



FRAUD AUDITING LAW IMPLICATIONS IN THE CASE OF JIWASRAYA INSURANCE IN INDONESIA

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ABSTRACT

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The Jiwasraya case is a fraud auditing legal case that has taken a lot of public attention and is particularly influential on capital market investors. The purpose of this study is to find out the legal implications of the Limited Company case and preventive measures that can be taken so that similar cases are no longer repeated. By using normative and empirical research methods, the study presents the conclusions that it is very important training in fraud detection and prevention especially for internal auditors in the Limited Company. In this case, being cautious in investing to avoid "fried" shares is an important lesson for other companies. Based on the Jiwasraya case empirical study where only recently detected cases of corporate asset fraud revealed the facts about the lack of a comprehensive understanding of fraud auditing, technology implementation, and corporate management mechanisms that are not in accordance with Good Corporate Governance in the corporate body.

Contribution/Originality: This study is one of the few studies that have been investigated about cases of a lack of comprehensive stakeholder understanding of fraud auditing, technology implementation, and corporate management mechanisms that are not in accordance with Good Corporate Governance in the corporate body.

1. INTRODUCTION

Financial sector oversight seems to be increasingly tightened after the emergence of the case of PT. Insurance Jiwasraya (Limited Company). The Financial Services Authority (OJK) is considered to be very late in uncovering fraud cases in the Limited Company's financial statements. PT. Insurance Jiwasraya (Limited Company) is a gamble for the credibility of the financial services industry in Indonesia, especially in the capital market. Moreover, limited company is a state-owned company which should be a model for other limited company and business start-ups. The case of alleged criminal acts against the management of investment funds in Jiwasraya insurance has a profound effect on investor confidence in the financial sector, especially the Indonesian capital market. Apparently, this was revealed after the change of new directors who then revealed fraud auditing by raising the value of the equity and profit of the limited company in financial statements which in fact lost in 2019 until unable to pay arrears of claims of IDR 12.4 trillion (Tempo.co.id, 2020).

Alleged case of Jiwasraya fraud auditing is indeed very disturbing for capital market investors. This financial reporting fraud occurs due to the weak internal control of the company. Although there is still little evidence found. However, a clear, weak control gives managers a greater opportunity to commit fraud and signifies management characteristics that do not emphasize the quality and integrity of reporting (Donelson, Ege, & McInnis, 2017). Failure to pay a policy claim that is due in large enough because the company is stuck in a 'fried' stock game. The

term "fried" stock is a stock of poor quality that has been engineered by a stock dealer to make a profit in a short period of time. This stock has a characteristic that is often suddenly traded with a very high rising price, does not have a good fundamental value but is traded as if it has good fundamentals, fluctuates at a certain time and does not last long, indicated Unusual Market Activity (UMA) (Wartaonomi.co.id, 2019).

This kind of corporate accounting scandal has actually happened in many parts of the world in the world. One of the best known is the Mckesson-Robbins Company case, a fictitious sales accounting scandal that inflated assets and profits to \$ 19 million in 1938 (Chatfield, 1996). But in fact, it is almost the same case that occurred in Indonesia after the economic crisis of the 1990s. Regrettably, previous cases were not used as valuable lessons for stakeholders. As a result, substantial losses must be borne and provide a bad image for investment for other Limited Company. It is a big question, where is the role of the auditors so that cases like this can occur and are only revealed after being widely discussed in the public sphere.

Pseudo trading and 'fried' stock practice is a serious problem in the capital market. Many companies are trapped in pseudo-trading practices and result in losses up to fraud auditing cases. Although strict sanctions have been carried out, it does not necessarily discourage investment interest because they are tempted by large profits in a relatively short period of time. In 2018, the Financial Services Authority (OJK) indicated 21 wash sale transactions. OJK also imposes sanctions 303 administrative sanctions in the form of fines, three revocation of company licenses, and 179 written warning sanctions and three written orders for companies conducting pseudo trade (Viva.co.id, 2018). This means that investors must be extra careful in investing in the capital market.

Relying on technology as a guardian of the company's main gate alone will not be enough to overcome cheating auditing. The role of Good Corporate Governance is very important. Because what should be prevented is not only cybercrime fraud but also internal company that requires periodic monitoring and evaluation of management. As a result, companies must be able to adapt, using an intelligent approach (Petrie & Evans, 2017). Even technological developments in the Big Data era have led to many new fraud auditing cases. Therefore, the company must always accelerate to protect the company from unlawful acts.

2. THEORIY

a. *Fraud Auditing*

Continuous auditing can increase the scope and frequency of company activity analysis and is referred to as a strong fraud prevention and detection technique. However, this can be effective if accompanied by timely notification to the party being audited. So this depends on the system to control the rules that exist in the company. A weak system will indicate a higher chance of financial reporting fraud compared to companies that have a strong monitoring system (Gonzalez & Hoffman, 2018).

Fraud auditing consists of four types, namely 1) fraudulent reports or known as over statements and under statements, consisting of fraudulent financial statements and other fraudulent reports (non-financial statements); 2) asset misappropriation consists of skimming and fraudulent disbursement and inventory and other assets including the scope of misuse; 3) corruption includes conflicting interests (bribery), bribery, illegal gratuities, and economic extortion; and 4) fraud related to computer use (ACFE (Association Certifield Fraud Examination), 2019).

Specifically for fraud related to computer use, Bologna and Robert (1999) classifies it into four types, namely destruction of computers, theft of company data and information, financial fraud or theft of corporate cash and illegal use or sale of computer services.

Many ways can be done to auditing corporate fraud, so companies must really have a strong security to avoid this possibility. The type of fraud committed consists of 1) fictitious income, 2) final evaluation of financial statements, 3) concealing liabilities and company expenses; and 4) improper disclosure of financial statements. Most financial reporting frauds occur because of opportunities (Donelson et al., 2017; Karyono, 2013).

Fraud triangle theory a theory put forward by Cressey (1953) reveals about the three main factors of fraud auditing. First, the incentive or pressure factor on management / employees. Incentives are caused by lifestyle demands, financial pressures, and job dissatisfaction with companies (Salman, 2007). Second, there is an opportunity for auditing fraud. Opportunity is an opportunity to take action freely due to the weakness of the company's internal audit, especially there are indications of corporate governance that is not in accordance with good corporate governance (Montgomery, Beasley, & Menelaides, 2002). And the last is rationalization, that is character who tries to justify the actions of certain parties to commit fraud auditing.

An important element of the fraud audit activity is, "1) a systematic process in the form of a series or procedure for auditing indications against the law; 2) conduct objective evaluations that have a strong foundation or evidence and do not align with any party (independent auditor); 3) carry out the accounting process in accordance with the principles of accounting standards, namely the process of identifying and submitting financial statement information properly; 4) determine the level of suitability of the collection of evidence and evaluations that have been carried out based on certain criteria. The basic criteria for evaluation referred to are legislative body regulations; budgets from management, and generally accepted accounting principles. Next is 5) delivery of results or written attestation in the form of an audit report; and finally 6) audits for stakeholders." (Mulyadi, 2013).

Agoes (2004) explain the three types of auditing generally conducted by auditors, namely 1) Operational Audit in terms of organizational operational procedures aimed at assessing the efficiency and effectiveness of company performance; 2) compliance audit as a form of checking the rules and authorized authorization carried out by internal organizations; 3) financial audit as an evaluation of the fairness of financial statements based on Financial Accounting Standards.

b. GCG (Good Corporate Governance)

BUMN Minister Regulation No. Per-01 / MBU / 2011 dated 1 August 2011 explained that Good Corporate Governance is the principles in the process and mechanism of corporate management based on laws and regulations and business ethics aimed at improving company performance and long-term economic value. The principles of good corporate governance consist of five criteria, namely, 1) transparency or disclosure of information to stakeholders; 2) accountability as a form of clarity of the company's functions and responsibilities; 3) responsibility, which is the conformity of management to the rules and principles of a healthy corporation; 4) independency as a form of company management in a professional and independent manner; and 5) fairness or internal and external justice in the company.

The term GCG is one of the keys to the success of the company's 'sustainability', especially in winning global industry competition. There are special criteria in the implementation of GCG, namely the importance of transparency in proper company management as shareholder rights and disclosure obligations in an accurate and timely manner. With this catalyst, the role of corporate culture is positively correlated to the successful implementation of GCG (Kozuma, 2017).

Chinn and Jones (2000) explains the stages of GCG implementation consisting of; "1) Stages of preparation include a) building awareness and commitment with the company (awareness building), b) measuring and mapping the readiness of infrastructure and company structure to achieve success (GCG assessment), c) preparation of manuals and working with independent experts from external companies (GCG manual building); 2) the implementation phase which consists of a) socialization of various aspects of GCG, b) Implementation based on a top down approach roadmap that includes change management in the process of changing the implementation of GCG, c) internalization of business activities in all business processes and company regulations; and 3) the evaluation stage which is carried out systematically, periodically and regularly is assisted by an independent party to conduct an implementation, mandatory and scoring audit of GCG practices. "

3. METHOD

This research uses normative juridical research method, meaning that the research is conducted based on positive legal review which uses positive logical conception (Ibrahim, 2006). The legislative approach and case approach aim to study the application of criminal law in legal practice as in jurisprudence (Soemitro, 1998). The primary legal material consists of legislation in the review of the Jiwasurya legal case referred to in the study are 1) based on the regulations regarding the implementation of the Audit regulated in Law No.40 of 2007 concerning Limited Liability Companies; 2) Regulation of Law No. 8 of 1995 concerning Capital Markets and 3) Regulation of Law No. 19 of 2003 concerning State Owned Enterprises. By gathering the search results, the study is then analyzed and gets conclusions based on normative analysis that is correlated with relevant facts obtained from the literature review.

4. RESULT AND DISCUSSION

a. Legal Review of the Limited Companys Fraud Audit in the Capital Market Sector

"Statutory provisions as regulated in Chapter IX Article 138-141 of the Company Law. The purpose of the examination is to obtain data or information regarding the existence of alleged illegal acts that could be detrimental to shareholders or third parties, or if members of the board of directors or the board of commissioners take actions against the law that could harm the company. In conducting company audit requests, the Company Law regulates several conditions that must be met, namely; 1) there are strong indications or allegations based on legal evidence of an unlawful act committed by the company; 2) those suspected of committing unlawful actions are the Company, members of the board of directors or the board of commissioners; 3) the actions have caused loss to shareholders, the Company or third parties; and 4) requests for financial data from the Limited Company"(Harahap, 2008).

"Article 138 Paragraph (3) of the Company Law states that those who have the legal standing authority on the request for examination are; 1) one or more shareholders with a vote representing 1/10 (one tenth) of the total number of shares with voting rights; 2) other parties who have legal standing meet the requirements of the laws and regulations that give those rights to the relevant parties, namely the Financial Services Authority (OJK); and 3) The prosecutor's office may submit examinations aimed at the public interest. "

"Article 139 Paragraph (3) of the Company Law explains about the taking of applications for examination by the Company by the Chairman of the District Court which contains; a) grant the application for inspection to the Company; b) appoint experts (at most three people to conduct the examination; c) determine the inspection period no later than 90 days from the date of the determination of the inspection; d) assign experts to prepare and submit Audit Reports to the Chief Justice in less than 90 days; e) determine the examination fee. "

"In terms of civil law, there are several responsibilities of the Limited Company as a Legal Entity that are separate and different from the shareholders and management of the company. This form of responsibility consists of two types, namely the contractual responsibility of the Company and the responsibility if there is an act that violates the Company's law against a third party. "(Harahap, 2008).

b. Indikasi Kecurangan Pada Kasus Jiwasurya

"The financial problems of the Jiwasurya Financial Services Authority (OJK) version are based on the following chronology; Beginning in 2004, the company reported smaller than expected reserves where insolvency or bankruptcy risk reached IDR 2.76 trillion;

1. In 2006, the company's financial statements showed a negative equity of IDR 3.29 trillion. The assets owned are actually far smaller when compared to the company's obligations.
2. In the range of 2008-2009 the company's deficit widened from IDR 5.7 trillion to IDR 6.3 trillion in 2009. So Jiwasurya took steps to re-insurance or short-term rescue.

3. Furthermore, in the period of 2010-2012, Jiwasraya continued the reinsurance scheme and recorded a surplus of IDR 1.3 trillion. At this time, the Capital Market and Financial Institution Supervisory Agency / Bapepam-LK (now OJK) has asked Jiwasraya to present alternative short-term comprehensive and fundamental solutions.
4. In 2012, Bapepam-LK gave permission for the JS Protection Plan product to be marketed through cooperation with banks through several banks including Bank BTN KEB Hana Bank and Central Java BPD. And at the end of December 2012, through the financial reinsurance scheme Jiwasraya still recorded a surplus of IDR 1.6 trillion. But without the financial reinsurance scheme, Jiwasraya experienced a deficit of IDR 3.2 trillion.
5. In 2013, the authority of the Jiwasraya issue was transferred to its functions and duties to the OJK and at that time the OJK asked the Ministry of SOEs to submit alternative measures to restructure Jiwasraya's finances because the problem of solvency ratio (RBC) was less than 120 percent. The Board of Directors of Jiwasraya conveyed the alternative of restructuring in the form of revaluation of land and building assets, revaluation to Rp6.56 trillion with profit of IDR 457.2 billion.
6. In the span of 2013-2016, OJK conducted a direct inspection of Jiwasraya. Then the BPK audit showed the alleged abuse of Jiwasraya's authority in which financial investment asset reports exceeded the reality / overstated and obligations under reality / understated. In the same year, the FSA asked Jiwasraya to submit a plan to fulfill the investment adequacy ratio because it was considered to no longer be using a reinsurance mechanism.
7. In 2017, the FSA gave the first warning sanction because Jiwasraya was late in giving the 2017 actuarial report and imposed a fine of IDR 175 million. In that year Jiwasraya's financial institutions seemed to improve with premium income from the JS Saving Plan product reaching IDR 21 trillion, surplus equity of IDR 5.6 trillion, and earning IDR 2.4 trillion in profit, up about 37.64 percent from the previous year.
8. In the middle of 2018 there was a change in Jiwasraya's directors. Then the new directors report the irregularities of the financial statements to the Ministry of SOEs. And it is evident from the audit results of the Public Accounting Firm (KAP) PricewaterhouseCoopers (PwC) of the 2017 financial statements that corrected the interim financial statements from a profit of IDR 2.4 trillion to only IDR 428 billion.
9. At the end of 2018 a new problem arose due to Jiwasraya's liquidity pressure starting to appear in the public. Then announced he could not pay the policy claim due to JS Saving Plan customers of IDR 802 billion. The new facts revealed that so far Jiwasraya has made a lot of investments in risk assets and ignored the principle of prudence with the aim of obtaining high returns. Investments are placed in stocks that are performing poorly and mutual funds managed by investment managers with poor performance.
10. The culmination of the Jiwasraya problem is that in 2019 Jiwasraya needs funds of IDR 32.29 trillion to meet a 120 percent solvency ratio (RBC) with company assets of IDR 23.26 trillion and liabilities reaching IDR 50.5 trillion. This results in negative Jiwasraya equity of IDR 27.24 trillion with problem liabilities of IDR 15.75 trillion. In addition, the failure to pay policy claims due to the end of 2019 rose to IDR 12.4 trillion "(CNN Indonesia.com, 2019; Wartaekonomi.co.id, 2019).

Based on the chronology of the Jiwasraya case, the following is a legal review of the arrangements for conducting an audit of a Limited Liability Company as a rule of law in an application for an examination of the Company.

1. Strong allegations indicated fraud was from Jiwasraya's financial statements as explained in the case chronology. It is clear that the act is against the law because Jiwasraya does not carry out the principle of prudence in the management of the Company.
2. The Company has internal control weaknesses so that an unlawful act occurs where Jiwasraya, who initially reported financial statements in a seemingly healthy condition, turned into a problem and experienced a failure

to pay a large enough policy claim. This proves that the management activities of the Company have caused losses to shareholders due to fraud auditing.

3. The form of audit compliance audits sometimes makes it difficult for shareholders and third parties to find out the true nature of the management of the Limited liability company. Therefore, even if it turns out that there has been something in Jiwasraya's financial statements then it is only known by Jiwasraya's internal management itself. So that this case was only recently revealed.
4. From the results of the investigation based on the chronology of the Jiwasraya case it is henceforth very clear that shareholders have the right to submit a request for an examination of the Company and claim the rights to policy claims that have failed to pay due to acts violating the law. As this is a form of responsibility of the Company towards contractual Company and responsibility for actions against the law.
5. From the results of the juridical review in Article 138 paragraph (4) of the Company Law, those who feel aggrieved can directly submit an application for inspection without first requesting data / or information from the limited company directly. In other words, in this case the Chair of the District Court may grant the request for examination based on the principle of proof of law. Of course in this case, the Financial Services Authority has an important role in dismantling fraud auditing cases and finding a middle ground so that the case does not worsen the situation of the limited company. Of course this is done, so that the same case is not repeated and this case can be resolved immediately.

In addition, the role of the expert as explained in Article 139 Paragraph (3) will really be needed. Good certified audit experience, type of personality, audit training, and professional skepticism are criteria that auditors must have to detect fraud (Putra & Dwirandra, 2019). An auditor as executor of audits at the Company is like two blades. On one side in this case, the resulting audit report will reduce the level of investor confidence in the Company and on the one hand it is hoped that these results will be key to the Company's sustainability. How not, the Auditor's performance is questionable in this case. Therefore, proving the audit report is the only way to clear the names of 'experts' as well as the Company in cases of alleged Jiwasraya fraud auditing. In the future, to anticipate the same case of course the effectiveness of ongoing audits will be very much needed by companies engaged in the capital market (Gonzalez & Hoffman, 2018).

4.1. The Role of Good Corporate Governance and Digital Technology as an Effort to Overcome Fraud Auditing

Development of methods for improving the quality of financial statements can be done based on GCG (Darmawan & Abdi, 2017). Likewise to improve management of company performance (Arora & Sharma, 2016; Muda, Maulana, Sakti Siregar, & Indra, 2018; Rodriguez-Fernandez, 2016; Widiatmika & Darma, 2018). And this can provide long-term results, especially in the stock market segment (Norden & Moura, 2019). Overseeing the mechanisms of corporate governance and ownership is a way to minimize the risk of fraud (Lozano, Martínez, & Pindado, 2016). Having procedurally responsible management, taking preventative measures and detecting them as early as possible can reduce collusion and false documentation. Of course this is done by implementing an anti-fraud control program and strict sanctions for example by updating the company's data management process using blockchain technology and criminal sanctions aimed at blocking auditing fraud. The AICPA guideline (2019) mentions three main elements to prevent the occurrence of fraud auditing, namely an honest culture by upholding integrity, being responsible for evaluating the risk of fraud and conducting independent auditing oversight.

In addition to the role of GCG digital forensic analysis in the process of corporate fraud auditing can be investigated using two different forensic tools namely; Table TD3 Forensic Imager Touch screen and Data Access FTK Imager. Cheating auditing is more a mindset than a method and has a different approach than financial auditing. Cheating auditing mostly focuses on exceptions, accounting irregularities, and organizational behavior. Financial auditors place special emphasis on audit track records and material misstatements (Simeunović, Grubor, & Ristić, 2016).

What is clear, the availability of Big Data has given the spirit of the industry in the field of public accounting in developing and using technology tools for guarantees and advisors. Although in fact not all audit practices like this apply universally throughout the company. The majority of companies use Big Faur's accounting as a Big Data analytical tool that is developed internally and change it to suit their audit procedures. Though cases like this can be minimized by applying technological advances in the audit process. But it is inversely proportional where company knowledge and the availability of regional equipment and local companies do not have it. Infrastructure is still not enough to support companies in the country (Chiang & Korol, 2017).

5. CONCLUSION

Based on a legal review of the case chronology revealed that Jiwasraya had audited fraud that caused losses to the Company, shareholders and third parties. Fraud auditing indications explain that it is very important for companies to implement good corporate governance, implement technology, and implement the principles of accounting standards that apply in Indonesia. Not without reason, in fact a violation of one of the rules has a negative impact on the sustainability of the company. Surely this is an urgent consideration for the other Limited company to be more careful in managing the Limited company, especially in the field of Capital Market.

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Laws and regulations

- BUMN Minister Regulation No. Per-01 / MBU / 2011 on 1 August 2011.
- Regulation of Law No.40 of 2007 concerning Limited Liability Companies
- Regulation Law No. 8 of 1995 concerning Capital Markets
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