
**Analysis of Violations of Corporate Governance Principles in Smuggling Cases
of Garuda Indonesia**

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Abstract

This study aims to analyze the violation of corporate governance principles in the smuggling case of a Harley Davidson motorcycle and two Brompton bicycles on the new Airbus A330-900 by the President Director of PT Garuda Indonesia and four other boards of directors involved in supporting it. The type of research used is qualitative research with a descriptive research design. This study focuses on analyzing an object by studying it as a case intensively. This research uses the data analysis method content analysis approach with the study documentation collection method. Research data sources were obtained from secondary data, namely by searching for previous research, the internet, financial reports from PT Garuda Indonesia, and several other reliable sources. It can be seen from this study that the smuggling act by the former president director of PT Garuda Indonesia violated the five principles of good corporate governance.” The five principles are transparency, accountability, responsibility, independence, and fairness. These five principles must be used as guidelines for companies in carrying out their performance so that companies can operate efficiently and effectively and compete well in the market.

Keywords: *Corporate Governance, Principles, Smuggling, Violation.*

Introduction

Indonesia is a country that has many islands. With this, in order to facilitate the transportation route, it is necessary to use alternative inter-island air transportation to make it faster and more efficient. To overcome these geographical conditions, Indonesia has provided air transportation needs with various kinds of airlines, both airlines managed by private parties and government parties, commonly referred to as State-Owned Enterprises or BUMN (Paramitha, 2019). State-Owned Enterprises is a business entity whose entire or most of its capital is owned by the State through direct participation from separated state assets (Regulation of the Minister of State for State-Owned Enterprises, 2011). Companies included in BUMN are limited liability companies whose capital is divided into shares of which all or at least 51% (fifty-one per cent) of the claims are owned by the Republic of Indonesia, with the primary objective being to earn profits.

Limited Liability Company Garuda Indonesia, or PT. Garuda Indonesia is a national airline owned by the Indonesian government, established on December 21, 1949. In carrying out the company's management, PT. Garuda Indonesia has always been committed to implementing the principles of Good Corporate Governance in its business processes. This commitment is maintained by trying to continuously improve the implementation of CG so that the company can have a good performance, earn profits, and continue to grow sustainably. A good track record in the business process makes the company gain the trust of shareholders and stakeholders. The

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provision of public services or state-owned companies cannot be realized effectively and efficiently without strong SOE governance and management (Grossi *et al.*, 2015).

Corporate Governance is a system for managing and directing the company (Cadbury Report, 1992). This system is based on the principles that underlie corporate governance, considering stakeholders' interests in accordance with the law, moral values and business ethics to increase the company's success and maintain long-term responsibility to achieve company goals (Ayuba, 2021). Corporate governance applied to a company functions to establish good cooperative relationships, build trust, and create common goals that benefit all parties involved so that all problems can be appropriately anticipated. In addition, implementing CG consistently can reduce the possibility of fraud in a company (In'airat, 2015). In its implementation, state-owned companies must implement good corporate governance in accordance with applicable rules and regulations. This is intended so that companies can optimize the value of SOEs and encourage professional and effective SOE management so that companies have strong competitiveness, both nationally and internationally.

In a company, good corporate governance (GCG) is needed. According to Siswantaya, Good corporate governance (GCG) is a set of regulations that control the relationship between shareholders, managers, creditors, the government, employees and other stakeholders related to their respective rights and obligations. This is made so that investment funds from the company are used properly and efficiently (Uwugbe, 2014). In order to implement corporate governance, principles or guidelines are needed that can be used as a guide in implementing actions and steps to realize corporate governance and can be used as parameters in testing its success. The National Committee on Governance Policy (2006) explains that corporate governance consists of 5 principles: transparency, accountability, responsibility, independence, fairness, and equality.

On the principle of transparency, the company must be able to maintain its objectivity. Therefore, companies must provide relevant material information promptly using methods easily understood and accessed by interested parties. o Companies must not only seek to disclose issues regulated by laws and regulations but also open issues for decision-making by shareholders, creditors, and other stakeholders. The principle of accountability requires a company to have a clear function and precise implementation of responsibilities. Furthermore, the company is obliged to account for its performance openly and fairly. Thus, the company needs to be adequately managed, measurably and in line with business interests while considering the interests of shareholders and other stakeholders. o Accountability is a crucial prerequisite for achieving long-term achievement.

The principle of responsibility or accountability is the suitability of management, and policies applied in the company must comply with the applicable laws and regulations. In addition, accountability to the community and the environment must also be maintained because it is essential to maintain business continuity in the long term and can make the Company an excellent corporate citizen. Based on the principle of independence, it must be ensured that under the principles of CG, the company can be operated independently so that each part of the company does not control the other and cannot be intervened by third parties.

The principle of fairness and equality is intended so that the company does not discriminate against the performance of the rights of all shareholders and stakeholders. Fulfilling the company's requests must be based on the applicable regulations. However, in its commitment to applying corporate governance principles, it does not mean that PT Garuda Indonesia has successfully implemented corporate governance principles without any violations. In early November 2019, a case was revealed that dragged the big name of PT Garuda Indonesia. The case that shocked the Indonesian people was the case of the smuggling of a Harley Davidson motorcycle and two Brompton bicycles carried out by the president director of PT Garuda

Indonesia with the support of 4 other boards of directors involved. This shows that fraud and rule violations cause the failure to implement Good Corporate Governance.

A violation is something that contradicts the law. Violation itself consists of several types. One of them is a violation of export-import. The thing that is most often done in this export-import violation is smuggling. Based on the records of the Ministry of Finance of the Directorate General of Customs and Excise, from early January to 12 December 2019, there were 17,716 prosecutions for smuggling cases. As a result, the value of the tax deviation or the Proceedings of Goods is at least Rp. 4.772 trillion.

Webster Ninth's New Collegiate Dictionary defines smuggling as illegally, illegally importing or exporting and, in particular, avoiding the obligation to pay for any import or export, which violates customs regulations. Smuggling itself can be divided into two, namely export smuggling and import smuggling. Import smuggling is the smuggling of goods from abroad into the country. Meanwhile, export smuggling is an act of smuggling goods from within to abroad. Irresponsible individuals/groups often carry out smuggling without heeding the applicable rules. As a result, smuggling shows poor governance, reducing market confidence and decreasing international investment flows.

Adhi (2021) stated that smuggling or smuggling is a criminal activity that violates a regulation regarding the import of goods or the act of carrying goods secretly. Based on Article 102 of Law Number 17 of 2006 concerning Customs stipulates that any person who: "Transports imported goods that are not listed in the manifest as referred to in Article 7a paragraph (2); Unloading imported goods outside the customs area or other places without permission from the head of the customs office; Convicted for committing smuggling in the import sector with a minimum imprisonment of 1 (one) year and maximum imprisonment of 10 (ten) years and a minimum fine of Rp. 50,000,000 (fifty million rupiahs) and a maximum of Rp. 5,000,000,000 (five billion rupiahs).

In conducting a study, the researcher refers to previous studies to obtain comparative and reference materials in writing systematics. Prior studies are also used to avoid the assumption of similarity with previous studies. The following is a summary of preliminary research from various references obtained.

Adhi (2021) analyzes the Director of PT's accountability for the Crime of Smuggling Harley Motorcycles in Garuda Indonesia. It can be concluded that the smuggling of Harley Davidson Motorcycles and two Brompton bicycles violates the positive law in force in Indonesia and is subject to violations related to abuse of authority. In accordance with the applicable positive law, the President Director of PT. Garuda Indonesia is subject to heavy criminal and administrative sanctions, as stated in Law No. 17 of 2006.

Ratnawati (2019) researched Organizational Behavior Analysis of Internal Control in a Case Study of Smuggling on a Passenger Aircraft Type Airbus A330-900 Series Neo Belonging to PT Garuda Indonesia. The results of the study state that organizational behaviour is directly proportional to an organisation's internal control. Organizational behaviour that acts as the locus of power is the control centre of the individual that must be applied in order to provide balance to humans. Therefore, a person's mental and mental readiness begins with good organizational behaviour, creating a competent internal control environment.

In previous research, it has been found that there is no link between smuggling cases and analyzing violations committed against the principles of corporate governance. Because no researchers have raised the above problems, the author attempts to conduct a study entitled "Analysis of Violations of Corporate Governance Principles in the smuggling case of PT. Garuda Indonesia". This study aims to analyze and perform a conceptual study of applying Corporate

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Governance principles at PT Garuda Indonesia, organizational behaviour as a control centre for controlling Corporate Governance, and the failure to maintain Corporate Governance that occurred at PT Garuda Indonesia, causing fraud in the form of smuggling. Researchers seek to identify and seek information by studying and evaluating factual opening data, which will then be combined with various existing references to produce accurate data.

Methods

This research uses a qualitative research type. This means that the research aims to understand the phenomena experienced by the research subjects as a whole by describing them in the form of paragraphs. Using a qualitative approach, the researcher tries to match the empirical reality with the existing theory using descriptive methods (Moleong, 2010). The author also uses descriptive research as the design of his research. Descriptive research is a type of research that describes and presents factual data, conditions, and phenomena that occurred during the research.

This research focuses on one particular object by intensively studying it as a case. In the process, the author investigates and examines a phenomenon that occurred at PT Garuda Indonesia. In addition, the author obtained information from several previous studies, the internet, financial reports from PT Garuda Indonesia, as well as several other credible sources.

The data collection method in this research is a documentation study. Sugiyono defines documentation study as collecting data by studying documents to obtain information about the problem under study. In the documentation study, the researcher searches historical data regarding the research object and sees that the ongoing process has been well documented. At the same time, the data analysis method used in this study is a content analysis approach. Content analysis is a qualitative data research technique that emphasizes the meaning of communication content, how to read symbols, and the contents of symbolic interactions that occur in communication (Bungin, 2011). Holsti explained that content analysis is a method of analyzing messages systematically as a guide for observing and analyzing specific messages conveyed by communicators.

Results and Discussion

Violation of CG principles in the Smuggling Case of PT. Garuda Indonesia

On Tuesday, 17 November 2019, a Harley-Davidson motorcycle and two Brompton bicycles were smuggled on an Airbus A330-900 aircraft from Garuda, Indonesia. This causes the credibility of PT. Garuda Indonesia damaged the public eye, not only that PT. Garuda Indonesia has lost the trust of its shareholders and other stakeholders. On the other hand, companies that do business in the community, especially state-owned companies, need to show examples of the application of good governance in their business activities.

PT. Garuda Indonesia has been committed to implementing the five principles of Good Corporate Governance in carrying out the company's activities. This commitment is consistently maintained so that the company can continue to grow and develop and gain the trust of various parties. But unfortunately, there are smuggling cases which show that PT. Garuda Indonesia failed to apply the principles of Corporate Governance, or it could even be said to have violated the principles of Corporate Governance. Violations of these principles include the Principle of Transparency, the Principle of Accountability, the Principle of Responsibility, the Principle of Independence, and the Principle of Fairness and Equality.

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In principle, objectivity is considered very important in running a company. A company must provide relevant and reliable information to those who need it. Directors, managers, and other ranks are responsible and involved in disclosing transparency within the company. There are at least two benefits if a company runs the principle of transparency well. First, the focus on openness can make directors, managers and other ranks more careful and responsible for every decision so as not to harm the stakeholders, shareholders and other parties. Second, transparency in a company can strengthen the trust of the parties concerned both in the company's performance, company management, return on investment and so on. However, the smuggling act carried out by the president director proved that PT. Garuda Indonesia violated the principle of transparency. This can be seen from the smuggling the president's director carried out to avoid paying state taxes, whose nominal value reaches 532 million – 1.5 billion. This lack of transparency has reduced related parties' trust, and shares' importance decreased by 2.42%.

The principle of accountability explains that a company must be appropriately managed, structured and in line with business objectives and pay attention to the interests of shareholders and other stakeholders. Clarity of corporate governance is essential for business sustainability. Directors, along with managers and other ranks, are the centre of the company's movement and are primarily responsible for the company's management process. However, the existence of a crime committed by the president director has set a bad example for all company members. Furthermore, the act of smuggling proves that the company's 'accountability principle' has not been operated properly. This is evidenced by irregularities in the corporate governance structure at the board of director level, not complying with applicable laws and regulations and not implementing the company's code of conduct (COC).

The principle of responsibility explains that every company, including its components, must have a sense of responsibility to comply with applicable laws and regulations. The company must also be able to account for every decision taken for the benefit of shareholders and stakeholders, and this is included in the form of compliance with regulations. However, the act of open smuggling by the president's director contradicts the responsibility principle. The President Director of PT Garuda Indonesia ignores and even violates all applicable rules in order to take any action that benefits oneself without looking at the risks that will be borne in the future.

The independence principle ensures that a company can consistently implement corporate governance principles independently, does not control each other and cannot be intervened by third parties. This smuggling act operates directly under the leadership of the President Director by involving four other officials, including the Director of Operations, Director of Cargo and Business Development, Director of Engineering and Services, and Director of Human Capital. The act of smuggling involving the president director and four other officials proves that the 'Independence Principles' have been violated. It can be seen that the five parties involved do not have independence and are easily influenced by other parties.

In applying the principles of fairness and equality, the company strives to provide fair treatment to all parties involved in business operations. The smuggling act carried out by the president director was proven to violate the 'fairness and equality principle' because the smuggling act was outside the limits of fairness and was deemed unfair to all parties, shareholders, stakeholders and the community and was carried out for self-benefit. This has also tarnished the good name of Garuda Indonesia and harmed many parties involved.

Criminal Acts of Smuggling Cases at PT. Garuda Indonesia

Acts that violate legal provisions must be held accountable. Criminal penalties must be served as a result of the offending activity that has been caused. Sanctions were imposed on anyone, and anyone who broke the rules would be punished regardless of age or class. A person must be responsible for his actions because before committing the violation, he already knows the consequences that will be borne. An act contrary to the provisions of laws and regulations must be followed up with legal processes to prevent other people from committing similar violations. The police are given full power in handling pre-trial actions to understand the perpetrators' motives. If the perpetrator has other smuggling networks, the information will be filtered as soon as possible to prevent further steps that can harm the state (Santoso, 2001).

In accordance with Law No. 17 of 2006 concerning Amendments to Law No. 10 of 1995 concerning Customs, it can be concluded that the prominent director of PT. Garuda Indonesia has been proven guilty and violated Article 102 letter a, "Transporting imported goods that are not listed in the manifest", and Article 102 letter b, "Unloading imported goods outside the customs area or other places without permission from the head of the customs office". Based on the Tangerang District Court Case Investigation Information System with case number 192/pid.sus/2021, it was decided that the accused president, director I Gusti Ngurah Askhara Danadiputra, received a sentence in the form of imprisonment for one year reduced by the time the defendant was in detention, had to pay a fine of IDR 200,000,000 (two hundred million rupiahs) because the defendant has been legally and convincingly proven guilty by the law of committing a crime of advocating for illegally hiding imported goods." This case ended when the Minister of SOEs, Erick Thohir, officially dismissed the OPT President Director. Garuda Indonesia I Gusti Ngurah Askhara Dhanadiputra, along with several other boards of directors involved, have resigned from their position as directors.

SOEs need to be more selective and vigilant in the selection of directors in order to create good corporate governance in the future. Since the leader determines the company's end, it is necessary to consider the performance and abilities of individuals so that abuse of power does not happen again. In addition, as a public company that operates in the community, it must demonstrate good corporate governance to the public.

Conclusion

Based on the results and discussion related to the research that has been carried out, it can be concluded that the smuggling of a Harley Davidson motorcycle and two Brompton bicycles was carried out by the president director of PT Garuda Indonesia by dragging four other boards of directors involved on 17 November 2019. This shows that the crime of smuggling has violated the five principles of corporate governance, namely Transparency, Accountability, Responsibility, Independence, Equality and Fairness. This can be seen from the deviant attitude and behaviour that violates the principles and contradicts the existing rules. With the violations committed, the principal director of PT Garuda and four other board members were immediately dismissed/disabled from their positions. The president director of PT Garuda also received a sanction in the form of a sentence of 1 year in prison reduced by the time the defendant was in detention. And must pay a fine of Rp. 200,000,000.00 (two hundred million rupiahs).

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References

- Adhi, I. D. G. P. (2021). Pertanggungjawaban Terhadap Tindak Pidana Penyelundupan Sepeda Motor Harley oleh Direktur PT. Garuda Indonesia. *Jurnal Analogi Hukum*, 240–244.
- Ayuba, F. A. (2021). “*Designing the Concept of Good Corporate Governance in Family Company*”. Maluku: CV Abadi Tiga Mandiri. <https://journal.uc.ac.id/index.php/RMBE/article/download/2416/1746>
- Bungin, B. (2011). *Penelitian Kualitatif*. Kencana Predana Media Group.
- Governance, K. N. K. (2008). *Pedoman Umum Good Corporate Governance Indonesia*. <https://knkg.or.id/>
- Grossi, G., Papenfuß, U., Tremblay, M.S. (2015). Corporate governance and accountability of state-owned enterprises: Relevance for science and society and interdisciplinary research perspectives. *International Journal of Public Sector Management*, 28 No. 4/5, 274–285.
- Holsti, O. R. (1969). *Content Analysis for the Social Science and Humanities*. Addison – Westley Publishing.
- In’airat, M. (2015). *The Role of Corporate Governance in Fraud Reduction-A Perception Study in the Saudi Arabia Business Environment*. *Journal of Accounting & Finance* (2158-3625). 15(2).
- Indonesia. (2006). *Undang-Undang Nomor 17 Tahun 2006 tentang Kepabeanaan*. Lembaran Negara Republik Indonesia Tahun 2006 Nomor 93.
- Indonesia, Garuda. (2021). *Kebijakan Tata Kelola Perusahaan*. <https://www.garuda-indonesia.com/id/id/investor-relations/corporate-governance/index>
- Moleong, L. J. (2010). *Metodologi Penelitian Kualitatif*. Remaja Rosdakarya.
- Paramitha, L. (2019). Tanggung Jawab Hukum Maskapai Penerbangan Terhadap Praktik Overbooking Tiket Pesawat. In *Skripsi. jember : Fakultas Hukum, universitas jember*.
- Ratnawati, T. D. W. (n.d.). *Analisa Perilaku Organisasi Terhadap pengendalian Internal " (Studi Kasus Penyelundupan Di Pesawat Penumpang Tipe Airbus A330-900 Seri Neo Milik PT Garuda Indonesia (Persero) Tbk*.
- Report, Cadbury Committee. (1992). *The financial aspect of Corporate Governance*. Gee and Co.Ltd. London. <http://www.ecgi.org/codes/documents/cadbury.pdf>
- Santoso, T. (2001). *Ilmu Hukum Pidana* (Rineka Cip).
- Santoso, Y.I. (2019). *Penyelundupan Barang Rugikan Negara Hingga Rp. 4,722 Trilliun*
- Siswantaya, I. G. (2007). *Mekanisme Corporate Governance Dan Manajemen Laba Studi Pada Perusahaan Perusahaan Yang Terdaftar Di Bursa Efek Jakarta*. Universitas Diponegoro Semarang.
- Tangerang, P. N. (n.d.). *Sistem Informasi Penelusuran Perkara Pengadilan Negeri (SIPP PN)*. <https://sipp.pn-tangerang.go.id/>
- Uwuigbe, U., Peter, S., Oyenyi, A. (2014). The effects of corporate governance mechanisms on earnings management of listed firms in Nigeria”. *Accounting and Management Information Systems*, Vol. 13 No, 159–174.
- Webster, A. M.-. (1983). *Webster’s Ninth New Collegiate Dictionary*. Merriam-Webster Inc.