint, and as evidence of indicated/suspected statements.

As Witness Statement

The results of the Investigative Audit found by the investigative auditor are witness statements, because the auditor is the one who examines the books of the BUMN Persero.

Witness testimony is in the first place as evidence in the Criminal Procedure Code. This means that witness testimony is one of the most important pieces of evidence in the process of proving a criminal case. In 2011, the Constitutional Court (*Mahkamah Konstitusi*, MK) as one of the actors of judicial power as referred to in the Constitution of the Republic of Indonesia through decision number 65/PUU-VIII/2010 made a renewal by granting the request for review of Article 1 points 26 and 27 of the Law. Law Number 8 of 1981 on the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Perdata*, KUHAP). In its ruling which was read out on August 8, 2011, the Constitutional Court stated that "Article 1 points 26 and 27, Article 65, Article 116 paragraph (3) and paragraph (4) of Law Number 8 of 1981 on Criminal Procedure Code are contradictory with the 1945 Constitution of the Republic of Indonesia as long as the definition of a witness in those articles is not defined as a person who always hears, sees, and experiences an event.

The Constitutional Court's decision which nullifies a legal situation or establishes a new law certainly has consequences in criminal procedural law in Indonesia, which so far both in the provisions of legislation, literature and doctrine by experts explain that witnesses must be people who have seen, heard and experienced an act. the crime.

As documentary evidence

A document as legal evidence must meet one of two criteria, namely the said document is made on an oath of office or the document is made with an oath ([Ekatama et al., 2019](#)). What is meant by documentary evidence is written documents such as: Minutes of Examination (*Berita Acara Pemeriksaan*, BAP), judge's decision, authentic deed, *visum et repertum*, certificate of fingerprint expert (dactyloscopy), ballistics expert certificate, investigative audit report, loss calculation report of state finances, including contracts, agreements, or letters related to the contents of other evidence.

The report on the results of the calculation of state financial losses from the Finance and Development Supervisory Agency (*Badan Pemeriksaan Keuangan dan Pembangunan*, BPKP), which in the legal realm can be categorized as "Documentary Evidence" is one of the main references for judges in making their legal decisions. In the context of handling corruption cases in court, documentary evidence containing



the number of state financial losses will be able to build judges' confidence in the certainty of the existence of corruption. In criminal acts of corruption, the element of state financial loss absolutely must exist and actually occur and with the amount of rupiah that must bring up real and definite figures.

As evidence of expert testimony

Expert testimony is a statement given by someone who has special expertise about what is needed in order to make a case clear and clear (Eldridge, 2019). The informant is someone who has special expertise related to the knowledge he has learned about something that is being asked for his consideration. An expert is someone whose statements can be heard on certain issues, who according to the judge's consideration, that person knows a particular field of knowledge, deeply and comprehensively. Expert testimony may be carried out by an investigative auditor.

Investigative auditors can be referred to as experts. The definition of an expert according to Andi Hamzah is a person who is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualification of him as an expert on the subject to which his testimony related. Thus, an expert will be asked for a description of the expertise possessed to explain the problem of the case being tried so that the case being tried becomes clear. As previously described, this expert witness in the United States is referred to as an expert witness (Silverstone et al., 2012).

The evidence built by the investigative auditor undoubtedly has a central role in providing light and clarity on the case. He is neither an investigator nor an investigator, but he is an auditor. This kind of role is often carried out by the Indonesian Audit Board (*Badan Pemeriksa Keuangan, BPK*) and BPKP in the form of investigative audits. However, in certain cases, investigators can also ask for help from experts. to give opinions according to their expertise, and not get into the subject matter. Requests to the auditor will generally involve two main issues, namely as a financial and accounting expert to seek, find and collect facts, events and documents related to the case, or he will be asked to calculate the amount of state financial losses that occurred in the case.

As evidentiary hint

Evidence in the form of hint or clue is an act, event or condition which, due to their conformity, either with one another or with the crime itself, indicates that a crime has occurred and who the perpetrator is. The judge's assessment of the strength of the evidence in each situation is carried out by the judge by conducting an examination with great care and thoroughness based on his conscience. Thus, the fundamental nature of this evidence is identical with the judge's observation because in the end the assessment of the strength of the evidence will be largely left to the discretion and wisdom of the judge. This observation will be made by the judge during the trial.



As evidence of Indicated/Suspected statements

This indicated/suspected statement is better known as the defendant's statement. However, because they are still in the process of an investigative audit, the information they make is referred to as evidence of an indicated/suspected statement. Indicated evidence is what is stated by the indicated which will later become a defendant regarding the actions they have committed or which they themselves know or have experienced.

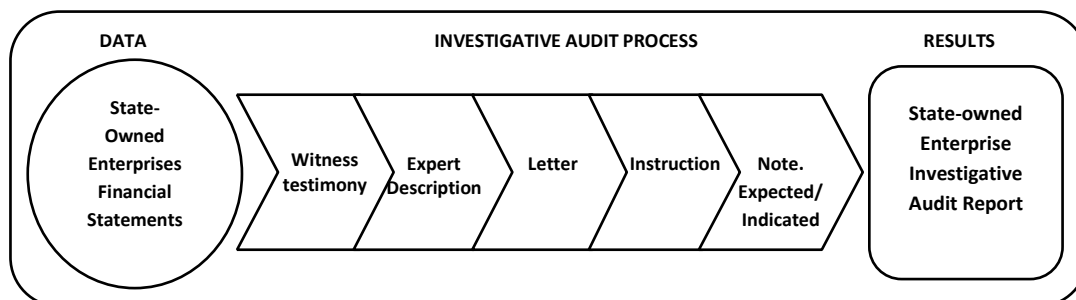
The defendant's statement is what is stated by the defendant in court about the actions they have committed or which they themselves knows or have experienced. However, there are also statements from the accused who are given out of court as long as the information is supported by valid evidence as long as it relates to the thing he is accused of (Shapiro, 2022).

Furthermore, from the description above, it can be concluded that when the judiciary receives preliminary information, it will conduct in-depth studies to ascertain whether the information contains indications of corruption that are worthy of follow-up. The indications must rationally lead to steps in the search for evidence of corruption in the form of witness statements, expert statements, letter statements, instructions and/or statements from the accused.

Thus, the description of the evidence of the defendant's testimony will be one of the forensic accounting visas. Because the main purpose of searching for evidence and evidence in the evidence of the defendant's testimony, will lead to the number of state financial losses.

After the researcher describes how the investigative auditor searches, finds and collects evidence and evidence, data, facts, information and information on criminal acts of corruption, then combines them with the applicable regulations in accordance with the Indonesian Evidentiary Law. The following is the construction of an investigative audit, the propositions both in the picture and in the narrative formula are as follows:

Figure 1. Investigative Audit Construction in SOEs (Persero)



From the process of carrying out the investigative audit, evidence is produced in the form of an Investigative Audit Report (LHAI) and an Attachment of Audit Evidence. However, the audit evidence cannot be used directly to prove a crime. Investigation Audit Reports and supporting evidence describing the existence of a criminal act of corruption must meet the formal requirements for evidence where there are at least 2 valid pieces of evidence (Article 183 of the Criminal Procedure Code). The evidence includes witness statements, expert statements, letters, instructions, and statements from the defendant (Article 184 of the Criminal Procedure Code).

After further processing, the investigative audit produces evidence according to the Criminal Procedure Code, including the following (Smith at all, 2009). Physical inventory can be processed into evidence of witness testimony and defendant's testimony; 2). Confirmation to an independent third party can be used as evidence for witness testimony; 3). Documents can be processed to be used as evidence for witness testimony and defendant testimony; 4). authentic documents can be directly used as documentary evidence; 5). The results of the interview can be processed into evidence for witness testimony and defendant's testimony; 6). Observations can be processed into evidence of instructions. To process audit evidence into evidence, investigative auditors can be involved, although the decision remains with the investigator.

Regarding the Investigative Audit Report and the Audit Evidence Attachment which can be used as expert statements, this refers to the opinion of Adami Chazawi, namely: 1). In general, judges are not medical experts and are not experts in the field of financial auditing. This situation requires judges to ask for assistance from forensic medical experts to find and determine the cause of death of the victim or ask for assistance from experts in the field of financial auditing to determine a certain number of activities using money *in casu* in corruption cases in the form of state losses (Ashton, 2012). Whereas both forensic medical experts and financial audit experts, they have taken an oath before carrying out their duties. Therefore, trust in the truth of the contents of the *visum et repertum* as well as the contents of the report on the results of the investigative audit, apart from being attached to or lying in the special expertise possessed by forensic medical experts or the auditor who made them, is also due to carrying out the work that produces *visum et repertum* and reports on the results of the investigative audit, made or given on the basis of an oath of office. The law has laid the foundation and determines the belief in the truth of a statement in the execution of the oath. Likewise, when a forensic medical expert or a financial audit expert gives information about their expertise before a judge in court, because before taking office and carrying out their work, an oath has been made. Also, if they are asked for a statement of their expertise in a court session, before giving a statement they are asked to take an oath first, or to give an oath to strengthen the information that has been given by them. Therefore, it is reasonable to note that that for them, they are appointed as experts, not witnesses. If it is not as an expert who provides expert testimony, then their statement does not have any value in front of a court



session. The reason being, they are not people who see, hear and experience an event. Therefore, they are not the eventual witnesses. They provide information based on their knowledge or expertise in assessing a particular event. Judges also need to assess certain events, in which case the judge cannot use witness statements, because witness statements are not sufficient to be used in assessing certain events. Meanwhile, the judge's knowledge is also not sufficient to be used as a basis for assessing the incident. Judges do not have special skills that can be used. Whereas the judge to form his belief about whether or not the defendant committed the criminal act that he was accused of really needed information that could be used as a basis for considering that there really was a certain incident, *in casu* the cause of someone's death or the existence of a certain value of money which is a loss to the state (Onodi et.al., 2015).

Construction of Investigative Audits in BUMN Persero is used to determine whether or not there are Suspected/Indicated have malicious intentions (*mens rea*) to commit fraud in BUMN Persero. "Evil intention (*mens rea*) in criminal law is included in the study of "criminal responsibility". When a criminal act is suspected, the first thing that needs to be proven is whether or not there is an unlawful act. After it is proven that the act is against the law, it will be seen whether the defendant can be held criminally responsible.

Therefore, the "evil intention (*mens rea*)" can only be proven after the criminal act is proven. This is a logical consequence of the dualistic principle that we adhere to, which separates criminal acts from criminal liability. Criminal liability is intended to determine whether a suspect/defendant can be held accountable for a crime (crime) that occurred or not. In other words, whether the defendant will be convicted or acquitted.

Implementation of Investigative Audits in the Principles of Good Corporate Governance in Garuda Indonesia

The implementation of the GCG principles in SOEs, including Garuda Indonesia, is crucial, in addition to being related to Garuda Indonesia's services as a SOEs as well as Garuda Indonesia's efforts to earn corporate profits. The principles of good corporate governance are here to oversee contractual relationships and direct the running of the company in accordance with applicable regulations to achieve management contracts (Wahyudi, 2020).

BUMN Persero as a state company is one of the economic actors that has an important function and role in economic development for the welfare of the people. In the current global financial crisis, BUMN Persero are also expected to generate profits or funds that are needed by the state. In order for this role to be carried out, the Persero must be managed properly, based on the principles of good corporate governance, GCG in order to become an effective, efficient, professional company, and able to compete in the business world at the national, regional and international levels.

Law No. 19 of 2003 and Law No. 40 of 2007, which are the legal basis for BUMN Persero provide rules that can be used as guidelines for managing BUMN Persero properly based on the principles of GCG. The regulation does not only include internal balance that regulates the relationship between the organs of BUMN Persero in a Persero structure, but also external balance which emphasizes BUMN Persero to pay attention to its relationship with all stakeholders as a manifestation of fulfilling the responsibilities of BUMN Persero. In the external balance, external relations are regulated between BUMN Persero and secondary stakeholders, including in the form of corporate social responsibility (CSR). However, the implementation of CSR must also pay attention to the principles of healthy company/Persero management so that BUMN Persero can run their business properly and generate profits/funds that are needed by the state.

Although there are several SOEs that have been managed well, it turns out that there are still several SOEs that have not been managed properly based on the principles of GCG as regulated in Law No. 19 of 2003 and Law No. 40 of 2007. This is due to various obstacles to the implementation of GCG in the Company, namely the lack of knowledge of the Human Resources of the State Owned Enterprises about GCG; Inadequate infrastructure of BUMN Persero; GCG is not mandatory but only business ethics whose implementation is based on the good will of the company; dualism of the government's attitude; the existence of political influence or intervention in BUMN Persero; and the intervention of other parties in the management of BUMN Persero. If the Persero is not managed properly, it is feared that the BUMN Persero will suffer losses. Therefore, these various obstacles need to be overcome so that BUMN Persero can be managed properly and generate profits that are very beneficial for the country (Cahyaningrum, 2009).

In the event that state-owned enterprises including Garuda Indonesia experience continuous and worsening losses, for this matter it is necessary to carry out an investigative audit whether the implementation of GCG has been going well and in accordance with GCG principles or not. GCG has 4 basic principles, namely transparency, accountability, independence, and fairness (Suwandi et al., 2018).

Three fundamental theories that contribute to the emergence of good corporate governance, namely agency theory, stewardship theory, and stakeholder theory (Puyvelde et al., 2012). The first theory is agency theory which explains the relationship between an authority (principal), who is a shareholder, and its agent, who can be a manager, who has different interests. A manager tends to fulfill personal goals than shareholders (Shaikh et al., 2020). In addition, more information about the company is owned by managers, because managers are more often faced with company conditions than company owners, so earnings management risk is easy to occur. The agent or agency is employed by one or more persons, called the principal, on a contractual basis and is compensated by the principal to achieve the desired



outcome for the principal. Because the agent acts on behalf of the principal, the principal gives the agent some decision-making authority.

In relation to corporate governance, the theory holds the view that company management as an "agent" for shareholders, will act with full awareness for their own interests, not as a wise and prudent party and fair to shareholders. In subsequent developments, agency theory received a wider response because it was considered to reflect reality. Various ideas on corporate governance have been developed by relying on agency theory in which management is carried out in full compliance with various applicable rules and regulations. This will cause agency problems that have an impact on the occurrence of information gaps or better known as information asymmetry. The problem can be overcome by implementing good corporate governance ([Hamsyi, 2019](#)).

The second theory, namely stewardship theory, illustrates that manager's motivation is not solely to achieve individual goals, but on the contrary leads to interest and achievement of organizational goals. Managers will be responsible and work optimally for the principal's wishes to be fulfilled ([Schillemans et al., 2020](#)). The existence of good relationships, mutual trust, and good cooperation between shareholders and managers will facilitate the achievement of common goals. Stewardship theory prioritizes cooperation and collaboration, in contrast to agency theory which emphasizes conflict and supervision. Stewardship theory is built on philosophical assumptions about human nature, namely that humans are essentially trustworthy, able to act responsibly, have integrity and honesty towards others. In other words, stewardship theory views management as trustworthy to act in the best possible way for the public interest and stakeholders ([Prabowo & Sulistianingsih, 2020](#)).

The third theory is stakeholder theory. The relationship that is considered important is not only the relationship between principals and managers, but also includes external parties of the company who are better known as stakeholders. It is not only the company's needs that must be met, but the interests of the stakeholders must also be accommodated by the company. This theory describes that stakeholders have a significant influence on the company's existence for the achievement of company goals and sustainability in the future ([Freudenreich et al., 2020](#)).

The principle of transparency carried out by Garuda Indonesia through its official website states that in 2019, the company has carried out an evaluation (review) of the implementation of GCG for the 2018 financial year with the assistance of MUC Consulting. In the evaluation (review), the Company achieved the score of 93.850 from a maximum sector of 100 or 93.850% with the predicate of "Very Good". ([Rotinsulu, 2020](#)) an investigative audit needs to be carried out because the report is submitted as follows:



Table 1. Evaluation score (review) for the 2018 financial year

Governance Aspect	Range	2018 Achievements	
		Mark	% Achievements
1. Commitment to the Implementation of Sustainable Governance	7,00	6,759	96,557
2. Shareholders and GMS/ Capital Owners	9,00	8,758	97,309
3. Board of Commissioners/Supervisory Board	35,00	31,618	90,338
4. Directors	35,00	33,734	96,384
5. Information Disclosure and Transparency	9,00	8,606	95,617
6. Other Aspects	5,00	4,375	87,500
Overall Score	100	93,850	93,850
GCG Implementation Quality Qualification		Very good	

This achievement is an evaluation score (review) for the 2018 financial year which has increased compared to the 2017 assessment score. In the 2017 financial year, the results of the assessment by the MUC Consulting assessor, the Company obtained the score of 92,764, while the evaluation (review) for the 2016 financial year, the Company obtained a score of 92,749 with the qualification of "Very Good".

The results achieved, especially in terms of Commitment to the Implementation of Sustainable Governance, got the achievement of 96.557%, which is a tremendous achievement. However, if it is related to the case of Postponement of Debt Payment Obligations which has been decided by the Commercial Court at the Central Jakarta District Court on December 9, 2021 in Case Number 425/Pdt.Sus.PKPU/2021/PN.Niaga.Jkt.Pst. then it remains necessary to carry out an in-depth investigative audit regarding the implementation of CGC in Garuda Indonesia.

Apart from the peace proposal that has been prepared by Garuda Indonesia, according to researcher, it is certain that Garuda Indonesia has not implemented the principles of GCG properly. This is supported by Rotinsulu's opinion which states that SOEs are required to implement GCG consistently and sustainably based on a Ministerial Regulation while taking into account the provisions, applicable norms and the articles of association of SOEs. However, Garuda Indonesia was suspected of being



caught in a GCG violation when publishing the 2018 annual financial report. This shows that in this case, as an SOE, Garuda Indonesia has not obeyed the rules and the implementation of GCG, hence has not been able to handle cases of losses so far. Starting from this, it appears that the financial management of SOEs has not been carried out effectively and efficiently. With the implementation of GCG, SOEs should be able to manage their business and company performance well. The results of this study indicate that the principles of transparency and accountability in GCG are not applied to the case of Garuda Indonesia, based on the review on the Limited Liability Company Law, BUMN Law, Capital Market Law ([Rotinsulu, 2020](#)).

In Disclosure of Information and Transparency the achievement of 95.617% is a very good achievement and if it is related to the case of Postponement of Debt Payment Obligations that has been decided by the Commercial Court at the Central Jakarta District Court on December 9, 2021 in Case Number 425/Pdt.Sus.PKPU/2021/PN.Niaga.Jkt.Pst. it is necessary to carry out an in-depth investigative audit regarding the implementation of CGC at Garuda Indonesia.

Garuda Indonesia did not provide complete and reliable information regarding the cases that it faces, which resulted in problems before the court relating to debt payments. Previously, Garuda Indonesia also submitted a PKPU proposed by PT. Magnus Indonesia (Magnus) ([Yuanita, 2017](#)). According to the evidence revealed at the trial, Garuda had made a number of payments for Magnus' work, until then the cooperation was terminated on November 14, 2004. On that basis, the panel considered the consultant agreement to have been partially implemented and not yet implemented perfectly. This shows that Garuda Indonesia has violated one of the principles of Good Corporate Governance, namely transparency. Transparency is the disclosure of sufficient, accurate and timely information to stakeholders.

The panel considered that there were still disputes regarding the quality and quantity of work. For this reason, a simple proof is needed. In other words, the debt argued by the applicant cannot be proven simply. The panel is of the opinion that the settlement of this case can be carried out with an ordinary civil suit.

The panel's consideration seems to be in accordance with the argument of Garuda Indonesia in response presented by their legal counsel. Garuda Indonesia's representative stated that the consultant agreement and the additional agreement were reciprocal in nature. According to the decision of case No. 46/Pailit/2001/PN.Niaga, the result of such an agreement is that case examination and evidence cannot be carried out easily, simply and quickly. As a result, the petition submitted by the applicant does not meet the provisions of Article 8 paragraph (4) of the Bankruptcy Law. This article states that an application for a declaration of bankruptcy must be granted if there are facts or circumstances that are simply proven that the requirements to be declared bankrupt as referred to in Article 2 paragraph (1) have been fulfilled.



Garuda Indonesia assessed that the bankruptcy petition filed by Magnus could not be proven simply. First, because the proposed bill does not automatically apply, it still requires evidence, among other things, about the absence of a breach of contract. Second, there is still a difference of opinion between Magnus and Garuda Indonesia regarding the validity of the bills. Third, Garuda Indonesia has filed a breach of contract against Magnus at the Central Jakarta District Court. As proven in court, the lawsuit file has been registered with register No. 02/Pdt.G/PN.Jkt.Pst. One of the grounds for Garuda Indonesia's lawsuit is the non-fulfillment of the schedule for handing over the work as agreed.

In this case, Garuda Indonesia has also violated another principle of Good Corporate Governance, namely the principle of accountability. Accountability is the clarity of the company's functions, implementation and accountability so that management is carried out effectively. The principle of accountability provides clarity on the rights and obligations of shareholders, the board of directors and the board of commissioners. In this case, Garuda Indonesia was dragged into the case of Suspension of Obligations for Payment of debts, it can be said that Garuda Indonesia's financial management was not carried out effectively.

Apart from the case that could be won by Garuda Indonesia, it was proven that the implementation of GCG at Garuda Indonesia did not go well, therefore after it was decided by the Commercial Court at the Central Jakarta District Court on December 9, 2021 in Case Number 425/Pdt.Sus.PKPU/2021/PN. Niaga.Jkt.Pst. it is necessary to carry out an in-depth investigative audit regarding the implementation of CGC in Garuda Indonesia, this is due to the status of Garuda Indonesia as a state-owned company that is not been able to apply the principles of GCG properly and correctly, resulting in state losses and the bankruptcy of Garuda Indonesia. The legal consequences if the PKPU is not resolved then Garuda Indonesia will be declared bankrupt by the Commercial Court.

The decision is a court decision in the PKPU (Suspension of Obligations for Payment of Debt) case filed by PT. Garuda Indonesia. The decision has binding legal force and must be implemented by the parties involved in the case. In the PKPU decision, the court gave the company an opportunity to postpone its debt payment obligations with the aim of giving the company an opportunity to improve its condition and pay its debts in a more regular manner. The PKPU decision was given after going through a trial process and evidence from each party related to the case. After the PKPU decision is ruled, usually an investigative audit process will be carried out to assess the company's financial condition and the company's ability to pay off its debts. The results of this investigative audit will become the basis for the parties involved in determining further actions against the company, be it to provide debt relief, carry out debt restructuring, or other actions needed to restore the company's financial condition to stability. After the bankruptcy occurs, the investigative audit rules that apply are based on Law no. 37 of 2004 on Bankruptcy and Postponement of Debt



Payment Obligations (PKPU) and Government Regulation No. 10 of 2018 on Procedures for Asset Management and Liquidation in Bankruptcy.

Conclusion

By conducting an investigative audit based on GCG principles following the decision No. 425/Pdt.Sus.PKPU/2021/PN.Niaga.Jkt.Pst., Garuda Indonesia can improve its financial management and improve its performance. An investigative audit that is conducted in a transparent, accountable and independent manner will increase public trust in the company and ensure that the company follows GCG principles in managing its finances. The implementation of an investigative audit on Garuda Indonesia based on the GCG principles became crucial after the decision Number 425/Pdt.Sus.PKPU/2021/PN.Niaga.Jkt.Pst. which suspended Garuda Indonesia's debt payment obligations which had been decided by the Commercial Court at the Central Jakarta District Court. The decision indicates that Garuda Indonesia is experiencing financial difficulties and needs to review its financial management. Therefore, an investigative audit based on GCG principles can assist Garuda Indonesia in improving the company's financial management and improving its performance. This supports the theory of prevention and detection to prevent fraud, corruption and other violations. In addition, an investigative audit was carried out after the decision to postpone debt payment obligations supports the theory of public trust considering Garuda Indonesia is a state-owned company.

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