Journal of Law and Legal Reform
Vol. 4 Issue 2 (2023) 211–234
DOI: https://doi.org/10.15294/jllr.v4i2.65375
Online since: April 30, 2023

Journal of Law & Legal Reform
journal.unnes.ac.id/sju/index.php/jllr/index

Reform of the Limited Liability Company Law for the Enforcement of Good Corporate Governance

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Abstract
The presence of majority shareholders who also hold positions as public company executives leads to a conflict of interest due to their dual status. During the general meeting of shareholders, these shareholders have the power to endorse the work plans of the directors and commissioners. As per the limited liability corporation law, shareholders are responsible for appointing and dismissing directors and commissioners. This study aims to investigate the conflict of interest that arises when a majority shareholder serves as a director or commissioner, utilizing normative legal theory. The research focuses on a sample of companies in the financial industry. The findings of this study recommend regulatory reforms to govern the voting rights of majority shareholders at the annual general meeting of shareholders (AGMS). It suggests that the AGMS should exclude the voting rights of shareholders with

conflicts of interest. Additionally, any transaction involving a conflict of interest should require the approval of other shareholders, which can be deliberated during a general meeting of shareholders.

Keywords
Conflict of Interest, Controlling Shareholder, Good Corporate Governance, Majority Shareholders, Law Reform

Introduction

Banks are financial institutions that accept funds from the public via savings and deposits.[1] A public corporation raises funds from the general public by selling shares.[2] These two qualities are shared by banks that operate as public entities. Banks can also act as development agents or as a support for a country's economic growth.[3]

A president director and a president commissioner with roles in the holding company or controlling shareholder lead Bank OCBC NISP.[4] The two of them have a brother-and-sister relationship. Several banks' main shareholders also act as bank management, either directors or commissioners.[5] One of the controlling shareholder's sons is the vice president director at Bank BCA.[6] The president commissioner of Bank Mega is the controlling shareholder of the company. [7] Bank Capital's president commissioner is the company's

1 Redaksi OCBC NISP, "Pengertian Bank, Jenis-Jenis, dan Fungsinya Bagi Masyarakat," 2021, https://www.ocbcnisp.com/en/article/2021/07/15/pengertian-bank.

2 Suwinto Johan, "Definisi Perseroan Terbuka Atau Publik Menurut Peraturan Perundang-Undangan Indonesia," *Jurnal Mercatoria* 14, No. 1 (2021): 38–45, https://doi.org/10.31289/mercatoria.v14i1.4429.

3 Redaksi OCBC NISP, "Pengertian Bank, Jenis-Jenis, Dan Fungsinya Bagi Masyarakat."

4 Bank OCBC NISP, "Manajemen Bank OCBC NISP," n.d., https://www.ocbcnisp.com/id/tentang-ocbc-nisp/profile/manajemen.

5 Sri Hermuningsih, Hadri Kusuma, and Rahma Anzalia Cahyarifida, "Corporate Governance and Firm Performance: An Empirical Study from Indonesian Manufacturing Firms," *Journal of Asian Finance, Economics and Business* 7, no. 11 (2020): 827–34, https://doi.org/10.13106/jafeb.2020.vol7.no11.827.

6 Anisa Indriani, "Sosok Armand Hartono Putra Mahkota Djarum Yang Tambal Sepatu Pakai Lakban," 2021, https://finance.detik.com/sosok/d-5712187/sosok-armand-hartono-putra-mahkota-djarum-yang-tambal-sepatu-pakai-lakban.

7 Bank Mega, "Manajemen Komite Bank Mega," n.d., https://bankmega.com/id/tentang-kami/manajemen-komite/.

controlling shareholder.[8] The daughter of Bank Victoria's principal shareholder occupies the role of director at the bank.[9] The president commissioner of Bank Mayapada is the controlling stakeholder of the institution.[10] Table 1 shows a representative bank led by shareholders.

TABLE 1. List of Bank in Indonesia

No.	Bank	Major Shareholder / Controlling Shareholder	Position (Affiliated)
1	BCA	Djarum	Director
2	OCBC NISP	OCBC	President Commissioner and President Director
3	Mega	CT Corporation	President Commissioner
4	Mayapada	PT. Mayapada Karunia	President Commissioner
5	Victoria	PT. Victoria Investama	Director
6	Capital	PT. Inigo Global Capital	President Commissioner
7	Jasa Jakarta	PT. Widya Rahardja Dharma	President Commissioner

Source: research results

A limited liability company has three essential elements: the annual general meeting of shareholders (AGMS), directors, and the board of commissioners (BOC).[11] The director is an essential part of the organization that manages the company's daily operations and achieves its objectives.[12] The BOC is a component of the company that should oversee the management of the company in general and explicitly follows the company's objectives, as well as provide advice on policies that will and have been implemented by the directors in carrying out daily company activities to achieve the company's goals and objectives, exceptionally annual work plans that the AGMS has

[8] Bank Capital, "Dewan Komisaris Bank Capital," n.d., https://www.bankcapital.co.id/id/direktur.

[9] Bank Victoria, "Direksi Bank Victoria," n.d., https://www.victoriabank.co.id/page/tentang-kami/manajemen/-direksi/.

[10] Tahir Saleh, "Tok Liang Xian Jadi Investor Baru Mayapada Direksi Diganti," 2021, https://www.cnbcindonesia.com/market/20210510150016-17-244677/tok-liang-xian-jadi-investor-baru-mayapada-direksi-diganti.

[11] Republik Indonesia, "Undang Undang No. 40 Tahun 2007 Tentang Perseroan Terbatas," 2007.

[12] Alessandro Merendino and Rob Melville, "The Board of Directors and Firm Performance: Empirical Evidence from Listed Companies," *Corporate Governance (Bingley)* 19, no. 3 (2019): 508–51, https://doi.org/10.1108/CG-06-2018-0211.

approved.[13] The AGMS, or Extraordinary AGMS, is the highest authority in a company's hierarchy.[14] The Extraordinary AGMS has the power to nominate and remove directors and members of the BOC from office.[15]

When a person is a shareholder and holds a position simultaneously, they occupy two posts in two of the three critical elements of a limited liability company.[16] A conflict of interest exists for shareholders who act as directors or commissioners.[17] As a shareholder, this person appoints himself as the company's management.[18] Shareholders will also ratify the directors' and commissioners' annual work reports, which he or she is featured in. Furthermore, stockholders serving as commissioners create conflicts of interest because they receive information first as commissioners before other shareholders.

This research focuses on the banks whose stock is traded on the Indonesian stock market. The banks investigated were those in which the shareholders also served as commissioners or directors. The significant shareholder or controlling shareholder has a relationship with the individual who becomes a commissioner or director. With empirical and legal normative research approaches, this study is unique. Annual reports of banks listed on the Indonesian stock market provide empirical data. The study examines corporate governance, focusing on conflicts of interest in the banking sector. This type

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13 Robert Jao et al., "The Effect of the Board of Commissioners and Audit Committees Effectiveness on Internet Financial Reporting," *International Journal of Academic Research in Accounting* 9, no. 2 (2019): 37–48, https://doi.org/10.6007/IJARAFMS/v9-i2/6027.

14 Ziyad Mohamed Swedan and Sohail Ahmed, "The Impact of Corporate Governance Implementation on Firm Performance: A Case Study of Indonesia," *International Journal of Business Society* 2, no. 11 (2019): 42–47, http://repository.uib.ac.id/2009/; Emiliano M. Catan and Marcel Kahan, "The Never-Ending Quest for Shareholder Rights: Special Meetings and Written Consent," *Boston University Law Review* 99, no. 3 (2019): 743–86.

15 Suwinto Johan and Ariawan Ariawan, "Pertanggungjawaban Direksi Setelah Pemberian Acquit and Discharge," *Acta Comitas Jurnal Hukum Kenotariatan* 5, no. 3 (2020): 586–600, https://doi.org/10.22437/ujh.3.1.107-137.

16 Irine Herdjiono and Indah Mega Sari, "The Effect of Corporate Governance on the Performance of a Company. Some Empirical Findings from Indonesia," *Journal of Management and Business Administration. Central Europe* 25, no. 1 (2017): 33–52, https://doi.org/10.7206/jmba.ce.2450-7814.188.

17 Andika Pribadi Waruwu, "Qualification of Ultra Vires Act by Board of Directors Company in Indonesian Law and Court," *Locus Journal of Academic Literature Review* 1, no. 5 (2022): 298–307, https://doi.org/10.56128/ljoalr.v1i5.81.

18 Boubker Mouline and Hicham Sadok, "Corporate Cash Holdings and Agency Conflicts: Evidence from Moroccan Developing Market," *Universal Journal of Accounting and Finance* 9, no. 1 (2021): 24–32, https://doi.org/10.13189/ujaf.2021.090103; Fiona Priscilla Kohar and Yetty Komalasari Dewi, "Abuse of Rights by Majority Shareholders in Indonesian Family-Owned Company: Is It Likely?," *Sriwijaya Law Review* 5, no. 1 (2021): 29–41, https://doi.org/10.28946/slrev.Vol5.Iss1.603.pp29-41.

of study is still uncommon. This study also recommends changes to capital market legislation relating to strong corporate governance and conflicts of interest.

Banking is a type of business that gathers funds from the community in savings and then supplies them to the community in a credit to help individuals improve their living standards.[19] The bank serves as a financial middleman, a trusted agency, a development agent, and a service agent.[20] In this study, the bank is referred to as the Commercial Bank.[21]

The term "going public" or "public company" refers to a corporation (issuer) making its first public offering of shares to the public (investors). A public company performs a public offering of shares per regulations governing the capital market sector.[22] A general business shares are owned by at least 300 (three hundred) shareholders and have a paid-up capital of at least Rp. 3,000,000,000.00 (three billion rupiah), or one with certain shareholders and paid-up capital as specified by a Government Regulation.[23]

According to POJK Number 55/POJK.03.2016 on the Implementation of Governance for commercial banks, good governance is described as a system for operating a bank that incorporates openness, accountability, responsibility, independence, and justice. These governance theories are crucial to the day-to-day operations of financial institutions. These concepts are abbreviated as TARIF (Transparency, Accountability, Responsibility, Independency, Fairness). A financial firm must disclose all facts reported about it in its reports. Reporters must be held accountable for their statements. Reporting must also be independent of the interests of all parties involved. In reporting, reasonableness is also necessary.

Corporate governance is a term that experts are continuously debating how to define.[24] One of the economic market system pillars is good corporate governance (GCG). The GCG application offers the possibility of building

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19 Rifqi Muhammad, Ahsin Suluki, and Peni Nugraheni, "Internal Factors and Non-Performing Financing in Indonesian Islamic Rural Banks," *Cogent Business and Management* 7, no. 1 (2020), https://doi.org/10.1080/23311975.2020.1823583; A. S. Bhegawati and M. S. Utama, "The Role of Banking in Indonesia in Increasing Economic Growth and Community Welfare," *South East Asia Journal of Contemporary Business, Economics and Law* 22, no. 1 (2020): 1.

20 Redaksi OCBC NISP, "Pengertian Bank, Jenis-Jenis, Dan Fungsinya Bagi Masyarakat."

21 Republik Indonesia, "Undang Undang No. 10 Tahun 1998 Tentang Perubahan Atas Undang Undang No.7 Tahun 1992 Tentang Perbankan Dan Bank Umum Syariah," 1998.

22 Pemerintah Republik Indonesia, "Undang Undang Perseroan Terbatas," 40 § (2007); Johan, "Definisi Perseroan Terbuka Atau Publik Menurut Peraturan Perundang-Undangan Indonesia."

23 Republik Indonesia, "Undang Undang No. 8 Tahun 1995 Tentang Pasar Modal," 1995.

24 Henry Aspan, "Good Corporate Governance Principles in The," *International Journal of Law Reconstruction* I, no. 1 (2017): 87–100.

and maintaining a healthy completion environment and a favorable investment climate. Based on this logic, the GCG use by Indonesian banks has become a critical issue for the country's economic growth. Corporate governance has become an essential topic of discussion in recent years. Corporate governance reform has emerged as a preferred policy response to many issues, ranging from economic development and systemic risk to rising inequality.[25] Good governance as a tool accomplishes a bank's goals.[26] Only a few studies have identified a link between effective corporate governance and bank performance. Higher corporate value was achieved due to the share of independent commissioners, institutional management, and public ownership.[27] In the aftermath of the market meltdown, banks with strong corporate governance standards had significantly greater stock returns, showing that good governance may have alleviated the crisis' negative impact on bank confidence. [28] GCG is a favorable rating directly affecting the bank's performance. [29] Financial success is influenced by the size of the board of directors, the audit committee, institutional ownership, and managerial ownership [30]. Managerial Ownership, Capital Adequacy Ratio, and Bank Size all have a beneficial impact on the financial success.[31] The findings highlight the significance of implementing GCG in banks. GCG can help a bank's performance.

Meanwhile, the OJK's Guidelines for Corporate Governance of Public Companies, also known as the Governance Guidelines, are corporate

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25 Mariana Pargendler et al., "The Corporate Governance Obsession Abstract Problems – from Economic Development and Systemic Risk to Rising Inequality – Corporate Governance as a Solution to a Constellation of Economic and Social Ills . It," *Journal of Corporation Law* 42, no. 2 (2016): 359–402.

26 Fatimoh Mohammed, "Impact of Corporate Governance on Banks Performance in Nigeria," *Journal of Emerging Trends in Economics and Management Sciences* 3, no. 3 (2012): 257–60.

27 Sin Nosuke Suzuki et al., "Virtual Experiments in Metaverse and Their Applications to Collaborative Projects: The Framework and Its Significance," *Procedia Computer Science* 176 (2020): 2125–32, https://doi.org/10.1016/j.procs.2020.09.249.

28 Emilia Peni and Sami Vähämaa, "Did Good Corporate Governance Improve Bank Performance During the Financial Crisis?," *Journal of Financial Services Research*, 2012, https://doi.org/10.2139/ssrn.1740547.

29 R. R. Iramani, Abdul Mongid, and Muazaroh Muazaroh, "Positive Contribution of the Good Corporate Governance Rating to Stability and Performance: Evidence from Indonesia," *Problems and Perspectives in Management* 16, no. 2 (2018): 1–11, https://doi.org/10.21511/ppm.16(2).2018.01.

30 Herdjiono and Sari, "The Effect of Corporate Governance on the Performance of a Company. Some Empirical Findings from Indonesia."

31 Nisrul Irawati et al., "Financial Performance of Indonesian's Banking Industry: The Role of Good Corporate Governance, Capital Adequacy Ratio, Non Performing Loan and Size," *International Journal of Scientific and Technology Research* 8, no. 4 (2019): 22–26.

governance guidelines for public companies issued by the OJK to encourage the implementation of governance practices consistent with best international practices. They are based on POJK Number 21/POJK.04/2015, which is about implementing Public Listed Firm Governance Guidelines. TARIF, a collection of governance principles, corresponds to this governance style.

Corporate governance has developed rapidly since 1980. Shareholder democracy has become a vital study material in corporations.[32] Developing better corporate governance requires innovative solutions.[33] Good corporate governance can improve company performance.[34] Good corporate governance development can solve fraud.[35] The separation between control and voting rights can enhance the quality of corporate governance.[36] Accounting and good corporate governance regulatory reforms should consider the country's institutional setting.[37] Conflict of interest is defined as the difference between the economic interests of a public company and the personal economic interests of members of directors, BOC, major shareholders, or controllers that may harm the public company in question, according to POJK No. 42/POJK.04/2020 concerning Affiliated Transactions and Conflict of Interest Transactions.

Based on KPK Regulation No. 5 of 2019 concerning the management of conflicts of interest in the corruption eradication commission, a conflict of interest is a condition of having or is reasonably suspected of having a personal

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32 John H. Matheson and Vilena Nicolet, "Shareholder Democracy and Special Interest Governance," *Minnesota Law Review* 103 (2019): 1649–97.

33 Mikhail Yakovlevich Veselovsky et al., "Innovative Solutions for Improving the Quality of Corporate Governance in Russian Companies," *Quality - Access to Success* 19, no. 162 (2018): 60–66.

34 Akshita Arora and Shernaz Bodhanwala, "Relationship between Corporate Governance Index and Firm Performance: Indian Evidence," *Global Business Review* 19, no. 3 (2018): 675–89, https://doi.org/10.1177/0972150917713812; Chermian Eforis, "State Ownership and Corporate Governance: An Empirical Study of State Owned Enterprises in Indonesia," *Accounting and Finance Review* 3, no. 1 (2018): 26–32; Ahmed Almoneef and Durga Prasad Samontaray, "Corporate Governance and Firm Performance in the Saudi Banking Industry," *Banks and Bank Systems* 14, no. 1 (2019): 147–58, https://doi.org/10.21511/bbs.14(1).2019.13.

35 Pankaj Kumar Gupta and Shallu Singh, "Corporate Governance Structures in Transition Economies-Issues and Concerns for India," *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis* 66, no. 6 (2018): 1459–67, https://doi.org/10.11118/actaun201866061459.

36 Gabriel V. Rauterberg, "The Separation of Voting and Control: The Role of Contract in Corporate Governance," *Yale Journal on Regulation* 38 (2021): 1124–81, https://doi.org/10.2139/ssrn.3637204.

37 S O Abdulmalik and A C Ahmad, "Corporate Governance and Financial Regulatory Framework in Nigeria: Issues and Challenges," *Journal of Advanced Research in Business and Management Studies* 2, no. 1 (2016): 50–63.

interest to benefit oneself and/or others in the use of authority to affect the neutrality and quality of decisions and/or actions made and/or do. Meanwhile, the definition of a conflict of interest transaction is a transaction carried out by a public company or a controlled company with each party, either with an Affiliate or a party other than an Affiliate that contains a Conflict of Interest, based on POJK No. 42/POJK.04/2020.

Multiple positions in the company fail to meet international corporate governance standards.[38] Multiple positions create a conflict of interest. The shareholder concurrently serves as a manager or supervisor, resulting in a dilemma.

Parties related to or have a special relationship with the decision-makers at a company. This business can be a financial institution or a publicly traded corporation. Related parties have traditionally defined the financial industry. According to PBI Number 8/13/PBI/2006 on Amendments to PBI Number 7/3/PBI/2005 on the Maximum Limit for Granting Commercial Bank Credit, a linked party is a company, company, or entity that has a guiding relationship with the bank, either directly or indirectly, in administration and finance. Shareholders are the controlling parties in financial institutions and publicly traded companies.

A family relationship due to marriage and descent up to the second degree, both horizontally and vertically, according to PJOK No. 42/POJK.04/2020; the relationship between one party and the employee, Director, or Commissioner of that party; the relationship between two (two) companies where one or more members of the same Directors or BOC; the relationship between the company and a party, either directly or indirectly, according to PJOK No. 42/POJK.04/2020; the relationship between Affiliation has the same meaning as related parties in this definition. As a result, because of the possibility of a conflict of interest, every related party transaction must be submitted openly.

While institutional shareholders, directors, and audit committees do not influence the company's cost structure. However, the directors who hold shares and the BOC positively affect the company's costs.[39] Shareholders who concurrently hold management positions reduce agency conflicts.[40]

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38 Minga Negash, "Corporate Governance and Ownership Structure in Sub Sahara Africa: The Case of Ethiopia," *Ethiopian E-Journal For Research and Innovation Foresight* 5, no. 1 (2013): 33–50, https://doi.org/10.2139/ssrn.2121504.

39 A. Ayunitha et al., "Does the Good Corporate Governance Approach Affect Agency Cost?," *Solid State Technology* 63, no. 4 (2020): 3760–70, http://solidstatetechnology.us/index.php/JSST/article/view/3199.

40 Gaia Balp, "Activist Shareholders at De Facto Controlled Companies," *Brooklyn Journal of Corporate, Financial & Commercial Law* 13, no. 2 (2019), https://doi.org/10.2139/ssrn.3270453.

The concentration of ownership does not create checks and balances so that concentrated shareholders can do many things according to their wishes and interests. Concentrated ownership in private companies negatively affects.[41] Many related party transactions have significant sums on companies owned by family-controlled companies.[42]

The Controller of a Public Company, is the Controller as referred to in the POJK regulating the takeover of a Public Company, according to POJK No. 3 / POJK.04/2020. According to POJK No. 39/POJK.03/2017 concerning Sole Proprietorship in Indonesian Banking, a controlling shareholder (after this abbreviated as PSP) is a legal entity, individual, or business group that owns 25% (twenty-five percent) or more of the total shares issued in a company or bank and has voting rights; or owns less than 25% (twenty-five percent) of the total shares issued and has voting rights.

Minority shareholders can improve audit quality. Minority shares are at least 10% of the total existing shares.[43] If the shareholder is also the company's management, the company must be audited by an audit firm with a solid reputation.[44] Financial reporting for family businesses is often weak. The quality of financial reporting and corporate governance have a good and significant relationship.[45]

Many rules and regulations control directors and corporate parties, involving various parties such as authorities, public accounting firms, internal parties such as the BOC and the audit committee, and external parties such as banks and rating agencies. On the other hand, violations of good corporate governance, fiduciary obligations, and unlawful activity continue despite various oversight attempts. The Indonesian government must amend the

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41 Yusheng Kong et al., "Corporate Governance Mechanisms, Ownership and Firm Value: Evidence from Listed Chinese Firms," *International Journal of Financial Studies* 8, no. 20 (2020): 1–26, https://doi.org/10.3390/ijfs8020020.

42 Negash, "Corporate Governance and Ownership Structure in Sub Sahara Africa: The Case of Ethiopia."

43 Aree Saeed Mustafa and Abdullah Saeed Barwari, "Minority Shareholders Rights and Audit Quality: Empirical Evidence from Turkey," *Journal of Accounting Finance and Auditing Studies (JAFAS)* 4, no. 4 (2018): 27–44, https://doi.org/10.32602/jafas.2018.003.

44 Abdalmuttaleb M.A.M. Al-Sartawi and Zakeya Sanad, "Institutional Ownership and Corporate Governance: Evidence from Bahrain," *Afro-Asian Journal of Finance and Accounting* 9, no. 1 (2019): 101–15, https://doi.org/10.1504/AAJFA.2019.096916.

45 Muneer Rajab Amrah and Mohammed Mahdi Obaid, "Effective Corporate Governance Mechanisms, Ownership Structure and Financial Reporting Quality: Evidence from Oman," *Asia-Pacific Management Accounting Journal* 14, no. 3 (2019): 121–54, https://doi.org/10.24191/apmaj.v14i3-06.

supervisory regulation, notably the section dealing with criminal sanctions for directors and corporate parties.[46]

The following are the research questions for this study: According to company law and capital market law, how is effective good corporate governance related to conflicts of interest? Why does the combined role of shareholders and management result in a conflict of interest? What changes can be made to eliminate the possibility of a conflict of interest?

Method

This research examines legal principles and norms, the legal system, the synchronization of laws and regulations, and legal comparisons and legal history, especially in the context of corporate governance, including conflict of interest between shareholders and directors. The research method used is a normative legal research method or literature-based legal analysis based on the background, research problem, and previous study. This study uses a statutory approach to investigate all relevant laws, regulations, and market activities in the subject in normative legal research.[47] The use of rules and regulations as a research basis underpins the approach to legislation. This method examines legislation and market practices in the real world and links them to related regulations.

The normative legal research materials include primary, secondary, and supporting legal texts. The critical legal materials reviewed in this study were the Republic of Indonesia's 1945 Constitution, statutes, and other related legislation. Legal journal articles, legal ideas, scientific books about specific research themes, symposium/seminar findings, and scientific papers are examples of secondary legal literature. Primary and secondary legal concepts are explained [48].

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46 Suwinto Johan, "Financial Institution and Public Listed Companies : How the Supervision Regulated Under the Indonesian Law ?," *Varia Justicia* 17, no. 2 (2021): 171–83, https://doi.org/10.31603/variajusticia.v17i2.4064.

47 Mahmud Peter Marzuki, *Penelitian Hukum: Edisi Revisi*, Revisi (Jakarta: Kencana Prenada Media Grup, 2017), https://opac.perpusnas.go.id/DetailOpac.aspx?id=1409842.

48 Suwinto Johan, "Knowing Company Secrets Through Employee Posts on Social Media," *Diponegoro Law Review* 6, no. 2 (2021): 203–16, https://doi.org/10.14710/dilrev.6.2.2021.203-216.

Good Corporate Governance Related to Conflicts of Interest

The Law on Limited Liability Companies (Law No. 40 of 2007) regulates company regulations (LLC Act). This LLC Act governs the significant organs of a limited liability corporation and its functions and obligations. Furthermore, the LLC Act governs the formation and dissolution of limited liability firms. The LLA Act governs company good governance in general. Reporting duties and responsibility in the event of a conflict of interest by the company's organs are governed by the LLC Act. The Law Number 40 the Year 2007 regarding Limited Liability Company does not explicitly regulate the implementation of Good Corporate Governance principles.[49]

It is governed in Law Number 8 of 1995 for companies listed on the capital market (Capital Market Act). The Capital Market Act governs the capital market supervisory agency, the stock exchange's function, the listing of securities on the stock exchange, and other types of investments such as mutual funds. The Capital Markets Act governs company good governance by defining affiliation and requiring disclosure of information.

In addition, the Financial Services Authority is governed by Law Number 21 of 2011. (OJK). All financial transactions must be conducted in an orderly, transparent, and accountable way, according to OJK. This is consistent with Good Corporate Governance principles. OJK is responsible for regulating financial industry actors. OJK issues OJK Regulations (POJK), which hold corporate governance in the financial industry, as part of its implementation.

There are currently no corporate governance regulations for the non-financial services business. Various independent institutions carry out socialization on corporate governance implementation. If there is a breach of corporate governance, it will be prosecuted under criminal and/or civil law.

Suppose there is a violation of good governance in a government-owned firm. In that case, the perpetrator will be liable to the law against corruption, money laundering, or the criminal code of law. This has occurred in the cases of Jiwasraya Insurance [50] and Garuda Indonesia [51], this has happened. The KPK is a particular government agency tasked with fighting corruption. The KPK's function is governed by Law No. 19 of 2019.

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49 Aspan, "Good Corporate Governance Principles in The."

50 Yuwono Triatmodjo, "Tersangka-Korupsi-Jiwasraya-Dikenakan-Pasal-Dengan-Ancaman-Penjara-Maksimal-20-Tahun," 2020, https://insight.kontan.co.id/news/tersangka-korupsi-jiwasraya-dikenakan-pasal-dengan-ancaman-penjara-maksimal-20-tahun.

51 Tatang Guritno, "Kilas-Balik-Kasus-Emirsyah-Satar-Di-Garuda-Sebut-Gratifikasi-Wajar-Hingga," 2022, https://nasional.kompas.com/read/2022/01/14/08254091/kilas-balik-kasus-emirsyah-satar-di-garuda-sebut-gratifikasi-wajar-hingga?page=all.

The public company director was sentenced to 4 years in prison for manipulating financial statements. This sentence is based on the Capital Market Act. Violations of corporate good corporate governance also occur in the capital market. Violations occur in recording affiliated companies' transactions as third parties independent and overstatement of receivables amounting to Rp. 1.4 Trillion. This is considered an internal conflict of interest [52].

Effectiveness Good Corporate Governance Related to Conflicts of Interest

Shareholders are not banned from holding concurrent positions in a company's organs under the Limited Liability Company Law. Shareholders can appoint themselves as the company's management. Concurrent jobs are not forbidden under applicable legislation, notably the Capital Market Law's regulation of public corporations.

Concerning Information Disclosure and Corporate Governance Obligations for Issuers or Public Companies that Meet the Criteria for Issuers with Small-Scale Assets and Issuers with Medium-Scale Assets, see POJK No. 43/POJK.04/2020. Issuers or small and medium-sized businesses must have at least one independent commissioner, according to this POJK. The regulations likewise govern the requirement for non-affiliated directors. The Indonesia Stock Exchange, on the other hand, repealed the policy in 2018 [53].

Affiliate transactions, on the other hand, are governed by POJK Number 42 of 2020. Any activity or transaction conducted by a public company or a controlled company with affiliates of a public company or affiliates of members of the directors, members of the BOC, significant shareholders, or controllers, including any activities and/or transactions conducted by the company, is referred to as an Affiliated Transaction.

In the POJK, affiliate trades are controlled. Through this article, an affiliate transaction is defined as any activity and/or transaction conducted by a public company or an owned company with affiliates from a public company or affiliates of members of the directors, members of the BOC, significant shareholders, or controllers for the benefit of affiliates of publicly listed

52 Tim Detik Finance, "2-Eks-Direksi-Aisa-Divonis-4-Tahun-Penjara-Gegara-Manipulasi-Laporan-Keuangan," 2021, https://finance.detik.com/bursa-dan-valas/d-5674705/2-eks-direksi-aisa-divonis-4-tahun-penjara-gegara-manipulasi-laporan-keuangan.

53 Emanuel Caesario, "Direktur Independen Didepak Dari Jajaran Manajemen Emiten," 2019, https://market.bisnis.com/read/20190101/192/874409/direktur-independen-didepak-dari-jajaran-manajemen-emiten.

companies or affiliates of members of the directors, members of the BOC, significant shareholders, or controllers. Transactions involving affiliates may result in a conflict of interest. The following are requirements for public companies that do affiliate transactions use an appraiser to determine the fair value of the affiliated transaction's object and/or the fairness of the transaction in question, publicize the disclosure of information on each affiliated transaction, submit the information disclosure and supporting documents to the Financial Services Authority, and must first obtain shareholder approval in AGMS if the value of the related transaction meets the maximum amount as stated in the article of association.

The establishment of an audit committee chaired by an independent commissioner is mandated by POJK No. 55/POJK.04/2015. Furthermore, Kep-315/BEJ/062000, which governs general rules for listing equity securities on the stock exchange, mandates the appointment of independent commissioners, audit committees, and corporate secretaries by businesses listed on the stock exchange.

Commissioners independent of shareholders or other organs such as directors are known as independent commissioners. In reality, independent commissioners are known to the board of directors or shareholders. This appointment demonstrates that the commissioner isn't entirely independent. Independent commissioners, on the other hand, face conflicts of interest. The main shareholders will not re-appoint the independent commissioner if he is too strict in his oversight. This occurs because the significant shareholders are more concerned with the directors than the commissioners, who are seen as obstructing the company's operations.

Before being appointed, every organ of a financial institution must pass the OJK's fit and appropriate test. A financial institution or bank's controlling shareholder must go through a fit and proper process. If the controlling shareholder is a corporation, the directors must conduct a fit and proper test. Each board member of commissioners and directors must also pass a fit and proper test. The fit and proper test solely consider a person's ability to carry out his responsibilities and suitability for the post he will be filling. This fit and proper test, on the other hand, don't look into potential conflicts of interest or the relationship between shareholders, board of commissioners, and directors.

A comprehensive regulatory framework is required to enforce good corporate governance. This rule must govern the limited liability company's rights and obligations, as well as the interaction between its organs. This rule applies to businesses that raise money from the public through debt securities, capital, or stock. This regulation is critical for minority shareholders' protection.

Types of Corporate Governance Violations Based on GCG Principles

a. Transparency
   All operations carried out in the company must be freely reported by the directors or corporate management. Transactions involving linked parties must be disclosed. Large-scale transactions that impact the company's performance must be made public.
b. Accountability
   Management must be accountable for the company's performance. The management should improve the company's performance. In carrying out its duties, management has no conflicts of interest.
c. Responsibility
   Each performance result is the responsibility of the company's management. The company's management cannot delegate responsibility to others. The management structure is well-defined. Management is unable to delegate duties to others.
d. Independence
   Management is an independent party to all parties interested in the company. The management of a company is a professional group. The company's management has no personal interest in the interests of third parties. All decisions are made with the firm's best interests and all parties involved in the company in mind.
e. Fairness
   All stakeholders, including the company's interests, must be treated fairly by management. All stakeholders must have access to critical firm information. Neither party obtains information ahead of time from the other. Neither party has a leg up on the other in terms of communication.

GCG Violations Examples

Examples of GCG violations in Indonesian corporate activity include the following.

a. Transact with related parties without disclosing information to the general public. Only related parties with conflicts of interest make transaction decisions.

b. The Board of Directors manipulates the financial statements. The financial statements are not reported in their current form by the Board of Directors.
c. Directors and shareholders manage side streaming funds. Using business funds for personal advantage is unethical.
d. Important company information is not openly shared with interested parties.
e. The company's directors protect certain shareholders' interests. The Board of Directors does not represent all stakeholders' interests fairly.

Role of Shareholders and Management Result in a Conflict of Interest

Shareholders and commissioners frequently hold opposing viewpoints. Other shareholders, particularly minority stockholders, suffer from concurrent positions. Commissioners have supervisory responsibilities. In comparison to other shareholders, shareholders will be the first to learn about the company. A conflict of interest arises as a result of this dual status. Shareholders also ratify the performance reports of commissioners and directors. Even though shareholders were involved in the execution of supervisory tasks.

A conflict of interest will arise if shareholders are also directors. The director is in charge of running the organization daily. Information about the company's daily operations will affect shareholders who do not hold concurrent directorships. While the shareholders have held positions as directors, they also confirm their reports through the AGMS.

For financial institutions that list their shares on the capital market, the Financial Services Authority (FSA) controls them under the OJK Law, the LLC Law, and the Capital Market Law. FSA or OJK issue POJK Number 55/POJK.03.2016 about the implementation of governance for commercial banks is one of the several POJKs published by the OJK in corporate governance. Function, authority, and responsibility of AGMS, Board of Director (BoC), and Director are all regulated by OJK per LLC Law and Capital Market Law. In addition, the company's internal regulations, such as the decisions of the annual general meeting of shareholders and the firm's articles of association, govern the company. In addition to OJK, the company's implementation is overseen by an independent auditor. Credit committees, risk committees, and human resources committees are examples of public company committees that oversee the company's operations. Figure 1 depicts the AGMS, directors, and the BOC relationship.

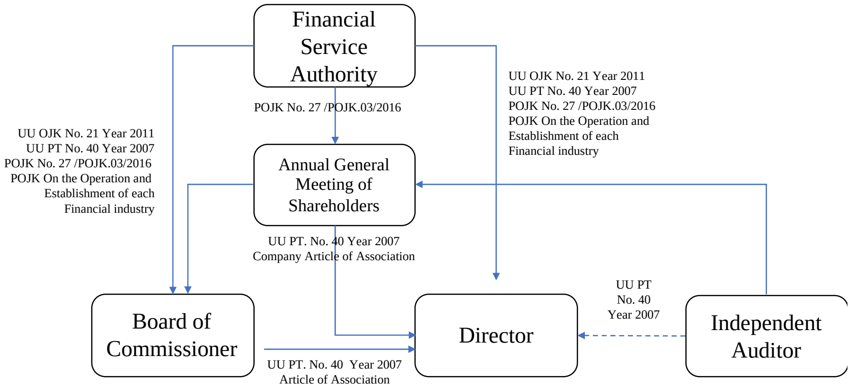

FIGURE 1. Legal Framework for Supervisory Director and Commissioner
Source: research results

The sharia supervisory board oversees the company's operations in conformity with sharia principles, which is especially important in sharia banking. The national sharia board, as well as the shareholders, are represented on the sharia supervisory board. Sharia principles must not be violated in the execution of the law. The sharia implementation authorization will be canceled if the bank violates sharia standards. Commissioners are not permitted to serve as directors at the same time. The commissioner serves as the directors' supervisor. The BOC receives reports from the directors. This is consistent with the GCG principles.

Eliminate the Possibility of a Conflict of Interest

Based on the discussion above, the research proposes an amendment to the Limited Liability Company Law, allowing shareholders to hold concurrent positions as commissioners or directors. Still, several things must be established first, such as shareholders' voting rights and supervision must be separated, and shareholders who hold concurrent positions cannot certify their work report. As a result, the shareholders and management will lose their votes in the AGMS ratification. Shareholders who do not hold concurrent positions in other organs are eligible to vote at the AGMS on the directors' and BOC's performance reports.

The existing definition of affiliation must be followed regarding voting rights. The AGMS must explicitly eliminate shareholders' voting rights who have concurrent positions while counting votes in decision-making. A person who has a business relationship with a shareholder will lose votes at the AGMS.

This excludes shares awarded to management as a bonus as long as the value of the shares is less than 10% of the total shares in the AGMS decision-making process. All appointed directors' and commissioners' accumulated value equals 10% of the total share value.

Per the revisions to the rules and regulations, shareholders, directors, and commissioners will act independently. Concurrent positions are permissible, but judgment and decision-making must be separated from conflicted voting rights. This regulation will safeguard the rights of minority shareholders.

Proposed of Voting Scheme

Shareholder A controls 51% of the company's stock. Shareholder A, acting as both a shareholder and a director, conducts business with Company B. Company A is the owner of Company B. This is a transaction involving related parties. A potential conflict of interest exists in B Decision. The decision on this transaction must be presented to the other shareholders by Party A. The additional 49% of shareholder must approve this transaction. For this transaction to be completed, a simple majority of 49 percent of shareholders must approve it. This transaction will not be carried out until a simple majority is obtained. Party A is not permitted to decide on B Transaction. Shareholders can set a limit on the total value of related party transactions that require shareholder approval, as well as the method for deciding the winner of related party transactions that must be approved at a shareholders' meeting.

President Director A and Director B have a father-and-son relationship. In this corporation, transactions can't just be signed by A and B; they have to be signed by all of the other directors as well. Despite the fact that the firm's articles of association provide that the corporation might be represented by two directors. The authority of A as president director and B as director must be limited by the general meeting of shareholders.

Mr. P owns 40% of PT. ABC, while Mr. P's son, Q, owns the remaining 15%. Q is a member of the board of directors at PT. ABC. Mr. P might not be pleased with Q's performance. Only minority stockholders approve of Q's performance. Mr. P is not permitted to have access to Mr. Q's confidential information. Mr. Q must uphold the TARIF's principles.

Conclusion

The ideal solution for running a limited liability corporation is to establish Good Corporate Governance (GCG). Poor firm performance will result from related parties who have related relationships and conflicts of interest. The implementation of GCG is still not fully developed at this moment. GCG is being implemented in compliance with current rules and regulations. Regulations and statutes do not ban concurrent positions. Laws and regulations must be amended as soon as possible. Related parties are banned from voting on a decision that affects their mutual interests. The power to vote at the AGMS will be eliminated in transactions with connected parties, such as the majority shareholder. A comprehensive regulatory framework is required to enforce good corporate governance. This rule must govern the limited liability company's rights and obligations, as well as the interaction between its organs. This rule applies to businesses that raise money from the public through debt securities, capital, or stock. This regulation is critical for minority shareholders' protection. The focus of discussion on the concerns of minority shareholders and the banking industry has flaws in this study. It is possible to do research in different industries. In the future, qualitative survey study on the organs of a limited liability business could be produced. Comparative legal research with other countries is also required. Other countries that have the same legal system as the Nederland. Existing national values must be considered in comparative law studies. Every legal system that governs a community has its own set of traits. Prior to the new legislation, OJK had to be more active in policing financial institutions, particularly banks and publicly listed firms. Routine audits must be conducted more thoroughly. In public companies, minorities shareholder should play a more active role. Minority shareholders are responsible for overseeing the company's operations. Under the current statutory arrangement, minority owners can take on more responsibilities.

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Acknowledgment
None

Funding Information
None

Conflicting Interest Statement
There is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement
All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.