The Role of the Board of Commissioners in Creating Good Governance of Indonesia’s State-owned Enterprises

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Declaration

The work presented in this thesis is, to the best of my knowledge and belief, original except as acknowledged in the text. I hereby declare that I have not submitted this material, either in full or in part, for a degree at this or any other institution.

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Miko KAMAL

Macquarie University

Sydney, February 2011
DEDICATION

For Resthy, Fathan, and my late parents and grandma;
Lb. Naumar, Kamarni, and Siti Darisah
Acknowledgement
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>AktG</td>
<td>Aktiengesetz, the German Stock Corporation Law</td>
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<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
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<tr>
<td>DPR</td>
<td>Dewan Perwakilan Rakyat, House of Representative</td>
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<td>FCGI</td>
<td>Forum for Corporate Governance in Indonesia</td>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
</tr>
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<td>GMS</td>
<td>General Meeting of Shareholders</td>
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<td>IFIs</td>
<td>International Financial Institutions</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>KPK</td>
<td>Komisi Pemberantasan Korupsi, Eradication Corruption Commission</td>
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<tr>
<td>NCG</td>
<td>National Committee on Governance</td>
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<tr>
<td>NCCG</td>
<td>National Committee on Corporate Governance</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
</tr>
<tr>
<td>PA</td>
<td>Principal Agent</td>
</tr>
<tr>
<td>PERUM</td>
<td>Perusahaan Umum, General Companies</td>
</tr>
<tr>
<td>PT</td>
<td>Perseroan Terbatas, Limited Liability Companies</td>
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<tr>
<td>RUPS</td>
<td>Rapat Umum Pemegang Saham, General Meeting of Shareholders</td>
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<tr>
<td>SEC</td>
<td>Security Exchange Commission</td>
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<td>SOEs</td>
<td>State-Owned Enterprises</td>
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<tr>
<td>SOX</td>
<td>Sarbanes-Oxley Act</td>
</tr>
<tr>
<td>TPA</td>
<td>Tim Penilai Akhir, Final Assessment Team</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>US</td>
<td>United States</td>
</tr>
<tr>
<td>VOC</td>
<td>Verenigde Oostindische Compagnie, Dutch Companies</td>
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<td>WTO</td>
<td>World Trade Organisation</td>
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Publications

Kamal, Miko, 'Board of Commissioners in Indonesia: an Empirical Study of Board of Commissioners of Indonesia's State-Owned Enterprises' (2011) Asian Journal of Comparative Law (conditional accepted subject to certain specified revisions).


Kamal, Miko, 'Corporate Governance Gagal?", Republika (Jakarta), 5 November 2008, 6.


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Abstract

The thesis examines the legal role of boards of commissioners in the governance of Indonesia’s state-owned enterprises (SOEs). The thesis is in the form of a thesis by publication and consists of four journal articles that have either been published or accepted for publication.

The thesis addresses the central research question by examining a series of interrelated research issues. Firstly, what is the existing system of Indonesia corporate governance? Secondly, what are the legal roles of SOE’s board of commissioners? Thirdly, what are the factors and elements that contribute to the establishment of an effective SOE board of commissioners? Fourthly, how do relevant laws, regulations and self-regulation of SOEs affect SOE governance and board practices? Finally, how can the operation of the SOEs be improved and what recommendations can be made in this regard?

With regards to qualitative research approach, the main methods employed for gathering data were document analysis and interviews. A total of 27 participants were interviewed, 18 of who were from six Indonesian non-listed SOEs and are members of board of commissioners, board of directors and presidents of such companies’ trade unions. The other nine interviewees comprised of Indonesian experts corporate governance, economic and political, a former of board of commissioners’ member of an Indonesian SOE, a vice-chairman of the Corruption Eradication Commission of Indonesia, a chairman of the National Committee of Governance, a coordinator of Indonesian Corruption Watch, a politician, and the chief of a corporate governance institution.
This thesis argues that the intermingling of politics and business is the main determinant of Indonesia’s SOEs’ problems rather than the more commonly discussed problems generated by the nature of mere state ownership. This is attributable to the lack of clarity regarding the definition of the SOE as principal and its relationship with the government as its agent. The intermingling of business and politics in Indonesian SOEs have been legitimised by the Presidential Instruction No. 9 of 2005 on the Appointment of Members of Boards of Directors and Boards of Commissioners of SOEs. According to the Presidential Instruction, the final decision when electing members to a board of directors and commissioners is to be undertaken by the government through the Final Assessment Team chaired by the President of the Republic of Indonesia with the Vice President, the Minister for Finance, the Minister for SOEs and the Cabinet Secretary as the team’s vice chairman, members and secretary respectively.

On the basis of the examination of the present legal framework governing SOEs, the present operation of SOEs and the analysis of the original empirical data, the thesis concludes that the government should introduce a single law for the governance of SOEs. The thesis provides recommendation as to the nature of the proposed single law. The law should ensure that the board of commissioners is positioned as the representative of the ultimate owner rather than the government. Secondly, the precise role of the board of commissioners ought to be precisely delineated and strengthened. Finally, the law needs to establish a board of trustees in order to ensure that the notion of positioning the Board of Commissioners as the public's representative will work effectively.