International Business Management 7 (4): 295-305, 2013
ISSN: 1993-5250

The Impact of Governance Structure to the Effectiveness of the Board in Implementing Good Corporate Governance at Indonesian State-Owned Enterprises

Synthia A. Sari
Univeristy of Bina Nusantara, JL.KH. Syahdan No. 9,11480 Jakarta, Indonesia

Abstract: Corporate governance has been implemented in Indonesian State-Owned Enterprises (SOEs) since 2002, however scandals over the SOEs are still occurring until today. Most of these cases happened as a result of weak control by the Board of Commissioners (BoC) against the board of management (BoD) due to unique governance structure in Indonesia. The primary aim of this study is to shed light on the extent of the governance structure impact upon the effectiveness of the BoC in Indonesian SOEs through analysing two factors; power and roles of the BoC. Being exploratory in nature, this study uses qualitative method in order to enhance an understanding of BoC real practices in Indonesian SOEs. Triangulation method is used for data collection, including semi-structured interviews with 19 informants over 8 SOEs. The study indicates that Indonesia governance structure with the two-tier model which followed its own path does not support effectiveness of the BoC in Indonesian SOEs. This is due to peculiarities in parallel position of the BoC to the BoD that have an impact on power of the BoC over the BoD and unclear roles of the BoC. Thus, it may seem that Indonesia has to apply the two-tier structure without any changes. This study aims to fill the gap in the literature by analysing impact Indonesia governance structure to effective BoC through assessing actual views and perceptions from members of the BoC, the BoD and the government as shareholder's representative. It also provides information on corporate governance system in Indonesia which difference with Western countries.

Key words: Good coporate governance, governance structure, state-owned enterprisese, shareholders, Indonesia

INTRODUCTION

In order to understand the impact of the economic reforms in Indonesian corporate governance system, this study addresses the impact of governance structure to the effectiveness of the board (in Indonesia called the BoC) in implementing GCG at Indonesian SOEs. Corporate governance studies have been discussed in developed economies since 1980s, however the practices of corporate governance became well used in almost all countries in the world, especially after the world economic crisis in 1997-1998 (Barton *et al*., 2004). The global crisis in 2007 added further strands to corporate governance development (Lefort and Urzua, 2008). Therefore during this period, there is significant increasing growth on GCG practices in several developing countries, as well as in developing and transitional countries. Indonesia, the fourth largest population in the world provides a special case for the study of corporate governance because of its huge economic market. It also gives an interesting contrast to corporate governance system in the developed countries as Indonesia has a unique governance structure.

The SOEs is important for Indonesia's economy as the SOEs own important resources and make direct contributions from their products and services to the state budget and indirect contributions from the realization of their social function of Indonesia's prosperity (Djajanto, 2007). Along with Indonesia politic and economic reform, the SOEs' reform began in 2002 and since then SOEs implement code of GCG as their best practices. However, until now performance of Indonesian SOEs is still very disappointing. Data from Ministry of SOEs (2011) shows in 2010 from the total of 132 SOEs, there were 22 SOEs which recorded losses and had problems, as it did not have commercial value and high potential for the political intervention on the enterprises (Kompas.com, 2010). While the Indonesian Corruption Watch (ICW) still found indication of corruption in substantive amounts in some of Indonesian SOEs on 2010-2011 which all of their former chairman of the BoD (in Indonesia called President Directors) are now being arrested for allegation of corruption (Irawan, 2012).

Most of these cases happened as a result of weak control of the BoC towards the BoD (Habir, 2005). Business executives, scholars and even governments think that the existence of the BoC is primarily driven by legislation rather than the result of having real understanding on the work of the BoC (Kamal, 2008a). By using a two-tier governance structure with following own path in Indonesia is providing further confirmation that the BoC were not meant to have power on the BoD in governing the enterprises in Indonesia. As a result in 2002, the government issued a decree to increase the role of the BoC in protecting the interest of minority of shareholders, however stakeholders of Indonesian SOEs have not recognized the importance of the work of the BoC into operation of the SOEs (Tjager *et al*., 2003). Some scholars who studied the board in SOEs found the link regarding effectiveness of the board in regulating the governance structure (Hua *et al*., 2006; Huang and Orr, 2007). Some of them emphasized that regulating on separation of CEO and chairman on governance structure would be best in obtaining an effective board (Hua *et al*., 2006; Huang and Orr, 2007). While other scholars argued that separating chair position of the board with CEO in governance structure would not make any differences on effective decision making in SOEs (Kamal, 2008a; Khongmalai *et al*., 2010). However given that these empirical studies are in the past, the result is not just inconclusive but none of them have discussed how well the governance structure may impact to the effective BoC from the real view and perception of actors of governance namely members of the BoC, the BoD and the government as shareholder's representative that may lead to new interpretation of effectiveness of the BoC. Consequently, it is interesting to have further studies whether the governance structure has an effect on the board's effectiveness as measured by succession implementing GCG in the SOEs.

Governance structure: Issues of corporate governance appear when there are conflicts of interest in the company. Mostly, the conflict is triggered by an imbalanced power struggle between the interested parties. When the balance of power tilts in the favour of one party, this provides the opportunity for one party to exploit the other (Kaen, 2003). In order to control the exploitation and to balance the power between the interested parties, a strategic position of the boards as shareholders' representatives in the governance structure is important (Kaen, 2003). In essence, the government structure determines who control the voting equity who is in majority control whether informal power block exist and what changes might occur over the strategic time horizon (Tricker, 2012). From the organization's point of view, the governance structure is defined as the framework of the organization in which the principles of governance are divided, implemented and controlled (Syakhroza, 2005). The emphasis of control in this regard becomes crucial, since corporate governance is associated with the exercise of power over corporate entities that emerged from the separation between the party who makes decisions (decision-making) and the party that controls these decisions (decision control) (Mintzberg, 1983). Governance structure is distinguished into two; external and internal governance structure (Syakhroza, 2005). The external governance structure has broader understanding than the internal one. In external one, the governance structure of SOEs can be seen as representing the function of manager of state assets which also functions to serve the public relating to their business (Tjager *et al*., 2003) while the internal, the governance structure can be seen in terms of business entities (Syakhroza, 2005). This study is only focus on the internal one in order to gain an understanding on how the governance structure of SOEs in terms of business entities impacts the work of the BoC.

Governance structures are usually imposed by the corporate law as the legal foundation of the organizational entity's establishment (Syakhroza, 2005). There are two types of governance structure which are commonly used by many countries. The first one derived from the Anglo-American with a one-tier system. In this system, a company has a single board namely board of directors which consist of senior managers (executive directors) and independent directors who work on a part-time basis (non-executive directors). This system is commonly used in USA and UK. The others are from European Continental with a two-tier system. This system has two separate bodies namely a supervisory and management board. Countries using this system are among others Denmark, Netherlands, Germany, Japan and Indonesia (FCGI, 2001). Many studies discussed which of these both are better but the result still varies. However many regulation bodies, the law and government policies have recommended there are separation between management and the governing body in order to assure the management conduct their duties in the best interest of shareholders.

In addition, a later study by Eldenburgh *et al.* (2000) emphasizes that the principle of "no one size fits all" may be applied within the choice of governance structure because each organization has its own characteristics and ownership. A report from the OECD (2005) also showed the same conclusion. It shows that most governments in developed countries had applied the principle of no one size fits all in regulating their enterprise's governance, since this flexibility made an impact to work of the board in governs the enterprises. For example, in the

Netherlands, the two-tier model applies only to Dutch public companies in France, the government gives the freedom for each enterprise to apply either a one-tier or two-tier model (Gronewald, 2005).

Roles and function of the BoC: Only few SOEs are incorporated for the simple sake of establishing a company or fulfilling social objectives. Most of the SOEs are created in the expectation that they will within the boundaries of law and acceptable social behavior provide public needs, as well as earn money for their people (citizen) as their ultimate shareholders. However, ownership by all the people could also mean a sense of ownership by none of them (Mar and Young, 2001). It means that the state which represents the citizen is considered as an agent but not the owner. In addition, the state which represents the owner faces many conflicts of interest as it is also the regulator and enforcer of laws, regulates and often control the governance system (Lukviarman, 2004). According to Berle and Means (1932) with those conflicts interest and without clear owners, it would easy to have a transfer of corporate control from owners to professional managers that may deploy asset in way that give benefit for those in control rather than owners (agency problem). Therefore, Jensen and Meckling (1976) addressed on the proposition of the separation between ownership and control. They add that the need for control mechanism to align interest of real owner (the principals) and agents (controller) in order to resolve the agency problem is essential. In the case of Indonesian SOEs where the ownership still concentrates under the state and have conflicts of interest, the most efficient mechanism to control agency problem is through the internal mechanism where the BoC plays as primary actor (Bozec *et al.*, 2004).

The BoC should ensure that the SOEs are operated in well direction, so that shareholder value is at the very least maintained and generally increased. They have to play significant supervision role for the shareholders in SOEs to assure that the business practice and the achievement of organization's objectives do not give benefit to one party only at the expense of the others. In short, an effective BoC is one who preserves and increases shareholder value by governing the company in the right direction (Leblanc and Gillies, 2005). To achieve the effectiveness, the BoC has two duties: Fiduciary duties and duty of care. The activity of these duties involve four basic elements: Strategy formulation, policy making, supervision of the BoD and accountability to stakeholders (Tricker, 2012). Therefore, the BoC has to be put in strategic position in the governance structure of the SOE in order to gain enough power and clear responsibilities for fulfilling those duties (Garratt, 2006; Tricker, 2012).

The governance structure in Indonesian SOEs: The governance structure of Indonesian SOEs was stipulated and regulated in the Corporate Law No. 19/2003. It stipulated that governance structure in Indonesia use two-tier model with following own path. This kind of model is applied for any types of companies including SOEs. The separation between the BoD and the BoC in the Indonesian governance structure is consistent with the idea of a two-tier model, as all members of BoC are non-executive directors. However, unlike the two-tier model where the BoC is structured between the shareholders and the BoD. The structure of the BoC in Indonesia is side by side (parallel) to the BoD (Fig. 1). Within this structure, the selection mechanism, power, functions and working relationship of the BoC are different from the two-tier model. As in Fig. 1, the governance structure in Indonesian SOEs makes up a triangle consisting of the General Meeting of Shareholders (GMoS) represented by the Ministry of SOEs, the BoC as the supervisory board and the BoD as the management. The shareholders (described on the form of GMoS) are a group of people who invest their money as capital and have a share in the profits of the company. The BoD is responsible for the company's operational management while BoC is the group of people who supervise and give advice to the BoD (NCG, 2006).

There are four major differences between the two-tier model and the Indonesian model: In the selection of the BoC and the BoD. Figure 1 (arrow no. 1 and 2) shows that the shareholders through the GMoS select or dismiss

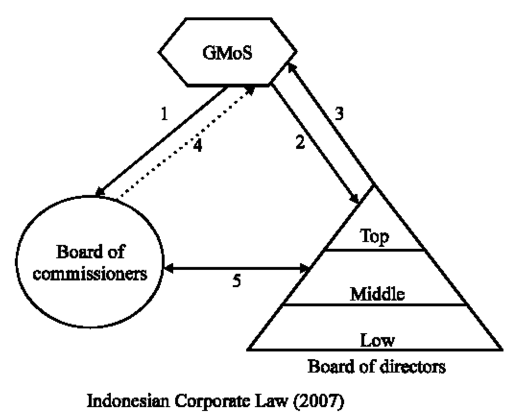

Fig. 1: Indonesian governance structure

both the BoC and the BoD. Meanwhile in the two-tier model, the shareholders select or dismiss the board and then the board selects or dismisses the management.

It relates to accountability. As shown in Fig. 1 (arrow no. 3), the BoD is directly accountable for company performance at the GMoS while in a two-tier model, the management is accountable to the board and then the board gives full account to the GMoS. The BoC is only accountable to GMoS for their roles in ensuring the BoD is heading in the right direction and in compliance with the principles of GCG. This accountability process is shown in Fig. 1 (arrow no. 4).

In the parallel structure of the BoC and the BoD as shown in Fig. 1 (arrow no. 5) relates to the fact that the BoC does not have the power to fire the BoD as the power is held by the GMoS. However, the rules give the right to the BoC to suspend a member of the BoD, if there is a member of the BoD who has been accused of engaging in fraudulent activities. A suspension will last for one month, until the BoC holds a general meeting of shareholders to receive a final decision.

In the relationship between the BoC and the BoD, the equal position or parallel structure of the BoC and the BoD makes both bodies work as partners rather than the BoC as superior to the BoC which is the case in the two-tier model. This relationship is aimed at ensuring checks and balances. Inevitably, this kind of relationship impacts on how the code of GCG is being implemented in SOEs by the BoC and the BoD. More explanations on the check and balance relationship will be given in the next sub-section.

Following this differences, it may seem that the Indonesian governance structure impact the work of the BoC in conducting their roles. According to Kamal (2008a) with Indonesian governance structure, it is very hard for BoC to minimize the agency problem. The BoD who is running the SOEs has more power to control the SOEs than the BoC who acts as the supervisor of the BoD. As the actor who involved in daily activity, certainly the BoD are very familiar with the governance process over their SOE, including the weakness (Hardjapamekas, 2000). If the BoD has bad intention to the SOEs, it is very easy for them to use the SOEs' wealth for their own interest without the BoC's notice. Despite the importance of how governance structure impacts the work of the BoC, there are no studies which discuss the extent of the governance structure impact to effective BoC in Indonesian SOEs. Most of the previous studied only focus on the structural characteristics of a BoC, for example the number of the BoC, the independent commissioners, ownership structure, etc., impact in general BoC's performance when performance is measured in terms of corporate financial performance (Achmad, 2007; Darmawati *et al.*, 2005; Lukviarman, 2004; Nasution and Setiawan, 2007). And, yet researchers know little the extent of Indonesian governance structure impact to the work of the BoC. Indeed, it is it truly astonishing, given the governance structure is the foundation of the implementation of GCG in one company, how little has actually been learned about how the governance structure impact to effective BoC in implementing GCG at Indonesian SOEs.

MATERIALS AND METHODS

This study presents an analysis of impact of Indonesian governance structure to the effectiveness of BoC in Indonesian SOEs from the BoC and the BoD's viewpoints. For this kind of research, interviews are more appropriately used in collection of the data in addition to written documents. A qualitative approach is used for answering research questions (Bryman, 2008). To avoid standard criticisms of the case study that findings cannot be generalized and that evidence is limited because it has restricted external validity and bias (Yin, 2009), this research use triangulation data.

Primary data was collected by semi-structured interviews from a selection of 8 SOEs which consist of seven limited liability enterprises (Perusahaan Perseroan/Persero) of which three of them are listed on the stock exchange and one public enterprise (Perusahaan Umum/Perum). The 7 SOEs are from construction, energy, banking and telecommunication and plantation industries. A total of 19 in-depth, semi-structured interviews were taken for an average of 1 h from participants who at that time, held a role as members of the BoC and the BoD allowing participants to reveal their real views and perceptions. A purposive sampling approach is used to draw sample from relevant organisations. Furthermore, there are also attempted to induce snowball sampling when some participants suggested or introduced other relevant people with the same characteristics to participate in the research. Access to participant was ultimately through personal contacts.

RESULTS AND DISCUSSION

This study provides the explanation on to what extent the governance structure impact on the effectiveness of the BoC. Based on interview data regarding the perception of the interviewee on the parallel position of the BoC with the BoD within governance structure impact to the work of the BoC are presented and analysed. On analysing the answer to interview questions, two major themes emerge, namely power and role ambiguity. Each theme is presented in the following.

Power: Figure 1 (arrow no. 5) shows that the BoC is structured side by side (parallel) to the BoD. Based on the interviewees' perception, the parallel position of the BoC and the BoD in Indonesian governance structure made the BoC practically exerts no power over the BoD. Relating to the fact that the role of the BoC is to ensure that the BoD is continuously and effectively striving above-average performance and taking account of risks with respect to shareholder protection, the BoC does not have the rights to select and dismiss the BoD.

Without having the rights to select and dismiss the members of the BoD, the BoC has no power over the BoD. These arguments are supported by interviewees who claim that due to having no rights for selecting and dismissing members of the BoD, both the BoC and the BoD have to work as a partner rather than as a superior to the BoD. As a partner, frequently the BoC finds difficulties in exerting their functions to supervise and advise the BoD. The BoC neither has enough power to supervise nor is listened by the BoD in ensuring that SOEs' operations are efficient and run under the code of GCG. Usually, the BoC and the BoD have to compromise each other on different opinions over strategic issues. This situation is supported by the following transcribed interview:

> We (the BoC) provide suggestions and the BoD is not under obligation to follow it. The BoD may have different opinions and they can take action accordingly. However, we usually compromise on the different opinion (member of the BoC-II-GT-2)

This view is also echoed by the other member of the BoC who argued that there is no punishment for the BoD, for not listen to the advices given. Furthermore for such actions, the BoC only can report it to the shareholders, if they feel it is necessary:

> There will be no punishment for the BoD if they do not listen to the BoC's suggestion. Thus, when the BoD makes mistakes in making decision over issues, we write a report to the shareholder that the BoC has tried to give advice to the BoC but it may seem that the BoD has other opinion over those issues (members of the BoC -IV-MD-2)

It may seem that due to the parallel position in governance structure and having no rights for the BoC to select and dismiss the BoD, the power given to the BoC may only consider as mere words which means that the BoC practically exerts no power over the BoD. Furthermore, the BoC only can respond to any actions made by the BoD by writing a report and giving it to the government if they do not agree to it. Nevertheless, since the appointment members of the BoD are done by the government as a major shareholder, frequently members of the BoD have close relations with government officials. This close relationship may result the government does not pay much attention to the reports given by the BoC. Therefore, it is difficult for the BoC to act decisively over the BoD, although according to the law, the BoC who represents the shareholders is a supervisor of the BoD.

Additionally, a direct appointment over the BoD from the shareholders may open opportunity for members of the BoD to bypass the BoC by having a direct contact with government or other groups as major shareholders. It also makes the BoD feel a bond with the shareholders who support them. This concept is supported by the following statement:

> This model (Indonesian governance structure) gives an opportunity for the BoD to ignore the function of the BoC by passing the bureaucracy and by having a meeting with major shareholders (corporate secretary I-MD-1)

One interviewee from a financial institution stated an additional opinion that direct meetings between the BoD and major shareholders may impact worse on companies involved in banking and financial sectors. A direct contact between the BoD with majority shareholders can lead to a transfer of interests and open up an opportunity for the BoD to have special relationships with certain groups that may jeopardize the sustainability of the SOEs. In this case, since the banking and financial institution are responsible of people's money, the activities of the BoD in bypassing bureaucracy and having meetings between the BoD and major shareholders, as well as others groups can lead to cooperation on fraudulent activities and financial scandals:

> The direct meeting of the BoD with shareholders can open the opportunity to influence the BoD on using customer's money on behalf of the owner's interest because the BoD is usually more afraid of the owners than the BoC (President Commissioners-IX-EG-1)

This result aligns with Tricker (2012)'s argument that the position of board in the structure of the company is very important as it determines the power in governing the company. In fact, the corporate governance is about the exercise of power over corporate entities (Clarke, 2004). It is the matter of who control whom (Syakhroza, 2005). Ideally when, there is a considerable distance between the ownership and the BoD is far (as in the case of Indonesian SOEs), the governance structure of those enterprises should put the BoC in a strategic position to gain enough power to ensure that the BoD runs the enterprise in the right direction.

Otherwise, the agency problems may exist (Garratt, 2003; Kamal, 2008a) and the roles of the BoC in the SOEs is more like parsley on fish-decorative but useless (Leblanc and Gillies, 2005) when the BoC is useless, the controlling shareholders will take over these roles (OECD, 2005). Then, it will open opportunity for the controlling shareholders to use the company's asset for their own interest by making cooperation with members of the BoD (Kamal, 2008a).

Roles ambiguity: The most important issue of Indonesian governance structure impact the work of the BoC is concerning the lack of clarity of BoC's responsibility. Due to the fact that the BoC is representative of shareholders that has responsibilities to ensure that the SOEs is well run the right direction, according to Tricker (2012), the BoC has to fulfilled four functions: Formulate strategy, policy making, supervising the management and accountability of company's performance as it discussed previously. However, these four functions of the BoC are not understood by Indonesian government, owner and most of the BoC and the BoD. The Indonesian corporate law do not require the BoC to have responsibility to formulate strategy and accountable of company's performance. The BoC are only obliged to question and approve the strategy and accountability report made by the BoD. Therefore, this study find that members of the BoC are rarely acted on it and the ambiguity roles that impact to the corrosive processes of under-performance of the BoC are start here.

When participants were asked what the BoC real job in the SOEs, their answer is quite varies. One participant from members of the BoC refers to the corporate law that job of the BoC is to control the BoD while giving an advice to the BoD is not requirement:

> According to the corporate law, the function of the BoC is to control the BoD. Giving advices is not the requirement because if the BoD has other opinion, then the BoD may act according to their selves. But, we [the BoC and BoD] frequently compromise over most of the strategic issues (members of the BoC III-HS-2)

Other participant from government sees the functions of the BoC differently. He said that the BoC's job is not just to supervise the BoD and controlling the SOEs but also to give advice to the BoD:

> The BoC give the authority to supervise, control and giving advice to the BoD. The authorization on all technical activities in the operation of SOEs is giving to the BoD. Meanwhile, the shareholders are more concern on making regulation over the management of the SOEs (Government Officers VII-PD-SA)

While participants from members of the BoD see the functions of the BoC is only limited to give an approval of the BoD's work, for example in giving approval on the corporate plan and budget proposed (RAKP), as well as setting the target for the SOEs. The BoC are not expected to be too involved on strategic issue:

> The BoC member are usually not too involved in strategic future planning, we (the BoD) usually do it by ourselves if we do involved them is mostly on the corporate plan and budget proposed (RAKP) and setting a target, just because according to the law, we need the BoC's approval for these strategic plan before handing it to the Ministry as the shareholder (members of the BoD- XIII-ID-3)

In contrary, interviewee of President Commissioners from the financial institutions view the functions of the BoC is not just in supervision but also to include on strategy issues, e.g., the managing the risk over the SOEs:

> The duties of BoC in this financial SOEs is quite many compare to others industries. We not just to ensure that the BoD has conducted a proper loan classification and choose the right external auditor but we also should involve on the strategic formulation. It is because we must to ensure that the risks that taken by the BoD are accordance with the SOE's ability (President Commissioners IX-EG-2)

All above arguments prove that the participants include government officers, the BoD and the BoC have different understanding on the functions of the BoC. But overall, their general understanding is the BoC's duty tends to supervise the BoD by approving all the reports made by the BoD. They failed to understand the functions of the BoC are also involved in formulating the strategies, policy making and accountability except for the last participants. If they do, they only highlighted the involvement of the strategy limited to the discussions about the annual plan and budget. They did not give time and effort to discussing long-term planning, policies, formulation of the vision, mission and direction of the

SOEs. Certainly without involving in those activities, the BoC will not able to participate actively in every discussion that concern on the strategic issues. As one participant from President Commissioner give comment:

> Members of the BoC are not quite good enough to see basic issues from mission and functions of this SOE. They tend not be involved too much during the formulation of strategy and policy making. Probably, this is the reason why the not able to formulate the strategic issues that may occur in this company (President Commissioners I-BM-1)

While according to Garrat (2006) if only conducting supervision job and approving the report made by the BoD is necessary but not sufficient for the BoC to ensure the company's is well run in right direction. Sufficiency come from regularly assessing the more difficult and less explored area of strategy formulation and policy making. The BoC will not effective, if they do not involve in making strategies and policies of the SOEs (Tricker, 2012).

Furthermore, this study found that because of lack of involvement of members of the BoC in strategic issues and policy making as a result of lack clarity of BoC's responsibilities, frequently members of the BoC avoid to take responsible over company's problems and have disengage feeling to the SOEs. Since, the BoC by law only has duties to supervise and adviser to the BoD without getting deep involvement to the policy making and any strategic actions thus when the SOEs' performance is decline, the BoC do not want to be blame as for them they already conduct their job as supervisor and adviser. This condition may illustrate in following comments from government officer:

> But when performance of the company decline in practice, the BoC did not want to be blamed. They always have excused, such as; we already doing the job as supervisor and adviser but the BoD did not want to listen. Furthermore when we confronter the impact of their duties, the BoC always have arguments to avoid (Government Officer-VIII-SG-5b)

Researcher also added that avoiding responsibilities by the BoC may clearly see during the presentation of the accountability report to shareholders where the BoC frequently remain passive and act as if they do not involve of anything to what the BoD done for a whole year. His expression on the BoC's behavior during the presentation of accountability report by the BoD to shareholder is follows:

> In the shareholders meetings, regarding accountability report on company's performance, most of the shareholders only questioning the BoD. Sometime, the BoD get overwhelmed with the questions. However, it quite rare, I see members of the BoC helped the BoD to answer those questions. They (the BoC) act as if they are not a part of all the actions that made by the BoD. Frequently during this meeting, the BoC just remain passive and sometime only said one or two words. The BoC is more act like a mediator rather than helping the BoD, they should not be like that (Government officer-VIII-SG-3)

An example from statement of interviewee of President Commissioner may also support arguments from government officer above. He stated that since the functions of the BoC is only to supervise the BoD thus if the BoD made mistake in making decision in some issues, the BoC do not take responsibility on those actions:

> The researcher must understand that in Indonesia function of the BoC is only a supervisor not an executor. Thus, it is not fair for the BoC if they should take the blame on all the execution that made by the BoD, particularly when the BoC already try to give an advice about those (President Commissioners IX-EG-2)

The statements of government officer and President Commissioner above confirmed that members of the BoC could avoid responsibility from any mistake made by the BoD. Those arguments may also illustrate that the BoC do not have sense of belonging to the SOEs. However, this BoC's reactions consider normal as human beings. If the law only expect the BoC as supervisor and adviser while accountability of SOE's performance is not the BoC's responsibility then it is normal if members of the BoC not just may feel that they not responsibility if the BoD took false actions over their decision but also they feel like outsiders. And as outsiders, they will not have a sense of belonging into the SOEs. This findings support the study of Kirana and Habriansyah (2004) who claim that owing to the lack of involvement in the strategy plan, policy making, as well as accountability report, the BoC in Indonesia are frequently do not feel responsible with the company's performance. They tend to be a passive member in every meeting with the BoD and shareholders, since it is difficult to develop much more than a basic understanding of their SOEs' conditions with spending less time and effort in strategic formulation and policy making (Lipton and Lorsch, 1992). A passive board frequently only maintain minimum performance based on the minimum requirements of corporate law (Stiles and Taylor, 1993). As a result, the BoC seem only met on a regular basis to fulfill statutory duties and do not feeling engage to the company (Tabalujan, 2002).

In addition to above findings, some participants give interesting opinion over different reactions of members of the BoC to their ambiguity roles. The participants related this different understanding over functions of the BoC with characters of the person. They mention that the lack of clarity of the BoC's responsibilities may be respond differently by members of the BoC as it depends to each individual character.

For example, there are members who seems not care to the SOEs as described previously but there are some members of the BoC are identified to be deeply involved over strategic issues and policy making of the SOEs. Even, several of them are too involved in the operation of the SOEs that run by the BoD. As interviewee of President Director revealed that the individual characters that determine someone to be more concern and responsible over the SOE's performance through their active involvement on any strategic issues or not:

> Well, researcher see two types of the members of the BoC. One is the person who wants to know everything over our company. For example is the President Commissioner. He always concern on the (the BoD) strategic plans, how we conduct the plan and what we will do to overcome the challenges in the company. Others, I do not feel the same way, frequently they just follow the meeting without giving any questions raised to us. This could be happened because I think the character of the President Commissioners is different from others members. He seems more curious, care and responsible to his duties rather than others (President Director-XV-HS-1)

A participant form President Commissioners also expressed similar view:

> Since, the duties of the BoC are unclear thus there are two types of BoC, person who are too involved in management activities and person who not really care in the firm performance. For example: I heard in PT. X, their President Commissioner is too involve in the operations, even frequently interfere the job of the BoD. He may release the policy with only having short discussion with the BoD (President Commissioners-IX-EG-1)

Another interviewee of President Commissioner also confirmed the arguments of his colleague, although it is more implicitly:

> From my point of view, the succession of the implementation of GCG with this (Indonesia) governance structure is depends on the character of the person. For example if the BoD do not listen to the BoC advice, then for members of the BoC who cares over the company will write a report but it also mean, if members do not really care and do not write a report, then there will be no problem either (President Commissioner-I-BS-1)

Based on those arguments that individual characters may imposed how the members of the BoC react to their functions. The ambiguity over the roles of BoC may varies due to the lack clarity of BoC's responsibilities but the individual characters of members of the BoC may determine how each members react to this ambiguity. For some person who cares enough to the SOEs, they will get involved on the formulating strategies, policy making and accountability of the SOEs. For some of them who take the job too seriously, they will too get involved over into the operation that in turn interfere the work of the BoD.

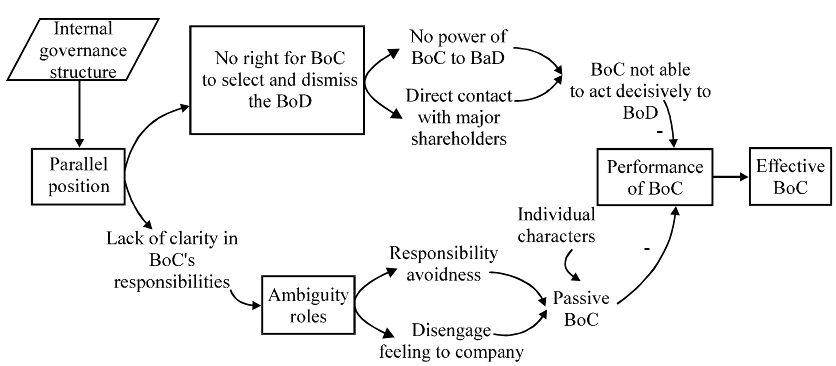

Fig. 2: The relationship between factors in governance structure and effective BoC

And others only fulfilled their statutory duties. This findings is support the study of Leblanc and Gillies (2005) who claims that there are many differences in the way in which members act when they conduct their duties as it depend on their behavioral characteristics.

The summary of analysis result of the impact of governance structure to effectiveness of the BoC can be seen in Fig. 2 which presents a clear relationship between power, ambiguities roles and effective BoC.

CONCLUSION

The evidence from the interviews indicate that the parallel position of the BoC to the BoD in Indonesia governance structure influences work of the BoC through two factors, power and role of ambiguity. The way of the board are structured in Indonesia does not provide enough power for the BoC to conduct their duties. Legitimately, the BoC is supervisor of the BoD, however in state the power is given to the BoC, the structure may give the BoD all the power and leave the BoC with practically none. Furthermore, Indonesian structure also has quite strong impact to lack clarity of the BoC's responsibilities. This lack clarity is shown to the ambiguity over members of the BoC, the BoD and the government over the functions of the BoC. Most members of the BoC has own understanding in how to conduct their functions. Has own understanding over the functions of the BoC may result on varied actions over members of the BoC to their roles in SOEs including avoid responsibility from any mistake made by the BoD and feel no a part of the SOEs. Although, how well members of the BoC interpret their roles and react to it are related to the individual characters of members of the BoC.

Without power and roles ambiguity, it is very hard for the BoC to conduct their duties to govern the SOEs. The BoD who is responsible for the operation of SOEs daily may have enormous power rather than the BoC as their supervisor. As the stakeholders' representative, the BoC may not able to do much to keep the balance of power with the BoD. While based on the perspective of principal-agent theory, agents cannot be trusted. The agent will use their power and company's assets to serve other interests rather than the shareholders. Therefore, the enormous power of the BoD over the Indonesian SOEs may maintain the opportunity to continue the culture of lobbying business management (Abeng, 2001) of the SOEs that may lead to power abuse and fraudulence activities by the BoD.

Therefore, it would be better if the Indonesian SOEs use two-tier model without any changes. When the distance between owner and the management is far and ownership structure concentrate in the hand of government like in Indonesian SOEs, the BoC as shareholder's representative should be place to the position where the BoC able to control and have bigger power over the BoD as in the two-tier model. This argument also support the study of Kamal (2008b) that current governance structure do not support the implementing of GCG in Indonesian SOE, thus it need to be adjusted in the way that the BoD may not able to exploit their power. Although, it is far being conclusive, probably current Indonesian structure may only be well implemented if the distance between owner and the BoD is close, such as what occurred in family enterprises. In addition, this study also suggests that Indonesia should applied the principle of no size fits all for choosing the suitable governance structure according to the types of company as it is in France and German.

RECOMMENDATIONS

From the discussion, it is clear that the governance structure is very important factors for effective BoC as this structure is the foundation of the work of the BoC. It determines the power and control of the BoC over SOEs. After all, the corporate governance is about who control whom (Syakhroza, 2005). However, many previous studies (Bozec and Dia, 2007; Cornforth, 2001; Garratt, 2006; Leblanc and Gillies, 2005; Pudjiastuti and Mardiyah, 2007) claim that only structuring the BoC above the BoD as in two-tier model will not be enough to make the BoC effective. Some scholars (Carter and Atkinson, 2006; Garratt, 2003; Leblanc and Gillies, 2005; Mace, 2004; Mayer, 1997) who made researches in the country held two-tier model argued that for many years, the capacity of the board used their power has been limited. It is true that members of the board by law are elected by the shareholders but in reality the management controls the recruitment and selection process and solicits proxies from the shareholders in support to the candidates whom they nominate (Garratt, 2003). This fact means that elected members of the board will not seriously challenge management or their fellow members during the board meeting (Mace, 2004). Therefore, it would be better if governance structure followed by good management of the BoC which bring transparency and appropriate system in every step of the process, such as in recruitment and selection process, induction, training and development program, performance assessment and reward system.

REFERENCES

Abeng, T., 2001. Indonesia Inc.: Privatising State-Owned Enterprises. Times Academic Press, Singapore, ISBN: 978-9812101747, Pages: 224.

Achmad, T., 2007. Corporate governance of family firms and voluntary disclosure: The case of Indonesian manufacturing firms. Ph.D. Thesis, Unviversity of Western Australia, Perth.

Barton, D., P. Coombes and S. Wong, 2004. Asia's governance challenge. McKinsey Q., 2: 54-61.

Berle, A.A. and G.C. Means, 1932. The Modern Corporation and Private Property. 6th Edn., Transaction Publisher, New Brunswick, French.

Bozec, R. and M. Dia, 2007. Board structure and firm technical efficiency: Evidence from Canadian state-owned enterprises. Eur. J. Oper. Res., 177: 1734-1750.

Bozec, R., D. Zeghal and A. Boujenoui, 2004. The effect of the reform of Canadian state-owned enterprises on major corporate governance mechanisms. Aust. J. Public Admin., 63: 79-94.

Bryman, A., 2008. Social Research Methods. 3rd Edn., Oxford University Press, New York, USA., ISBN: 9780199202959, Pages: 748.

Carter, C. and T. Atkinson, 2006. Evaluating Board Performance: A Guide for Directors. Australian Institute of Company Directors, Sydney, Australia.

Clarke, T., 2004. Theories of Corporate Governance: The Philosophical Foundations of Corporate Governance. Routledge, Taylor and Francis Group, London and New York, ISBN: 9780415323086, Pages: 370.

Cornforth, C., 2001. What makes boards effective? An examination of the relationships between board inputs, structures, processes and effectiveness in non-profit organisations. Corporate Governance Int. Rev., 9: 217-227.

Darmawati, D., K. Khomsiyah and R.G. Rahayu, 2005. Hubungan corporate governance dan Kinerja Perusahaan. Indonesian J. Account. Res., 8: 65-81.

Djajanto, P., 2007. The implementation of good corporate governance principles and the benefit for state owned enterprise. Paper Presented by National Committee for Corporate Governance, Sustaining Company Value through GCG Based Business Practices.

Eldenburg, L., B. Hermalin, M. Weisbach and M. Wosinska, 2000. Hospital governance, performance objectives and organizational form. University of Illinois Working Paper.

FCGI, 2001. Peranan dewan komisaris dan komite audit dalam pelaksanaan corporate governance (Tata kelola perusahaan). [The roles of the board of commissioners and the audit committee in corporate governance]. Forum for Corporate Governance in Indonesia, Jakarta.

Garratt, B., 2003. The Fish Rots From The Head: The Crisis in our Boardrooms: Developing the Crucial Skills of the Competent Director. 2nd Edn., Profile Book Ltd., London, UK.

Garratt, B., 2006. Thin on Top: Why Corporate Governance Matters and How to Measure, Manage and Improve Board Performance. 1st Edn., Nicholas Brealey Publishing, London, UK.

Gronewald, E., 2005. Corporate governance in the Netherlands: From the verdam report of 1964 to the tabaksbalat code of 2003. European Business Organization Law Review.

Habir, A., 2005. Governance in Indonesia: Developing Search Strategies. In: Corruption and Good Governance in Asia, Tarling, N. (Ed.). Routledge, New York, USA., pp: 275.

Hardjapamekas, E.R., 2000. Corporate level initiatives and implementation of good corporate governance. Paper Presented on Panel Discussion on Corporate Governance, Jakarta, March, 2000.

Hua, J., P. Miesing and M. Li, 2006. An empirical taxonomy of SOE governance in transitional China. J. Manage. Governance, 10: 401-433.

Huang, R.H. and G. Orr, 2007. China's state-owned enterprises: Board governance and the communist party. McKinsey Q., 1: 108-111.

Irawan, A., 2012. ICW minta dahlan fokus bersihkan BUMN (ICW asked Dahlan to be focus on cleaning SOEs). November 7, 2012. http://www.tempo.co/read/news/2012/11/07/078440292/ICW-Minta-Dahlan-Fokus-Bersihkan-BUMN.

Jensen, M.C. and W.H. Meckling, 1976. Theory of the firm: Manajerial behavior, agency cost and ownership structure. J. Financial Econ., 3: 305-360.

Kaen, F.R., 2003. A Blueprint for Corporate Governance: Strategy, Accountability and the Preservation of Shareholder Value. AMACOM, New York, USA., ISBN-13: 9780814426982, Pages: 227.

Kamal, M., 2008a. Corporate governance in Indonesian state-owned enterprises: Is it on the right track? Social Science Research Network, Macquarie University Law Working Paper No. 2008-30, December 3, 2008.

Kamal, M., 2008b. The new Indonesian company law: Does it support good corporate governance? Sosial Science Research Network, August 7, 2008.

Khongmalai, O., J.C. Tang and S. Siengthai, 2010. Empirical evidence of corporate governance in Thai state-owned enterprises. Corporate Governance, 10: 617-634.

Kirana, D. and M. Habriansyah, 2004. An overview of directors liability Indonesia. International Financial Law Review, pp: 3.

Kompas.com, 2010. Daya saing BUMN perkebunan melorot. Kompas Cyber Media, Kompas Gramedia, July 18, 2010.

Leblanc, R.W. and J. Gillies, 2005. Inside the Boardroom: How Boards Really Work and the Coming Revolution in Corporate Governance. John Wiley, Mississauga, Ontario, Canada.

Lefort, F. and F. Urzua, 2008. Board independence, firm performance and ownership concentration: Evidence from Chile. J. Bus. Res., 61: 615-622.

Lipton, M. and J.W. Lorsch, 1992. A modest proposal for improved corporate governance. Bus. Lawyer, 48: 59-77.

Lukviarman, N., 2004. Ownership Structure and Firm Performance: The case of Indonesia. D.B.A. Thesis, Curtin University of Technology, Perth, Australia.

Mace, M.L., 2004. Directors: Myth and Reality. In: Theories of Corporate Governance: The Philosophical Foundations of Corporate Governance, Clarke, T. (Ed.). Routledge Taylor and Francis Group, London and New York, pp: 96-107.

Mar, P. and M.N. Young, 2001. Corporate governance in transition economies: A case study of two Chinese airlines. J. World Bus., 36: 280-302.

Mayer, C., 1997. Corporate governance, competition and performance. J. Law Soc., 24: 152-176.

Mintzberg, H., 1983. Power in and Around Organizations. Prentice Hall, Englewood Cliffs..

NCG, 2006. Pedoman umum good corporate governance Indonesia [Indonesia's code of good corporate governance]. National Committee on Governance, Jakarta, Indonesia, pp: 1-39.

Nasution, M. and D. Setiawan, 2007. Pengaruh corporate governance terhadap manajemen laba di industri perbankan Indonesia [Effect of earnings management of corporate governance banking industry in Indonesia]. Proceedings of the National 10th Symposium on Accounting, July 26-28, 2007, Indonesia, pp: 1-26.

OECD, 2005. Corporate governance of state owned enterprises: A survey of OECD countries. Organisation for Economic Co-Operation and Development (OECD).

Pudjiastuti, W. and A.A. Mardiyah, 2007. The influence of board structure on firm performance. Proceedings of the National 10th Symposium on Accounting, July 26-28, 2007, Indonesia.

Stiles, P. and B. Taylor, 1993. Maxwell-The failure of corporate governance. Corporate Governance: Int. Rev., 1: 34-45.

Syakhroza, A., 2005. Corporate Governance: Sejarah dan perkembangan, teori, model, dan sistem governance serta aplikasinya pada perusahaan BUMN (Pidato pengukuhan jabatan guru besar tetap pada fakultas ekonomi universitas Indonesia). Universitas Indonesia, Jakarta.

Tabalujan, B.S., 2002. Why Indonesian corporate governance failed-conjectures concerning legal culture. Columbia J. Asian Law, 15: 141-171.

Tjager, I.N., A. Alijoyo, H.R. Djemat and B. Soembodo, 2003. Corporate Governance: Tantangan dan Kesempatan bagi Komunitas Bisnis Indonesia [Corporate Governance: Chalange and Opportunity for Indonesian Business Community]. 1st Edn., PT. Prenhallindo, Jakarta, Indonesia, ISBN-13: 9789796836222, Pages: 265.

Tricker, B., 2012. Corporate Governance: Principles, Policies and Practices. 2nd Edn., Oxford University Press, New York, ISBN-13: 9780199607969, Pages: 546.

Yin, R.K., 2009. Case Study Research: Design and Methods. 4th Edn., Sage Publications, USA., ISBN: 9781412960991, Pages: 219.