LEGAL CONSEQUENCES OF ACCOUNTABILITY PRINCIPLES AND COMPANY TRANSPARENCY VIOLATION TOWARD COMPANY SHAREHOLDERS

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Abstract

This study aims to analyze Decision 1028/Pid.Sus/2020/Pn.Jkt.Sel regarding the Actions of the Former Directors of PT. Tiga Pilar Sejahtera Food Tbk in terms of inflating financial reports that cause losses for investors. In addition, the study will examine how GCG violations—particularly those involving accountability and transparency—were carried out by the former directors of PT. Tiga Pilar Sejahtera Food Tbk and how they affected the company's stockholders. Legal normative research is the methodology employed. The study's findings demonstrate that, on their own, internal corporate rules like the GCG guidelines of the company and the application of relevant laws and regulations to ensure that the principles of transparency and accountability are upheld are insufficient to prevent violations. Additionally, the two former Directors of PT. Tiga Pilar Sejahtera Food Tbk's fraud on the financial statements due to their violation of the principles of transparency and accountability caused a significant price decrease for the company's shareholders.

Keywords: Accountability, Transparency, Financial Reports

INTRODUCTION

In Financial Service Authority Handbill (SEOJK) Number 32/SEOJK.04/2015 concerning Public Company Governance Guidelines, the principles of governance are explained, namely (1) increasing the value of holding General Meeting of Stakeholders (GMS), (2) improving the quality of public company communication with shareholders or investors, (3) strengthen the membership and composition of the Board of Commissioners, (4) improve the quality of implementation of duties and responsibilities of the Board of Commissioners, (5) strengthen the membership and composition of the Board of Directors, (6) improve the quality of implementation of duties and responsibilities of the Board of Directors, (7) improve aspects of corporate governance through stakeholder participation, and (8) increasing the implementation of information disclosure. The government then anticipates that these guidelines will be able to support *Good Corporate Governance* (GCG) and serve as a guide for public companies as they conduct their operations.[1] The case in decision 1028/Pid.Sus/2020/PN JKT.SEL has violated the provisions of the established governance principles. This case is also the first instance for a public company where the Directors have been charged with an Article crime under the Capital Market Law. This case is good because it demonstrates that a company's management can be held accountable if illegal acts are discovered.

Former Directors Joko Mogoginta and Budhi Istanto were suspected of committing the crime of capital market fraud in the 1028/PidSus/2020/PNJKTSEL case involving PT. Tiga Pilar Sejahtera Food Tbk where the two former Director's *overstatement* funds or *overstatement* receivables in the financial statements of the company in 2017.[2] Due to investor optimism regarding the financial statements that the two former Directors had altered, this ultimately had an impact on the increase in the share price of the AISA-coded company during trading time. However, PT. Tiga Pilar Sejahtera Food Tbk was shut down in 2018 for failing to pay interest on bonds, and it did not open again until 2020.

The court investigated this matter and discovered that PT. Tiga Pilar Sejahtera Food Tbk's former directors' management received a fund transfer of Rp 1.78 trillion from the company. In their verdict, the panel of judges considered that the former directors had committed a capital market crime, which the article handed down by the chairman of the panel of judges was Article 93 of the Capital Market Law. It is also the first instance in which the criminal article of the Capital Market Law has been used to charge the directors of a publicly traded company.[3]

With this justification, it can be concluded that this case—the first involving a public company in which the directors were accused of violating the criminal article of the Capital Market Law—is unquestionably a good thing because it demonstrates that a company's management can be held accountable if illegal activities are discovered. However, this also shows that there are still practices of manipulating financial statements by companies to either enhance a company's performance or benefit themselves.

The principles of *Good Corporate Governance* (GCG), particularly transparency and accountability principles, should be implemented to prevent this incident from harming investors. This incident is because, as a public company, companies require greater accountability to provide transparency and accountability to their investors. Similar to the event involving PT. Garuda Indonesia Tbk's attempt to "beautify" its financial accounts, where it was discovered that the firm had made such an attempt and which led to fines being imposed by the Financial Service Authority (OJK) against PT. Garuda Indonesia Tbk, this incident had the corporation trying to "beautify" its financial statements.[4] However, no criminal penalties were imposed in this instance; instead, the corporation, its board members, and its commissioners received administrative penalties in the form of fines.

RESEARCH METHODS

The research method used is the normative juridical law research method. The approach used with the statutory approach; the search system used with the *library research* method (Marzuki & SH, 2021). With a statutory approach, it will find answers to the problems studied normatively, (Sihombing & Hadita, 2022). Namely legal protection for customers in conventional insurance companies that convert into sharia general insurance.

RESULT AND DISCUSSION

Violation Forms of the Transparency and Accountability Principles in Decisions 1028/Pid.Sus/2020/PN JKT.SEL

The case of inflating the financial statements carried out by the Directors of PT. Tiga Pilar Sejahtera Food Tbk is a case that occurred from 2017 to 2018. At that time, Stefanus Joko Mogoginta and Budhi Istanto Suwito were controllers in 6 (six) other companies, including PT. Semar Pelita Sejati, PT. Tata Makmur Sejahtera, PT. Semar Kencana Sejati, PT. Kereta Kencana Mandiri, PT. Kereta

Kencana Mulia, and PT. Kereta Kencana Murni.[5] Each of these six businesses is a distributor for PT. Tiga Pilar Sejahtera Food Tbk, a company involved in the distribution industry.

In this instance, PT. Tiga Pilar Sejahtera Food Tbk had trade receivables from the six companies that the two former Directors ultimately inflated. The incident started in 2017 when financial reports were being prepared, and PT. Tiga Pilar Sejahtera Food Tbk, a public company, was required to publish the company's financial statements. The Accounting Unit Manager of each subsidiary prepares the financial reports at PT. Tiga Pilar Sejahtera Food Tbk before anyone else. Furthermore, from the report that has been prepared, the *Corporate Accounting Manager* of PT. Tiga Pilar Sejahtera Food Tbk, namely Lo Junida, will consolidate and submit it to Hartanto Wibowo as the company's Finance Controller before finally being handed over to Syambiri Lioe who serves as *Chief Financial Officer* (CFO), Stefanus Joko Mogoginta, and Budhi Istanto Suwito.

In this instance, Budhi Istanto Suwito and Stefanus Joko Mogoginta gave Syambiri Lioe instructions as CFO to increase the value of trade receivables from 6 (six) distributor companies for PT. Tiga Pilar Sejahtera Food Tbk and record them as trade receivables.[6] The receivables from this distributor were to be recorded as related party transactions, as Syambiri Lioe had previously requested. Despite this, the two former Directors chose to report the transaction as a trade receivable. Hartanto Wibowo finally received this instruction from Syambiri Lioe, who also reaffirmed its accuracy to the two former Directors who issued the directives. Syambiri Lioe also confirmed that this action was indeed taken.

The two former Directors of PT. Tiga Pilar Sejahtera Food Tbk have increased their accounts receivable to improve the company's financial situation, as it appears in the report. It should be noted that Rp 281,374,225,085.00 should have been the total amount of trade receivables held by PT. Tiga Pilar Sejahtera Food Tbk for the six distributor companies. However, Stefanus Joko Mogoginta and Budhi Istanto Suwito exaggerated the value of these trade receivables until the total amount reached Rp 1,613,189,000,000.00. The annual financial reports made public and used to create the company's internal data eventually diverged due to this action. Stefanus Joko Mogoginta and Budhi Istanto Suwito, the Directors, also signed the annual financial statements annexed to this annual report, even though they were not required to. The 2017 annual report was signed by Main Commissioner Anton Apriyantono and Commissioner Kang Hongkie Widjaja before these financial statements were submitted to the public accountant, who later served as the auditor.[7]

Amir Abadi Jusuf, Aryanto, Mawar & Partners, public accountants, received the signed annual report for auditing on June 29, 2018. A signed letter of representation from Budhi Istanto Suwito and Stefanus Joko Mogoginta is also included as a statement of accountability for relationships and related party transactions that have been recorded following financial accounting standards. The annual report, which has been audited, is submitted to the Financial Service Authority (OJK) along with the directors' and auditors' accountability documents from Amir Abadi Jusuf, Aryanto, Mawar & Rekan. On June 30, 2018, the annual report that has been uploaded will be automatically uploaded to the IDX website along with the reporting of the report.

On the other hand, it was decided at the Annual General Meeting of Stakeholders (AGMS) of PT. Tiga Pilar Sejahtera Food Tbk, held on July 27, 2018, that the submitted annual report had yet to receive the approval of the company's shareholders. The Board of Commissioners had suspicions about the accounts receivable of the six distributor companies, and Stefanus Joko Mogoginta and Budhi Istanto Suwito could not explain why these receivables had increased. Finally, the previously mentioned annual report signatures were revoked and cancelled by Main Commissioner Anton Apriyantono and Commissioner Kang Hongkie Widjaja.[8] Additionally, on October 22, 2018, an Extraordinary General Meeting of Stakeholders (EGMS) was held, announcing that Budhi Istanto Suwito and Stefanus Joko Mogoginta had been fired. When the Financial Service Authority (OJK) eventually looked into this matter, it was discovered that related transactions had been included in the calculation of the receivables. The public accountant Ernst & Young also conducted an investigative audit on March 12, 2019, and discovered the following issues:[9] 1) Four trillion dollars' worth of trade receivables, inventories, and fixed assets were overstated; 2) IDR 662,000 billion's worth of food entity sales were overstated; 3) IDR 329 billion's worth of EBITDA was overstated; 4) An alleged Rp 1.78 trillion's worth of funds flowed; and 5) There were double bookkeeping errors and inconsistencies in the 2017 financial reports and internal data. These conclusions lead to the conclusion that Stefanus Joko Mogoginta and Budi Istanto Suwito, the two former directors of PT. Tiga Pilar Sejahtera Food Tbk, engaged in capital market crimes that were detrimental to society. Nevertheless, deliberate recording errors and inflated accounts receivables fall under the category of window dressing.

The actions taken by the two former directors of the company, in this case, were *window dressing* by exaggerating the financial statement contents and intentionally *misleading*, which as a result, led to deceiving other parties where this fulfilled the requirements of an incorrect statement about material facts. The incorrect recording and inflated trade receivables were done to make the company appear strong to investors, as shown by the evidence used to support the court's ruling. This action demonstrates that the primary objective, which is served by *window dressing*, is to fool or deceive the company's investors. When management is *opportunistic* in manipulating its performance before and during the bidding period, window dressing may be a component of self-deception.[10] In the new capital market, window dressing fraud can also be characterized as fraud if false information is disseminated to cause a change in the stock price.[11]

Window dressing has taken place in this case, as evidenced by the rise in the share price of PT. Tiga Pilar Sejahtera Tbk following the release of the company's annual financial statements as well as the fall in share prices following the halting of stock trading and the discovery of fraudulent financial statements. Based on these facts, the two former Directors' actions were fraudulent window dressing because it was determined that the company's directors had provided false information. When there is window dressing, the Board of Directors, directly in charge of the financial statements, is the management in question. Accordingly, where this is following Article 69 paragraph (3) of the Limited Liability Company Law, the Board of Directors is jointly responsible for financial statement fraud.

Legal Consequences of Violating the Company Accountability and Transparency Principles Against Company Shareholders on Decision 1028/Pid.Sus/2020/Pn Jkt.Sel

The principles of accountability and transparency apply in the case of the two former directors of PT. Tiga Pilar Sejahtera Food Tbk, who engaged in financial report manipulation or window dressing as a form of capital market fraud. The importance of transparency and accountability for public companies is emphasized in this study because it fosters public trust and provides opportunities for businesses to perform better. In addition, referring to the actions taken by the two former Directors of PT. Tiga Pilar Sejahtera Food Tbk, which essentially involved inflating the numbers on the accounts contained in the financial statements, such as trade receivables and intentional non-recording of affiliated transactions as they should but instead being counted as trade receivables. The provisions of the Limited Liability Company Law (UUPT), Capital Market Law, and Financial Service Authority Regulations (POJK) relating to transparency and accountability are unquestionably violated by this action. The *ultra vires* and *fiduciary duty* doctrines have been disregarded in the case of the Company Law by Stefanus Joko Mogoginta and Budhi Istanto Suwito. Intentionally acting outside their authority scope, the two former Directors made decisions.

A limited liability company's directors are required to create financial reports and have the authority to act for and on behalf of the business.[12] However, an action that exceeds their authority is ordering inflated financial reports and recording affiliated transactions that do not follow the relevant regulations. Furthermore, Stefanus Joko Mogoginta and Budhi Istanto Suwito, who at the time were members of the Board of Directors of PT. Tiga Pilar Sejahtera Food Tbk, were, of course, also trusted by investors (*fiduciary duty*), so they had to carry out their responsibilities with caution (*duty of care*) and for the best interests of the company (*duty of loyalty*). In this instance, carrying out a director's responsibilities prudently and in the company's best interests must be addressed. The company will undoubtedly be impacted by a criminal act by its directors, as is well known. Indeed, society does not want those who engage in criminal activity and lack responsibility to be in charge of their companies.

If we trace the actions of the two former Directors of PT. Tiga Pilar Sejahtera Food Tbk, the move to manipulate the financial statements was reckless. It did not pay attention to the company's interests. To give the impression that the business is doing well in the public eye, Stefanus Joko Mogoginta and Budhi Istanto Suwito committed fraud. However, the two former Directors did not consider what would occur if the fraud was discovered. Furthermore, institutional investors with a financial background are included among the capital market's investors, who are not just members of small communities. The company will suffer from such actions in the long run because the public will undoubtedly learn about them.

Based on these facts, the two Directors have broken the requirements of Article 66 paragraph (3) of Limited Liability Company Law, which mandates the recording of financial statements following financial accounting standards. The Board of Directors may also be held responsible under Article 69 paragraph (3) of Limited Liability Company Law, which states that if the financial statements are false or deceptive, the Board of Directors and members of the Board of Commissioners may be held accountable. Members of the Board of Directors must also accept full personal responsibility under Article 97, paragraphs (1) through (3) of Limited Liability Company Law, if they are guilty of negligence or other wrongdoing while performing their duties, which must be done with full responsibility and good faith.

Budhi Istanto Suwito and Stefanus Joko Mogoginta have violated the Capital Market Law's adherence to the principle of *fair disclosure*, a requirement for compliance. *Fair disclosure* calls for issuers and companies that are listed on the Stock Exchange to disclose information, as well as for the material facts to be presented in clarity, accuracy, and completeness because this influences the decisions of shareholders, which has an impact on the price of the issuer's shares. The accuracy of material information, a *fair disclosure* principle requirement, has been compromised by the two former Directors' intent to record affiliated transactions illegally. Suppose this is added to their actions to inflate several accounts in the financial statements. In that case, it has rendered the financial reports that investors typically use to make investment decisions inaccurate, unreliable, and transparent.

Let us look at Article 79 of the Capital Market Law, previously mentioned. This article mandates that all publications related to Public Offerings must not contain untrue information about material facts or not contain material facts that may influence and create a misleading image. Based on the formulation of the article, the actions of the two former Directors of PT. Tiga Pilar Sejahtera Food Tbk have violated the article and have contradicted the purpose of the article itself, which was formed to provide correct information to investors in making investment decisions. In this situation, the accountability principle in Article 81 of the Capital Markets Law mandates that parties who make statements of material facts that are untrue or omit material facts that have an impact and paint a misleading picture be held accountable. Where PT. Tiga Pilar Sejahtera Food Tbk had Guidelines for Good Corporate Governance, applicable regulations like Financial Service Authority Regulations (POJK) Number 21/POJK.04/2015 have been satisfied in cases of violations of the Financial Service Authority Regulations (POJK). Furthermore, the requirements of Financial Service Authority Regulations (POJK) Number 31/POJK.04/2015, which required PT. Tiga Pilar Sejahtera Food Tbk to disclose material information to the public, have also been met. These actions, however, will be meaningless because the two former Directors continued to defy the principles of accountability and transparency by defrauding investors in the capital market. The principles of accountability and transparency are violated in ways other than by breaking the relevant laws and regulations. Of course, PT. Tiga Pilar Sejahtera Food Tbk has Guidelines for Good Corporate Governance since it is a publicly-traded company. In this instance, Stefanus Joko Mogoginta and Budhi Istanto Suwito have disregarded their duty to be accountable for the performance of their responsibilities and the outcomes of their work to shareholders through the GMS. In addition, the Board of Directors should be in charge of successfully implementing GCG principles and long-term risk management within the organization.[13]

The two former PT. Tiga Pilar Sejahtera Food Tbk Directors are no longer in charge of carrying out efficient GCG as outlined in the Guidelines for Good Corporate Governance of PT. Tiga Pilar Sejahtera Food Tbk because they violated the principles of transparency and accountability by engaging in capital market fraud. The former Directors also departed from the fundamental principles for putting transparency and accountability into practice developed by the National Committee on Governance Policy (KNKG), as was already mentioned, when it came to analysing violations of those principles.

The two former Directors disregarded the company's responsibility to provide clear and accurate information, one of the primary principles for implementing transparency. Failing to fulfil their obligations and uphold the agreed-upon code of conduct and business ethics, the former Directors violated the fundamental principles for implementing accountability.

Investors in the company will undoubtedly be impacted by the two former Directors of PT. Tiga Pilar Sejahtera Food Tbk's *fraud* on financial reports, which violated the principles of accountability and transparency. Since the company is public and its shares are traded on the Stock Exchange, the price per share is established by the supply and demand for its shares. The *fraud* news significantly reduced the stock price of PT. Tiga Pilar Sejahtera Food Tbk, which is traded under the symbol "AISA". This condition is so that *fraudulent* announcements on the company's financial statements will harm stock prices for a while. Stock prices in an effective capital market are affected by responses to information.[14]

In this case, the opening price of the shares of PT. Tiga Pilar Sejahtera Food Tbk at the start of 2017 was IDR 1,575 per share. The company's shares nearly hit their all-time high in mid-2017, when they were worth IDR 2,220 per share. The share price of PT. Tiga Pilar Sejahtera Food Tbk is currently being traded at Rp 220.00 per share, but this has gradually decreased as a result of the suspension of trading in the company's shares due to the failure to pay bonds, which led to the disclosure of *fraud* by Stefanus Joko Mogoginta and Budhi Istanto Suwito. The share price per share experienced a lower *auto-reject* for 3 (three) straight days after the suspension of PT. Tiga Pilar Sejahtera Food Tbk's company shares was lifted, which had driven the AISA-coded company's share price down 18.45% and brought the price per the company's shares to Rp 168.00 per share.[15]

Investors in the company will undoubtedly be impacted by this sharp decline in share prices and the suspension of trading in the issuer's stock. Losses resulting from capital losses may occur in the capital market. Investors in PT. Tiga Pilar Sejahtera Food Tbk undoubtedly suffered *capital losses*, particularly those who purchased shares when the price was still relatively high. Additionally, several investors who could only sell their shares after the PT. Tiga Pilar Sejahtera Food Tbk share trading was suspended have found it difficult for them to sell their shares.

The public's confidence in the company's management is another effect seen in the PT. Tiga Pilar Sejahtera Food Tbk case. This situation is evident from the AISA Retail Investor Forum's (hereafter referred to as FORSA) actions, where FORSA Chairman Deni Alfianto declared that Stefanus Joko Mogoginta and Budhi Istanto Suwito needed to be subjected to harsh legal sanctions. They claimed that the two former Directors of PT. Tiga Pilar Sejahtera Food Tbk's *mismanagement* had resulted in substantial losses for investors in the capital markets and psychological and traumatic effects.[16] Furthermore, they claimed that seriousness on the part of the authorities is required if investors are to continue to be able to rely on important information like these financial reports and for the capital market not to be negatively impacted as a whole.

As a result, it can be said that Budhi Istanto Suwito and Stefanus Joko Mogoginta, two former directors of PT. Tiga Pilar Sejahtera Food Tbk who violated transparency and accountability, have lowered investor confidence. Initiatives to restore investor faith in company management are required because it is a public company. The two PT members, Budhi Istanto Suwito and Stefanus Joko Mogoginta were found guilty of the crime of "making a statement or providing information that is materially incorrect or misleading which affects the price of securities on the stock exchange" as a result of these initiatives, which were evident in the actions of the two other PT bodies, the GMS and the Board of Commissioners of PT. Tiga Pilar Sejahtera Food Tbk.

CONCLUSION

Based on the discussion regarding the Legal Consequences of Violating the Principles of Corporate Accountability and Transparency towards Company Shareholders in Decision Number 1028/Pid.Sus/2020/Pn Jkt.Sel, arrangements related to the principles of transparency and accountability have been contained in applicable regulations such as the Limited Liability Company Law (UUPT), Capital Market Law, and other regulations related to the transparency and accountability of public companies. PT. Tiga Pilar Sejahtera Tbk has also considered the Service Authority Handbill (SEOJK) Number 32/SEOJK.04/2015 recommendations in its guidelines for good corporate governance. In addition, other PT bodies, including the GMS and the Board of Commissioners, have carried out their obligations to uphold the values of accountability and transparency to stop similar incidents from occurring. However, the two former directors of PT. Tiga Pilar Sejahtera Food Tbk are still defrauding, and the company's shareholders are still suffering losses. This case demonstrates how the judging panel applied its judgment based on the company's principles of transparency and accountability. It demonstrates that more than implementing these principles through applicable laws and regulations and company internal regulations like company GCG guidelines is required to prevent violations.

The two former Directors of PT. Tiga Pilar Sejahtera Food Tbk's *fraud* on the financial statements also affected the company's shareholders, violating the principles of accountability and transparency. A public company's share price is established based on supply and demand for the company's shares that are traded on the Stock Exchange. The *fraud* news caused PT. Tiga Pilar Sejahtera Food Tbk, traded under the code "AISA", to drop significantly. Since responses to information affect stock prices in a functioning capital market, *fraudulent* announcements on a company's financial statements will undoubtedly have a short-term negative effect on stock prices.

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