

# CHAPTER I

## INTRODUCTION

### 1. 1. Background

Today's business world and economy are evolving at a breakneck pace, and these changes have a significant impact on every entity or corporation, private or public. Moreover, the current pandemic conditions allow global competition to occur which can be affected by the current crisis in the Indonesian economy.

Not a few companies are in bankruptcy due to poor corporate governance standards and fraudulent practices, such as corruption, collusion, and nepotism that cause losses to a company. Companies that are currently able to survive are companies that have good governance and have a company image that has been trusted by the public. In order to get a good image, business actors must make various efforts for healthy competition.

Furthermore, with the development of the era of democracy and bureaucracy at this time, the public demands more and more to create transparency and accountability. In order for the trust held by the public with a business entity to remain solid and business competition is getting tougher, it is necessary to create a condition of transparency and

accountability, this condition is called Good Corporate Governance.

The history of the birth of Good Corporate Governance (GCG) emerged from the reaction of shareholders in the United States in the 1980s whose interests were threatened.<sup>1</sup> At that time, in America, there was a tremendous economic turmoil that caused many companies to restructure by taking all means to seize control of other companies.<sup>2</sup> This action caused strong protests from the public because the public considered that the management in managing the company had ignored the interests of the shareholders as owners of the company's capital.<sup>3</sup> Mergers and acquisitions at that time caused a lot of loss to shareholders due to management errors in decision-making. To guarantee and secure the rights of shareholders, the concept of empowering the Commissioners emerged as one of the discourses on the enforcement of Good Corporate Governance.

The implementation of *Good Corporate Governance* is basically a system and a set of regulations that regulate the relationship between various interested parties (stakeholders).<sup>4</sup>

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<sup>1</sup> Lilin Budiati, *Good Governance Dalam Pengelolaan Lingkungan Hidup*, (Bogor: Ghalia Indonesia: 2014), p. 9

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid*, p. 10

<sup>4</sup> Ridwan Khairandy dan Camelia Malik, *Good Corporate Governance Perkembangan Pemikiran dan Implementasinya di Indonesia dalam Perspektif Hukum*, (Yogyakarta: Total Media, 2007), p. 12

*Good Corporate Governance* is very necessary to build a good, regular, and reliable company performance so that it can encourage the creation of an efficient, transparent and in line with the laws and regulations. The implementation of *Good Corporate Governance* needs to be supported by three interconnected pillars, namely the state and its apparatus as regulators, the business world as market players, and the community as users of business products and services.<sup>5</sup>

The implementation of *Good Corporate Governance* is important because it is the foundation used to build public trust in a company to develop properly and healthily.<sup>6</sup> Furthermore, *Good Corporate Governance* is also able to encourage the creation of a clean, professional and transparent management work pattern. The implementation of Good Corporate Governance is intended so that business actors have strong competitiveness and also to restore the confidence of investors and consumers. Good Corporate Governance is believed to be the key to success for a company to grow and develop and be profitable in the long term.<sup>7</sup>

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<sup>5</sup> *Ibid*, p. 25

<sup>6</sup> Anton Sugiono, "Analisis Good Corporate Governance Terhadap Kinerja Keuangan Perusahaan", *Jurnal Majalah Ilmiah Informatika*, Vol. 3, No. 1, Januari 2012, p. 78

<sup>7</sup> Mas Achmad Daniri, *Good Corporate Governance: Konsep dan Penerapannya dalam Konteks Indonesia*, Cetakan I, (Jakarta: Ray Indonesia, 2005), p.4

According to the Organization for Economic Cooperation and Development (OECD), the definition of Good Corporate Governance is divided into two contexts. First, Good Corporate Governance is a relationship and a different pattern of behavior that is related to the obligations of managers, shareholders, employees, creditors, and the public as consumers, to form a corporate strategy, where this context is referred to as the behavioral side of corporate governance. Second, Good Corporate Governance which is related to company relationships and behavior, then forms the formulation of company strategy where this can be in the form of securities regulations and company law, but can also be in the form of regulations drawn up by the company itself, this can be called the normative side of Good Corporate Governance.<sup>8</sup>

The implementation of *Good Corporate Governance* has been supported by various international institutions such as the World Bank, International Monetary Fund (IMF), and Asia-Pacific Economic Cooperation (APEC), which are the parties that formulate several general principles in *Good Corporate Governance*. The principles are Transparency, which requires openness in presenting material and relevant information about

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<sup>8</sup> Rusdiyanto, dkk, *Good Corporate Governance: Teori dan Implementasinya di Indonesia*, Bandung: PT. Refika Aditama, 2019), p. 73

the company. Responsibility, which requires conformity in the management of the company to the applicable laws and regulations and corporate principles. Independency, requires professional company management without conflict of interest and/or influence/pressure from any party. Accountability, which requires clarity of functions, implementation, and accountability of organs so that the implementation and management of the company are carried out effectively. Fairness, which requires fairness and equality in fulfilling the rights of stakeholders that arise based on agreements and applicable laws and regulations. Companies that apply the principles of Good Corporate Governance are possible to win the global competition.<sup>9</sup>

In Indonesia itself, the practice of implementing *Good Corporate Governance* began with the post-crisis recovery program in aid of loans or grants that began in 1997-1998 based on the collaboration between the government and the private sector as well as international financial institutions to overcome the economic crisis that hit Indonesia, at the time. These international financial institutions require that the government's policy direction be aimed at efforts to practice Good Corporate Governance so that the government contains the obligation to

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<sup>9</sup> *Ibid*, p. 15

implement Good Corporate Governance in the current legislation.

The implementation of Good Corporate Governance is intended to realize information disclosure, leadership accountability, fair treatment for every employee in carrying out their obligations and accepting their rights as employees as well as the involvement of all employees in developing the company to achieve the company's vision and mission.<sup>10</sup> The success achieved by the company in implementing Good Corporate Governance cannot be separated from the involvement of stakeholders. Law Number 40 of 2007 concerning Limited Liability Companies emphasizes that business actors are required to apply the principles of Good Corporate Governance consistently and/or use the principles of Good Corporate Governance as the operational basis, which is basically to improve business success and corporate accountability in order to realize shareholder value in the long term by taking into account the interests of third parties and the interests of other stakeholders, and based on laws and regulations and ethical values.<sup>11</sup>

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<sup>10</sup> Sedarmayanti, *Good Corporate Governance (Kepemerintahan yang Baik) dan Corporate Governance (Tata Kelola Perusahaan yang Baik)*, (Bandung: CV. Mandar Maju, 2007), p. 23

<sup>11</sup> *Ibid*, p. 23

Nowadays, investment activities are booming among the people of Indonesia due to a large number of educational sources regarding the investment world, thereby increasing public interest in investing. This of course brings benefits that can be felt both for the company, the investor, and at the same time helping the country's economic growth. Some of the benefits of this investment are to help improve the welfare of people's lives, as an indicator of economic development, as a good future asset, and to provide a steady income.<sup>12</sup>

With the high enthusiasm of the public to invest, this will be a gap for irresponsible parties to reap personal benefits in a way that is contrary to the applicable laws and regulations to cause losses for those who invest. Therefore, to minimize things that can harm certain parties and injure public confidence in activities in the capital market world which have many benefits, good governance is needed in the companies that become the forum for these investment activities.

The application of the principles of Good Corporate Governance is actually not easy, this is reflected in the quality of Good Corporate Governance in Indonesia which is still relatively low. The low implementation of the principles of

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<sup>12</sup> Burhanudin, Siti Aisyah, dan Sri Bintang, "Pengaruh Pengetahuan Investasi, Manfaat Investasi, Motivasi Investasi, Modal Minimal Investasi dan Return Investasi Terhadap Minat Investasi di Pasar Modal", *Jurnal Distribusi*, Vol. 9, No. 1, Maret 2021, p. 16

Good Corporate Governance has led to cases that resulted in losses for several parties. One of them is about PT Minna Padi Aset Manajemen, a company engaged in financial services which is a member of the Indonesia Stock Exchange which holds a license as a Securities Trading Broker and Underwriter issued by the Capital Market Supervisory Agency (Financial Services Authority).

Reported from CNBC Indonesia as of February 19, 2020, it was stated that the Financial Services Authority had frozen 6 Minna Padi Asset Management mutual fund products. This happened because the Financial Services Authority found that two mutual funds managed by the company were sold with the promise of a fixed return of 11% each between 6-12 months. In fact, the two mutual funds are equity mutual funds that are open in nature, where open mutual funds means that the product units can be bought and sold at any time and are highly affected by market conditions so that their performance cannot and should not be promised.

Equity mutual funds are mutual fund products with a minimum of 80% of the portfolio in the form of stocks, while mixed mutual funds are mutual fund products that have high flexibility because the investment manager has the power to shift the portfolio from the majority in the stock market or convert it



into bonds. Therefore, this is contrary to the Regulation of the Financial Services Authority (POJK) No.39/POJK.04/2014 concerning Selling Agents of Mutual Funds in article 37 point d which states that selling agents of mutual fund securities are prohibited from ensuring or promising investment returns. Now, PT Minna Padi Aset Manajemen has undergone a liquidation process by the Financial Services Authority as the authorized party because customers want their funds back, which liquidation is carried out in two stages.

The urgency of the application of the principles of Good Corporate Governance in the company is very important because it can create a lot of useful value in terms of fulfilling the interests of parties related to the company, both internal and external parties of the company.<sup>13</sup> Therefore, the application of the principles of Good Corporate Governance for a company will lead to the fulfillment of the interests of the parties related to the company.

Law Number 40 of 2007 concerning Limited Liability Companies is the legal basis for companies in implementing Good Corporate Governance which functions to regulate the management of companies so that they are able to generate

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<sup>13</sup> Arga Vella Nirwana, "Urgensi Implementasi Prinsip *Good Corporate Governance* Kaitannya Terhadap Perlindungan Hukum Pemegang Saham Minoritas", *Jurnal Privat Law*, Vol. 4, No. 2, Juli-Desember 2016, p. 11

sustainable long-term economic value for shareholders and stakeholders. Basically, the application of the principles of Good Corporate Governance in the company is an absolute must because it has been mandated in the provisions of Article 4 and the Explanation of Article 4 of Law Number 40 of 2007 concerning Limited Liability Companies which state that:

"Article 4

The Company applies this law, the articles of association of the Company, and the provisions of other laws and regulations.

Explanation of Article 4

The enactment of this law, the articles of association of the Company, and the provisions of other laws and regulations, do not reduce the obligation of each company to comply with the principles of good faith, the principle of propriety, the principle of propriety, and the principles of good corporate governance in running the company.

What is meant by "other statutory provisions" are all laws and regulations relating to the existence and operation of the Company, including their implementing regulations, including banking regulations, insurance regulations, financial institution regulations.

In the event that there is a conflict between the articles of association and this law, this law shall prevail."

Indeed, with the principles of Good Corporate Governance applied in a company, it is expected to be able to minimize unwanted things, such as the loss experienced by one of the parties related to the running of a company's business activities. The losses experienced by PT Minna Padi Aset

Manajemen investors were caused by the sale of mutual funds that did not comply with the provisions in the capital market. This reflects the lack of transparency between the company management and investors and other stakeholders, who do not heed the provisions regarding the principles of Good Corporate Governance.

Departing from everything that has been described, it is necessary to examine the implementation of the principles of Good Corporate Governance in PT Minna Padi Aset Manajemen based on the provisions in Law Number 40 of 2007 concerning Limited Liability Companies and to know the legal consequences of not applying the principles of Good Corporate Governance in PT Minna Padi Asset Management.

## **1. 2. Formulation of Issues**

As the background described above, this research will focus on answering two main problems, namely:

1. How is the implementation of the principles of *Good Corporate Governance* at PT Minna Padi Asset Management in terms of Law Number 40 of 2007 concerning Limited Liability Companies?

2. What are the legal consequences of not applying the principles of *Good Corporate Governance* by PT Minna Padi Aset Manajemen?

### **1. 3. Research Purposes**

This study aims to answer the writer's curiosity about the two problems above, namely:

1. To identify the implementation of the principles of *Good Corporate Governance* at PT Minna Padi Aset Manajemen in terms of Law Number 40 of 2007 concerning Limited Liability Companies.
2. To analyze the legal consequences of not applying the principles of *Good Corporate Governance* at PT Minna Padi Aset Manajemen.

### **1. 4. Research Benefits**

#### **1. 4.1. Theoretical Benefits**

Theoretically, the author hopes that this research can be used as a contribution of thought in the context of developing legal knowledge, especially in corporate law and capital market law in knowing the implementation of the principles of *Good Corporate Governance* in a company engaged in investment management and the

legal consequences of not applying it. the principles of *Good Corporate Governance*.

#### **1. 4. 2. Practical Benefits**

Practically, the results of this study are expected to be used for the general public as well as for entrepreneurs (companies), public policy makers, researchers, and stakeholders as a source of information and input to expand knowledge regarding the implementation of the principles of *Good Corporate Governance* in companies that operate. in the field of investment management and the legal consequences of not applying the principles of *Good Corporate Governance*.

#### **1. 5. Framework of Writing**

This research will be divided into five chapters which aim to provide a coherent understanding, namely:

#### **CHAPTER I: INTRODUCTION**

This chapter consists of an introduction which is further divided into five parts, namely background, research

questions, research objectives, research benefits and writing framework.

## CHAPTER II: LITERATURE REVIEW

In the literature review chapter, the author will divide this chapter into five 2 (two) subchapters, the first is a literature review on Good Corporate Governance which contains the definition, legal basis, objectives and benefits, and principles of Good Corporate Governance. Then in the second sub-chapter contains a literature review on the capital market which contains the understanding, benefits, actors in the capital market, and instruments in the capital market.

## CHAPTER III: RESEARCH METHODS

This chapter will discuss in general about the types of research, types of data, data analysis techniques and types of research approaches. Followed by the types of research, data, data analysis methods and research approaches that the author uses to discuss the problems in this thesis.

## CHAPTER IV: DISCUSSION AND ANALYSIS

The fourth chapter will discuss the research problem and its solutions. This chapter will be divided into two subsequent sub-chapters and each sub-chapter will answer the respective research questions as set out in chapter two of this research. The first sub-chapter contains an analysis of how the implementation of the principles of Good Corporate Governance at PT Minna Padi Aset Manajemen and the second sub-chapter will analyze the legal consequences if it is known that the principles of Good Corporate Governance are not applied.

#### CHAPTER V: CLOSING

In this last chapter, the author will explain the conclusions as answers to the problems that have been analyzed in chapter four. In addition to providing conclusions, the author will also provide suggestions and recommendations on these matters and the possibility of regulations that can be prepared and implemented in the future to provide strict supervision of the implementation of the principles of Good Corporate Governance in companies, especially those engaged in the capital market.