

THE RESPONSIBILITY OF PUBLIC LEGAL ENTITIES (CASE STUDY OF PT GARUDA INDONESIA)

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ABSTRACT

Financial reports are a source of information about a company. External parties of the company can study the company and predict the company's prospects through the information presented in the financial statements. Therefore, company's management sometimes tries to beautify financial statements through earnings management. Studies of earnings management are frequently encountered in economics and accounting research, but rarely seen from a legal perspective. In 2019, PT Garuda Indonesia was found guilty of misrepresenting financial statements by the Indonesian Financial Services Authority. If the directors and commissioners are not careful in managing the company, then there is the potential for criminal acts of manipulation and/or fraud to occur. The aim of the research is to study the roles and responsibilities of public legal entities: PT Garuda Indonesia; OJK; and CPC. The research method was carried out using a normative qualitative approach, namely analyzing laws and regulations as primary legal material through horizontal and vertical synchronization methods, as well as interpretation or hermeneutics. Likewise with other secondary data in the form of printed media information as secondary legal material and tertiary legal material with the help of legal dictionaries and encyclopedias. As a suggestion in this study PT Garuda Indonesia Tbk as a public company must implement good corporate governance. Where the board of directors and commissioners must carry out their business activities with the principles of transparency, accountability, responsibility, independence, and fairness.

Keywords: *Earnings Management; Fraudulent Financial Reporting*

ABSTRAK

Laporan keuangan merupakan sumber informasi tentang suatu perusahaan. Pihak eksternal perusahaan dapat mempelajari perusahaan dan memprediksi prospek perusahaan melalui informasi yang disajikan pada laporan keuangan. Oleh sebab itu, manajemen perusahaan terkadang berusaha untuk mempercantik laporan keuangan melalui manajemen laba. Studi mengenai manajemen laba sering ditemui dalam penelitian ekonomi dan akuntansi, tetapi jarang terlihat dari perspektif hukum. Pada tahun 2019, PT Garuda Indonesia dinyatakan bersalah dalam penyajian laporan keuangan oleh Otoritas Jasa Keuangan (OJK). Apabila direksi dan komisaris tidak berhati-hati dalam mengelola perusahaan, maka berpotensi terjadinya tindak pidana manipulasi dan/atau *fraud*. Tujuan penelitian untuk mempelajari peran dan tanggung jawab badan hukum publik: PT Garuda Indonesia; OJK; dan BPK. Metode penelitian dilakukan dengan pendekatan kualitatif normatif yaitu menganalisis peraturan perundang-undangan sebagai bahan hukum primer melalui metode sinkronisasi horizontal dan vertikal, serta penafsiran atau hermeneutik. Demikian halnya dengan data sekunder lainnya berupa informasi media cetak sebagai bahan hukum sekunder dan bahan hukum tersier dengan bantuan kamus dan ensiklopedia hukum. Sebagai saran dalam penelitian ini PT Garuda Indonesia Tbk sebagai perusahaan publik wajib menerapkan *good corporate governance*. Jajaran direksi dan komisioner wajib menjalankan kegiatan bisnisnya dengan prinsip transparansi, akuntabilitas, tanggung jawab, independen, dan kewajaran serta kesetaraan.

Kata Kunci: Manajemen Laba; Kecurangan Laporan Keuangan

1. INTRODUCTION

Based on article 1(b) of the Indonesian Law no. 3 the year 1982, a company is defined as each permanent and continuous business form that is established, active, and located within the territory of the Republic of Indonesia which has the main purpose of gaining revenue or profit. Companies need funding to run their businesses. Aside from utilizing the revenue from their business activities, companies can also raise funds either by borrowing from creditors or issuing

shares to shareholders. External stakeholders such as prospective creditors and investors do not have open access to the company's internal information. Every year, each company must present and report its financial statements. Financial reports carry a lot of information not only for the internal but also for external stakeholders of a company. These annual and financial reports provide creditors and investors to gain a better understanding of the company's condition to support their judgment.

In the first half of 2019, it was reported that PT. Garuda Indonesia, the flag carrier and second-largest airline of Indonesia was found guilty of falsely reporting their 2018 financial report. The issue started because the public was bewildered when the 2018 financial statement of PT Garuda Indonesia suddenly recorded a profit of 809 thousand USD. This is because PT Garuda Indonesia in fact has not been performing well since 2014 with a very fluctuating income. In 2014, the company suffered a loss with the amount of 370 million USD, then managed to somehow gain a profit of 76 million USD in 2015. However, in 2016 the profit decreased significantly to 8 million USD, only to suffer another loss of 216 million USD in 2017. Initially, two of the commissioners namely, Chairal Tanjung and Dony Oskaria refused to sign PT. Garuda Indonesia's 2018 annual statement. They had expressed their disagreement towards the revenue recognition of one of the company's transactions with PT Mahata Aero Teknologi in 2018. It was later found that the agreement that was signed by both parties did not include a clear term of payment. However, in the end, the financial statement was still reported but with a note that there were differing opinions.

The dispute caught the attention of the Indonesian Financial Services Authority (Otoritas Jasa Keuangan). After going through a series of investigations, the Indonesian Financial Services Authority found PT. Garuda Indonesia to have violated one of the Financial Services Authority regulations, No. 29/POJK.04/2016 about financial statements reporting of the issuer or public companies.

There has been a lot of research conducted that studied earnings management cases from the accounting and financial perspective. However, studies on earnings management are rarely seen from a legal perspective. Suparji (2015) explained that we can have a better understanding of legal entities through the organ theory. He described that the organ theory perceives legal entities as the same as humans and possessing the same functions as humans. This theory was first introduced by Otto von Gierke in 1973 which illustrates that a legal entity is a body that forms a will by the means of instruments or organs of the entity (members or directors). Freeman (1984) proposed the stakeholder theory which describes the relations between individuals as well as groups that may be influenced or gave influence to firm or company's activities. This theory provides a foundation that shows how firms or companies must create value for all stakeholders, not just shareholders.

From the organ theory we can see that a company as a legal entity possess a responsible nature like a human in front of the law. Furthermore, article 3 of the Indonesian Law No. 40 2007 states that public companies must report their financial statements in accordance with the accepted accounting principles. The board of directors are the people who are responsible in making decision regarding the company under the supervision of the board of commissioners. In court, the board of Commissioners and board of directors acts as the representative of the company. Therefore, the role of directors are very crucial.

Hence, there is a need for research to be done about the issue as each action and decision that a company makes can have both direct and indirect influence on all the stakeholders surrounding them. As PT Garuda Indonesia is a very eminent government-owned company, the company

should be a role model for other companies as a representation of the Indonesian government. This research wants to study the responsibility of PT Garuda Indonesia, the board of commissioners and directors as the organ of the company on falsely financial reporting. Therefore, this study hopes to contribute to the existing literature by providing a legal standpoint on the issue of fraudulent financial reporting and the responsibility of board of directors as a company's representative.

There is a formulation of the problem generated in the introduction that has been written by the researcher:

1. How is the responsibility of the commissioners and directors of PT. Garuda Indonesia as well as the public accounting firm involved, KAP Tanubrata, Sutanto, Fahmi, Bambang & Rekan in the case of fraudulent financial reporting by PT. Garuda Indonesia?
2. How is the role and responsibility of the Indonesian Financial Services Authority (Otoritas Jasa Keuangan) and the Audit Board of Indonesia (Badan Pemeriksa Keuangan Republik Indonesia) in the case of fraudulent financial reporting by PT. Garuda Indonesia?

2. RESEARCH METHOD

According to Soerjono Soekanto research is an activity that can be carried out in a scientific way in which there is an act of *analyzing* an event (concrete) and *constructing* (qualifying) a legal event using a certain method. In relation to the case that occurred at PT Garuda Indonesia, based on information from the Indonesian Financial Services Authority (Otoritas Jasa Keuangan) and the Audit Board of Indonesia (Badan Pemeriksa Keuangan Republik Indonesia) reports that the audit findings indicate the potential for criminal acts of manipulation and/or fraud. Therefore, the method that will be used for the purpose of this research is a qualitative-normative approach through horizontal and vertical synchronization, as well as interpretation or hermeneutics. As primary legal material, namely the laws and regulations currently in force in Indonesia as positive law. Secondary data are also collected, which consisted of printed media information, law dictionary which is then referred to as secondary legal materials.

3. RESULT AND DISCUSSION

Legal and Regulations Discussion. Apeldoorn (1983) explained that subjects of law are everything that possesses legal authority or *persoonlijkheid*. Where legal authority is further explained as having the rights and obligations under the law which is the support given by objective law to the subjects of law. Subjects of law include each individual as well as legal entities. Subekti defined a legal entity as a body or association that could have rights, act as individuals, own its own wealth, and can be prosecuted as well as sue another subject of law in court trials.

Article 1653 of the Indonesian Civil Code acts as the juridical foundation of legal entities, which stated that there are three kinds of associations, associations that are held by the general authority, associations that are acknowledged by the general authority, and associations that are authorized to serve a certain purpose that does not contravene with the existing law. This covers both public as well as private entities.

According to article 1(1) of the Netherland Burgerlijk Wetboek (NBW), public entities or public legal persons comprises "the State, the Provinces, the Municipalities, the Waterboards, and all other bodies to which legislative power has been granted have legal personality." Article 2 of

NBW further elaborates that “other bodies charged with governmental duties only have legal personality if this results from what has been specified by or pursuant to law.”

Private entities or private legal persons is defined in article 3 of NBW which stated that “Associations, Cooperatives, Mutual Insurance Societies, Open Corporations, Closed Corporations, and Foundations have legal personality.” Open corporations here refer to public limited companies, while closed corporations refer to private limited companies.

Article 1(1) of the Indonesian Law no. 19 year 2003 defines State-Owned Enterprise (Badan Usaha Milik Negara), as an enterprise in which the capital is owned by the state either majority or entirely through direct equity participation deriving from the Restricted State Assets. There are three kinds of state-owned corporations according to article 1 (2-4), state-owned limited liability company (Perusahaan Perseroan/Persero), state-owned listed company (Perusahaan Perseroan Terbuka/Persero Terbuka), and state-owned public company (Perusahaan Umum / PERUM). Persero is in the form of a limited liability company in which its capital is entirely or at least 51% owned by the government with the main purpose of gaining profit. Persero Terbuka includes Persero that has fulfilled specific criterias or Persero that has made a public offering in accordance with the regulations in the sector of capital market. Lastly, Perum is a company entirely owned by the state whose objective is for public expediency in the form of high-quality goods and/or service provision and at the same time to gain profits under the principles of corporate governance.

Limited Companies are regulated under the Indonesian Law no. 40 2007. In article 1(1), limited companies are defined as legal entities that constitute a capital alliance, in order to conduct business activities with the Company’s Authorized Capital divided into shares and which satisfies the requirements as stipulated in this Law, as well as its implementation regulations. The organ of a limited company includes the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners.

The obligations of each organ in the company are elaborated in article 1 (4) – (6) of the Indonesian Law no. 40 2007, The General Meeting of Shareholders, hereinafter referred to as GMS, means the organ of the Company that has authority not given to the Board of Directors or the Board of Commissioners, within limits as stipulated in this Law, and/or the articles of association. The Board of Directors means the organ of the Company that has the authority and full responsibility to manage the Company for the interest of the Company, in accordance with the purposes and objectives of the Company as well as to represent the Company, either in or out the court in accordance with the provisions of the articles of association. Lastly, The Board of Commissioners and the organ of the Company that has the responsibility to conduct general and/or specific supervision, in accordance with the articles of association, as well as providing advice for the Board of Directors.

Regulation of The President of The Republic of Indonesia no. 8 2021 discusses the basic capital of a corporation, it is stated in article 3 that each company must have a basic capital, in which the amount is determined in accordance with the founders of the company. Riyanto (2008) explained that based on its origins, there are two kinds of funding sources for a company, internal and external funding. Internal funding is the fund or capital that is collected from the initial establishment by the owners and/or produced from the business activities of the company itself. While external funding is the fund received from the externals of a company, be it creditors or investors.

According to article 1(7) of the Indonesian Law no. 40 2007, Issuer means a Public Company or a Company which exercises a public offering to shares, in accordance with the provisions and legislations in the field of the capital market. Public companies whose application statements have been made effective have the obligation to produce and submit a periodic financial report to the Indonesian Financial Services Authority (OJK) and announce the report to the public as well, according to article 2 of the Financial Services Authority regulation no. 14/POJK.04/2022.

In article 3 of the same regulation, it is also emphasized that the financial reports submitted to the Financial Services Authority and announced to the public must have the exact same content. In addition, article 16(2) of the same regulation also stated that the financial report must be first audited by a public accountant that is registered at the Indonesian Financial Services Authority. Furthermore, in article 18, it is also stated that the opinion of a public accountant as a result of the audit of a financial report must also be submitted along with the financial report.

Case Discussion. PT Garuda Indonesia is a prominent government-owned airline in Indonesia. PT Garuda Indonesia is under the control of the Indonesian Ministry of State-Owned Companies (BUMN), it is a legal entity in the form of a limited company (PT Persero). In 2011, the Indonesian Ministry of State-Owned Companies announced that PT Garuda Indonesia will hold its initial public offering, offering 6,3 billion shares that could be purchased by investors, but the Indonesian government still possesses the majority of the shares at 69,14%.

As a leading airline that has made achievements both on the national and international stage, the public was surprised by the unstable performance of the company. A study by Ibrahim (2019) showed that PT Garuda Indonesia has been suffering from financial distress from 2014 to 2018. In April of 2019, two of PT Garuda Indonesia's independent commissioners claimed that the company's 2018 financial statement that has been submitted is not in accordance with the existing Statement of Financial Accounting Standards. The company reported a sudden increase in revenue in 2018 of 809 thousand USD just when it had just suffered a loss of 216 million USD in the previous year.

The cause of this sudden surge in income in 2018 is due to the agreement between PT Garuda Indonesia and PT Mahata Aero Teknologi. PT Garuda Indonesia had an agreement with PT Mahata Aero Teknologi to provide internet services for all the airplanes of Garuda Indonesia, Citilink and Sriwijaya Air which are both under PT Garuda Indonesia for the duration of 15 years. The company had claimed that it is part of the compensation for the internet provider equipment installation rights and onboard entertainment rights which amounted to 241,9 million USD.

After having received the report about the controversial financial report, Indonesia Stock Exchange (Bursa Efek Indonesia) called PT Garuda Indonesia's board of directors alongside the responsible public accountant firm, KAP Tanubrata Sutanto Fahmi Bambang & Rekan, to discuss the financial report issue in a meeting. At the same time, the Indonesian Ministry of Finance (Kementerian Keuangan Republik Indonesia) also made a thorough investigation of the auditor's opinion statement regarding the financial report. After the meeting had ended, the Indonesian Financial Services Authority assigned Indonesia Stock Exchange to make an evaluation and verification concerning the differing opinions on the revenue recognition of the transaction between PT Garuda Indonesia and PT Mahata Aero Teknologi.

The board of directors of PT Garuda Indonesia was also summoned to a meeting with Commission VI of the Indonesian People's Representative to discuss the issue. The result of the

investigation by the Indonesian Ministry of Finance indicated that they had a suspicion that the financial report submitted may not be in accordance with the financial accounting standards.

Finally, in the press release SP 26/DHMS/OJK/VI/2019, the Indonesian Financial Services Authority has concluded and listed all the violations that PT Garuda Indonesia and KAP Tanubrata Sutanto Fahmi Bambang & Rekan have made as well as the sanctions.

Table 1

Summary of sanction given in the case of PT Garuda Indonesia Tbk.

Responsible Party	Violated regulations	Sanction given
PT Persero Garuda Indonesia	1. Pasal 69 Undang-Undang Nomor 8 Tahun 1995	a. Written notice to the company to revise and restate PT Persero Garuda Indonesia's 2018 financial report.
	2. Peraturan Bapepam dan LK Nomor VIII.G.7	b. Publicly expose the revised and restatement of the financial report.
	3. Peraturan OJK Nomor 29/POJK.04/2016	c. Administrative sanction in the form of a 100 million IDR fine borne by PT Persero Garuda Indonesia.
	4. Ketentuan Nomor III.1.2 Peraturan BEI Nomor 1-E	d. Administrative sanction in the form of a 250 million IDR fine borne by PT Persero Garuda Indonesia.
PT Persero Garuda Indonesia – Board of Directors and Commissioners	1. Peraturan Bapepam Nomor VIII.G.11	a. Administrative sanction in the form of a 100 million IDR fine borne by all the directors.
	2. Peraturan OJK Nomor 29/POJK.04/2016	b. Administrative sanction in the form of a 100 million IDR fine borne together by the board of directors and commissioners.
KAP Tanubrata Sutanto Fahmi Bambang & Rekan	1. Pasal 66 UU PM jis. Peraturan OJK Nomor 13/POJK.03/2017	a. Administrative sanction in the form of 12 months license suspension.
	2. Peraturan OJK Nomor 13/POJK.03/2017 jo.	b. Written notice to the firm to make improvements of the necessary quality control policies and procedures.

The role and responsibility of each party involved. PT Garuda Indonesia and KAP Tanubrata Sutanto Fahmi Bambang & Rekan. Yulia et. al. explained that based on the Financial Services Authority Regulation Number 75/ POJK. 04/2017 Regarding the Responsibilities of the Board of Directors for Financial Statements explains that the Board of Directors is responsible for the truth of the financial statements presented as evidenced by the Directors' report and signed by the Directors. The regulation also explained that the Directors are ready to bear the losses that may cause. Therefore, the sanction was not only given to PT Garuda Indonesia, but also to the board of directors and commissioners.

The Board of Directors is defined in article 1(9) of Indonesian Law no. 19 2003 as the organ of State-Owned Enterprises responsible for the management of SOE for the interest and objective of the company, also to represent the company both in and out of the court of law. Board of Commissioners duties are to conduct supervision and advise the Board of Directors in performing management activity of Limited Corporation.

Other than the board of directors and commissioners, in article 67, it is also stated that Internal Supervisory Unit is formed at each State Owned Enterprises which constitutes internal supervisory apparatus of the company. In the elucidation part of the law, it is further explained that the internal supervisory unit is formed to assist the president director in conducting internal financial audit and operational audits of SOE as well as to assess his/her control, management, and performance of the relevant SOE, and to give recommendations for improvements.

Aside from the company and its directors, the public accountant firm is also responsible for not abiding the regulation for public accountants. Public accountant is regulated in Indonesian Law no. 5 2011, in article 3, it is explained that public accountants can offer assurance services which include audit and review services on historical financial reports as well as other assurance services. In article 1(11), it is also stated that public accountants must follow the Professional Standards for Public Accountants (Standar Profesional Akuntan Publik) as a reference set to be a measure of quality that must be complied with by a Public Accountant in providing their services. In addition, article 49 also stated that The Ministry of Finance has the authority to provide guidance and supervision of Public Accountants, KAP and KAP branches. The ministry also has the authority to give administrative sanctions when the public accountants are violating administrative provisions.

Indonesian Financial Services Authority (Otoritas Jasa Keuangan) and the Audit Board of Indonesia (Badan Pemeriksa Keuangan Republik Indonesia). The legal principle, *no punish without representative* which states that the inclusion of criminal sanctions norms is only allowed with the consent of the people through their representatives in parliament, in this case, the approval of the House of Representatives for laws. The Indonesian Law Number 12 of 2011, article 15, acts as the basis of the legal principle. It is stated that criminal provision can only be contained in law, province regulation, or regency/municipality regulation. Therefore, other regulations aside from the three do not have the authority to give any criminal provision.

The Indonesian Financial Services Authority (Otoritas Jasa Keuangan) is a state institution established under the Indonesian Law Number 21 of 2011 whose function is to organize an integrated regulatory and supervisory system for all activities within the financial services sector, both in the banking sector, capital markets, and the non-bank financial services sector. Article 2(2) emphasized that the Indonesian Financial Services Authority is an independent institution, free from third-party interference when carrying out its duty unless stated in the regulations.

Also in article 8(i) of the Indonesian Law Number 21 of 2011, it is stated that OJK has the authority to set the regulations regarding procedures for imposing sanctions in accordance with statutory provisions in the financial services sector. Furthermore, in article 9(g), OJK also has the authority to determine administrative sanctions against parties who violate laws and regulations in the financial services sector.

Last but not least, The Audit Board of the Republic of Indonesia (Badan Pemeriksa Keuangan) also has a role in the case, it is tasked with examining the management and accountability of state finances. As PT Garuda Indonesia is one of the state-owned enterprises, therefore, the audit board is also responsible to audit the company. The result of the audit investigation by the audit

board shows that the agreement between PT Garuda Indonesia and PT Mahata Aero Teknologi is faulty in the first place. PT Mahata Aero Teknologi is a very new start-up with only Rp. 10,5 billion of capital and has no experience in providing onboard entertainment before. PT Mahata Aero Teknologi is deemed as to not have the appropriate financial ability in comparison with the value of the contract. After the revision of the 2018 financial report, it was discovered that PT Garuda Indonesia actually suffered a loss of 175,02 million USD after dismissing the revenue recognition of the transaction with PT Mahata Aero Teknologi.

After the audit investigation, the audit board submitted their report to President Joko Widodo in September of 2019. The audit board recommended PT Garuda Indonesia to terminate the existing agreement with PT Mahata Aero Teknologi. The reason is, firstly, PT Citilink, a subsidiary of PT Garuda Indonesia was not given any authority to from PT Garuda Indonesia nor PT Sriwijaya to sign a contract with PT Mahata Aero Teknologi. In addition, PT Mahata did not provide guarantees for the implementation of interconnectivity, and entertainment system installation work in flight. Ever since the agreement was started, there was no agreement on the installation schedules of connectivity equipment on PT Garuda and PT Sriwijaya Air aircraft.

Secondly, PT Mahata was deemed not having the financial ability and qualifications to proceed with the cooperation. Aside from that, it was also discovered that PT Mahata Aero Teknologi has not receive permission from the Indonesian Ministry of Communication and Information Technology as well as not having the necessary certifications regarding the installation of additional equipment. Thirdly, at the time PT Garuda Indonesia was actually in the middle of an agreement with PT Panasonic regarding inflight internet connectivity service.

4. CONCLUSION

PT Garuda Indonesia Tbk as a state-owned enterprise should have been a model for other companies on how to conduct their business activities. However, with this fraudulent financial reporting case, it seems that there is a need for further supervision and improvement of their internal management. First off, now that PT Garuda Indonesia is a public company, its shareholder also consists of the people of Indonesia. Therefore, each decision that the director of the company makes has a direct influence on the people of Indonesia. Secondly, from the case, we could see clearly that the agreement between PT Garuda Indonesia and PT Mahata Aero Teknologi has a lot of loopholes. Later, it was discovered that PT Mahata Aero Teknologi was chosen by PT Garuda Indonesia's board of directors directly without going through a thorough selection process. Although the agreement was terminated in the end, but it shows how the selection process in choosing a business partner in a big state-owned company like PT Garuda Indonesia may have problems that still needed to be solved. With the development of technology and the internet, information can be accessed easily by all the people in the country, therefore PT Garuda Indonesia as a very influential company should have set a standard for other business owners and encourage them to have to abide the existing law and regulations while running their business activities. The board of directors and commissioner must follow the five main points of good corporate governance in running the business operation.

Acknowledgment

The funders had no role in study design, data collection, analysis, decision to publish, or manuscript preparation.

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