World Journal of Advanced Research and Reviews
eISSN: 2581-9615 CODEN (USA): WJARAI
Cross Ref DOI: 10.30574/wjarr
Journal homepage: https://wjarr.com/

(Review Article)

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Characteristics of good corporate governance in Indonesian export financing institutions

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World Journal of Advanced Research and Reviews, 2023, 17(01), 475–479

Publication history: Received on 01 December 2022; revised on 14 January 2023; accepted on 17 January 2023

Article DOI: https://doi.org/10.30574/wjarr.2023.17.1.0036

Abstract

Indonesia is a country that seeks to increase export activities by providing facilities in terms of capital through the Indonesian Export Financing Agency. The Covid-19 pandemic affected export activities, so that exporter sales decreased, impacting LPEI financing. Receivables are a crucial indicator for assessing the performance of the LPEI function because high bad debts are an indicator of the failure of LPEI in managing the business as a result of ignoring the principles of good corporate governance, causing liquidity, profitability, and solvency problems. This study aims to analyze the characteristics of good corporate governance in LPEI and alternative dispute resolution in the problem of bad debts that LPEI can carry against business entities. The research method uses normative research, namely legal research that uses legal sources obtained by approaching statutory regulations. Based on the study's results, it was found that the financing experienced a breakdown because it ignored the principles of good corporate governance. Bad debts make LPEI indirectly harm the state, so LPEI must strive to fulfill its debtor's obligations. Dispute resolution can be carried out by restructuring accounts receivable through rescheduling, re-conditional, re-arrangement, non-litigation efforts through arbitration and mediation, and litigation efforts carried out by filing a lawsuit to the District Court. Dispute resolution recommendations are expected to reach a fair agreement for the parties.

Keywords: Governance principles; Company; Financing; Business entity

1. Introduction

Indonesia is one of the countries that continues to encourage business people, especially exporters who carry out export activities. Export-import activities play an essential role in driving the country's economy and positively impact the country, one of which can increase foreign exchange earnings for the country. The form of export support is to provide facilities in terms of capital, the establishment of the Indonesian Export Financing Agency (hereinafter referred to as LPEI) or Indonesia Eximbank. The formation of LPEI is specifically regulated in Law Number 2 of 2009 concerning Indonesian Export Financing Institutions (hereinafter referred to as the LPEI Law). LPEI is a particular financial institution that can provide facilities such as financing, guarantees, insurance, and other services for business entities, both in the form of legal entities and non-legal entities, which are domiciled inside or outside the territory of the Republic of Indonesia.

Export-import activities are essential to boost the Indonesian economy. This is based on the fact that no country is truly independent because each other needs and complements each other. In addition to boosting the economy, export-import activities can also create a warm atmosphere for doing business between countries because export-import activities aim to fulfill the need for a resource mutually.

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Even so, there were also negative impacts on export-import activities. One of them is in terms of financing. Exporters need significant funds, which often force exporters to apply for large amounts of credit. Suppose the export-import activities do not go according to plan and do not get the appropriate results. In that case, it can cause bad debts or non-performing loans (NPLs), which may cause exporters to experience bankruptcy.

Non-performing loans (NPL) are one of the critical indicators for assessing the performance of a bank's functions. A high NPL is an indicator of a bank's failure to manage its business, including liquidity problems (inability to pay third parties), rentability (uncollectible debt), and solvency (decreased capital) (Dwihandayani, 2017). In other words, the greater the NPL, the more difficult it is for banks to extend credit. Conversely, the lower the NPL ratio, the lower the level of non-performing loans, which means the better the bank's condition (Dwihandayani, 2017).

Based on the 2021 LPEI Annual Report, the NPL of the particular mission vehicle agency, the Ministry of Finance, reached 4.78% in 2017. This figure jumped to 10.31% in 2018 and peaked at 13.96% in 2019. After that, the non-performing loan ratio started to decline, but still above 5%, namely 11.49% in 2020 and 7.12% in 2021 (Akbar, 2022).

The problems with LPEI's bad debts caused the Supreme Audit Agency to audit the distribution of funds in export financing from 2017 until the first semester of 2019 (da Santo, Pedo, 2020). Based on the examination results, LPEI still needs to fully comply with the governance provisions in the distribution and management of export financing. In addition, the financing distributed to several business entity groups is considered to ignore several aspects, such as historical financial performance, reasonable projections, guarantor capacity, and adequate supervision.

Until December 2020, LPEI's debit balance reached IDR 110 trillion (Prananta, 2021). Of this figure, IDR 16 trillion is categorized as bad loans (collectability 5). Meanwhile, IDR 42 trillion is included in the non-current category (2-4 collectability). One of the loans that were quite large and ended up being non-performing was the one given to the Johan Darsono Group, which until June 30, 2019, had an outstanding value of IDR 2.18 trillion. In addition, those that are classified as bad are those given to the textile business group, the Duniatex Group, which has the potential to default on receivables amounting to IDR 3.05 trillion.

The increase in the percentage of bad debts was due to LPEI ignoring the provisions of good corporate governance. For LPEI, implementing governance is not just an obligation but also a necessity and foundation in carrying out business activities and maintaining transparency and accountability of institutional management and administration to stakeholders (Rosita, 2018). Suppose the financing disbursement is not carried out by applying the provisions of good corporate governance. In that case, problems may occur, such as an increase in the percentage of non-performing receivables from LPEI, which will impact the size of LPEI's capital because LPEI receives capital from the state. Based on the illustrations of problems related to bad debts in export financing, the research problem formulation chosen is what are the characteristics of good corporate governance in Indonesian Export Financing Institutions?

2. Research methods

This research is normative research with a statutory approach. The laws and regulations used are (1) Civil Code, (2) Law Number 2 of 2009 concerning Indonesian Export Financing Institutions, (3) Law Number 40 of 2007 concerning Limited Liability Companies, (4) Regulation of the Minister of Finance Number 58/PMK.06/2020 concerning the Development and Supervision of Indonesian Export Financing Institutions, (5) Ministerial Regulation Number 208/PMK.06/2021 concerning Principles of Governance, (6) Principles of Risk Management, and Principles of Knowing Customers, (7) Financial Services Authority Regulation Number 9/POJK.05/2022 concerning Supervision of Indonesian Export Financing Institutions, and (8) Financial Services Authority Regulation Number 61/POJK.07/2020 concerning Alternative Institutions for Financial Services Sector Dispute Resolution. The method of collecting legal materials is done by analyzing all legal materials, then analyzing them with systematic interpretation.

3. Results and discussion

GCG issues initially started with the emergence of a separation between owners and management (Arman & Ukas, 2019). Owners or shareholders act as principals, while management acts as agents. The principal is the party that gives the mandate to the agent to act on behalf of the principal. The agent is the party given the mandate by the principal to run the company. The agent is obliged to account for what has been entrusted by the principal. It is based on the agency theory by Jensen and Meckling, American economists (Mahru & Yulianto, 2017).

According to agency theory, conflicts between principals and agents can be reduced by aligning the interests of principals and agents. The presence of share ownership by management can be used to reduce agency costs that have the potential to arise because by owning company shares, it is hoped that managers will directly experience the benefits of the decisions they make. This process is known as the bonding mechanism, namely the equalizing management's interests through a binding program for management in the company's capital (Savitri, 2019).

GCG, according to Cheung and Chan, is an approach to monitoring and controlling behavior within a company. In modern large corporations, the crisis point of corporate governance is generally associated with the division of labor between groups that control and manage management and those who provide capital, in this case, the shareholders. According to BUMN Decree Number 117 of 2002, GCG is a process and structure used by BUMN organs to increase business success and corporate accountability to realize long-term shareholder value while taking into account the interests of other stakeholders in accordance with legislation, as well as the ethical values. The organs in question are the General Meeting of Shareholders (GMS), Commissioners and Directors for Limited Liability Companies, Capital Owners, Board of Trustees and Directors for Public Companies and Service Companies.

In general, Good Corporate Governance (hereinafter referred to as GCG) or good corporate governance can be linked to an effort to attract investors to invest in a country, even if the investment is made either in the form of direct investment or indirect investment. Its application is directly related to Corporate Governance up to the stage of complying with the legal rights of shareholders in company management (Sinurat & Ilham, 2021).

The implementation of good corporate governance in Indonesia was initially carried out when the Indonesian government changed Law Number 1 of 1995 concerning Limited Liability Companies (Swantoro, 2019). This happened because, in the Credit Lyonnais Securitas Asia report on corporate governance in 2003, Indonesia was in the lowest position in the Asian region regarding implementing GCG principles. Therefore the Indonesian government is trying to change this perception by implementing GCG values in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the Company Law).

The Company Law does not explicitly regulate GCG. Nonetheless, the Company Law regulates the mechanism of relationships, roles, authorities, duties and responsibilities, procedures, and procedures for meetings (Kosasih, 2019). In addition, it also regulates the decision-making process of the minimal organs that must exist in the company, namely the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners. In addition, it also regulates the requirements and procedures for the appointment and dismissal of members of the Board of Directors and Commissioners.

In Indonesia, GCG is always associated with companies with good corporate governance (Fuady, 2008). Good corporate governance means a system and process that regulates the pattern of relationships in the company's organs to provide profit value to companies that are interconnected and comply with the rule of law and always pay attention to the needs of stakeholders.

The purpose of implementing GCG is to foster management commitment to implementing good corporate governance and following steps for improvement and consistency in its application. In implementing GCG in Indonesia, many companies have adopted the values of GCG as a guide in carrying out their institutional activities. For LPEI, the implementation of GCG is not just an obligation but a necessity and foundation for carrying out business activities and maintaining transparency and accountability of the management and administration of the institution to stakeholders.

Governance, according to Article 1 number 11 Permenkeu Number 208/PMK.06/2021, is a process and structure used by LPEI to achieve the objectives of conducting business activities by taking into account the interests of each party involved in conducting business activities based on laws and regulations and practices that generally applies (Hutabarat, 1990). LPEI is required to apply the principles of good corporate governance in carrying out business activities at all levels of the organization effectively. The Board of Directors implements GCG, Executive Directors, Managing Directors, and all employees regulated in Permenkeu Number 208/PMK.06/202.

The governance principles include transparency (openness), Accountability (accountability), Responsibility (responsibility), independence, and Fairness (fairness). The principle of openness means a situation where the implementation of LPEI's business activities is carried out clearly, transparently, and openly by various parties so that every action taken by the institution will avoid conflicts of interest.

The principle of accountability means conformity with the implementation of LPEI's business activities related to the functions of the parties in the LPEI with the standard implementation procedures and legal rules that apply to the institution (Dwihandayani, 2017). One form of applying this principle is by setting business targets and strategies to achieve the goals and functions of this institution so that its implementation can be accounted for.

The principle of responsibility means a situation where the operational implementation of LPEI can describe the role and status of each party in terms of the development and implementation of the institution's policies. In its application, LPEI will comply with and follow the prudential principle, which this principle guarantees that LPEI will comply with the rule of law (Tanaya & Octaviani, 2018). By acting as an excellent corporate citizen, LPEI carries out social responsibility fairly and justly as part of implementing GCG principles.

The principle of independence describes a situation in which the institutional management of the LPEI is carried out professionally, free from the influence or pressure of various parties and conflicts of interest (Pane, 2015). In other words, LPEI acts independently to make all decisions to be made objectively to avoid conflicts of interest.

The principle of fairness describes a situation where in terms of fulfilling the rights of various parties arising from an agreement, it can be said to be equal, fair, and reasonable according to the applicable legal rules (Astuti, 2019).

Before its transformation into LPEI, the institution was initially a financial institution that carried out its business activities guided by banking laws and regulations. Banking in managing its institutions also applies GCG principles which aim to strengthen company performance (Jatiningrum & Marantika, 2021).

The application of corporate governance in banking is based on the following provisions: (1) Law Number 10 of 1998 concerning Banking, (2) Bank Indonesia Regulation Number 8/4/PBI/2006 concerning the Implementation of Good Corporate Governance for Commercial Banks, (3) Regulation of the Financial Services Authority Number 18/POJK.03/2014 concerning Implementation of Integrated Governance for Financial Conglomerates GCG Guidelines for the National Committee on Governance Policy (Harjono, 2021).

As an intermediary and trust institution, banks must adhere to the principle of transparency and have performance measurements from all levels of the bank based on measures consistent with the corporate values, business objectives, and bank strategy as a reflection of bank accountability.

Based on a comparison of good corporate governance implemented by LPEI, IDX, and Banks, it can be concluded that in carrying out their business activities, the three institutions are guided by the GCG concept with the same objective, namely to create good corporate performance. However, even though guidelines have been set regarding good corporate governance, the fact is that large institutions such as LPEI have been declared problematic as a result of carrying out bad corporate governance practices. The fall of the state-owned banks was caused by the unwise credit expansion policies of the bank's directors. Credit is given in large amounts to several prominent business groups without going through a careful and objective study of their business feasibility studies. As a result, LPEI experienced financial difficulties because the prominent business entities could not repay the loan and interest.

The 2021 LPEI Annual Report states that LPEI's NPL reached 4.78% in 2017. This figure more than doubled to 10.31% in 2018 and peaked at 13.96% in 2019. After that, the ratio of non-performing loans to financial institutions these exports began to decline but remained above 5%, namely 11.49% in 2020 and 7.12% in 2021. It is known that in Article 14 POJK Number 40 of 2015 concerning LPEI Guidance and Supervision, there are provisions prohibiting LPEI from having financing with the quality category of non-performing financing after deducting reserves for allowance for write-offs of financing of more than 5% of total financing.

Looking at the increase in the percentage of LPEI's NPL, which is still above 5% due to LPEI neglecting good corporate governance when providing financing to several large groups of business entities. The impact of not implementing GCG triggers a financial crisis at LPEI but also has an impact on a country's economy. If GCG is implemented optimally, it can affect the decision-making process, the balance of the framework, and the overall understanding of the company's management. As for the sustainable implementation of GCG, it can also direct LPEI in mitigating risks, maintaining product quality standards, and increasing access to capital.

4. Conclusion

The Indonesian Export Financing Institution was specifically formed as a financial institution under the Ministry of Finance to provide financing, guarantee, insurance, and other services as long as it does not conflict with Law Number 2 of 2009. The financing provided to the Duniatex Group, the Johan Darsono Group, and the Walet Group experienced defaults or bad debts because they were carried out without applying the principles of good corporate governance. It failed to achieve the principles of transparency, the principle of responsibility, the principle of accountability, the principle of independence, and the principle of fairness, so stakeholders cannot account for LPEI's actions.

The Indonesian Export Financing Institution should improve its performance to benefit the state because LPEI receives capital from the state budget deficit. Hence, LPEI requires special attention to the continued use of the planned funds provided by the state.

Compliance with ethical standards

Acknowledgments

Sincere gratitude goes to the Faculty of Law, University of Wijaya Kusuma Surabaya that have supported and funded this research.

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