

Testing the Public Officials' Integrity in the Moonlighting of State-Owned Company Commissioner

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ABSTRACT

Conflict of interest is related to fraud and corruption, whose sources include the following, (a) concurrent positions or moonlighting, (b) public sector non-cooling off work/business activities post-employment, (c) work and personal business interests of family, friends, and associates, (d) affiliate relationship of community groups, organizations, and political aspirations. Therefore, this study aimed (1) to develop a catalogue of laws and regulations implicitly and explicitly prohibiting state officials or government employees from implementing moonlighting. It indicated the explicit prohibition of moonlighting against interfering with the conditions causing conflicts of interest. It also aimed (2) to examine the moonlighting of SOE commissioners through state officials. In this analysis, SOE was selected as the sample due to being simultaneously regulated by various policies prohibiting conflicts of interest and moonlighting. The sample was also exchange-listed because of the obligation to disclose information in the Capital Market Law as an Annual Report, where the profiles of the Commissioner members were often showcased. The results showed that moonlighting was unacceptable by public officials as commissioner members, regarding the compiled catalogue.

Keyword: Public Official, Conflict of Interest, Moonlighting, Corporate Commissioners.

1. INTRODUCTION

A business organization is mostly challenged by corruption and fraud, which often originates from the government, State-owned Enterprise, as well as private, non-profit, and other companies, at 48.5%, 31.8%, 15.1%, 2.9%, and 1.7%, respectively

(ACFE Indonesia Chapter, 2020). This analysis theoretically showed an agent-principal problem in state organizations and SOE, indicating the difference between the interests of the manager (agent) and the organization owner (principal). From this context, a conflict of interest form

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emphasizes moonlighting. In the public service sector, a total of 397 moonlighting public officials are reportedly observed as SOE commissioners, with 254, 112, and 31 of them originating from ministries, non-ministerial institutions, and academics, respectively (Ombudsman Republik Indonesia, 2020). Regarding Business Competition Supervisory Commission (2021), numerous moonlighting analyses were explored between SOE Directors/Commissioners and the non-SOE companies within various sectors, such as (i) finance, insurance, and investment (31 Directors/Commissioners), (ii) mining (12 Directors/Commissioners), and construction (19 Directors/Commissioners).

Based on Table 1, inflated outputs were observed because of the various definitions of State-owned Enterprise. The SOE holding program is a privatization program that changes the legal entity into mere Persero (Limited Liability) Companies. As quoted from idxchannel.com, the SOE Minister's statement, "*We have succeeded in reducing the number of companies from 142 to 41*", confirmed that this program encompassed the privatization of SOE. This confirmation is subsequently supported by the 101 non-SOE Persero Companies claiming to be State-owned enterprises. Since other

parties have replaced state ownership, the prefix/suffix "Persero" is then lost, with the SOE Law becoming unreferenced to the articles of association and corporate governance. For example, Perkebunan Nusantara (PTPN), Gas Negara, Kimia Farma, Bukit Asam, Aneka Tambang, Timah, and Indofarma are merely Limited Liability Companies and not SOE.

Although various apologia is reportedly postulated, the public officials performing commissioner moonlighting still obtain time from their original institutions. In this case, the State-owned Enterprise often finance part-time jobs massively, due to being filled with the officials acting as commissioners. The moonlighting of ministry or non-ministry officials and academics subsequently emphasize an affiliation relationship, where the concerned commissioners commonly work in favour of the SOE. Under these conditions, the loyalty of these public actors is mostly ranked and authorized, with one of them prioritized over others. This provided priority focuses on the duties at the original institution or university or SOE. From this description, a potential is observed for information seepage, through the original organization (as regulator) to the State-owned Enterprise (as industry operator), or vice versa. Moreover, the

Table 1. Moonlighting (Ministry/Non-Ministry/Academics)

Officials' Home Agency/ Academics' Home University					
Non-ministry		Ministry		Academics	Total
TNI	27	BUMN	55	UI	9
POLRI	13	Keuangan	42	UGM	5
Kejaksaan	12	PUPR	17	Unhas	2
Pemda	11	Perhubungan	17	Unpad	2
BIN	10	Sekneg	16	ITS	2
BPKP	10	Kemenko	13	Others	11
KSP	6	Perindustrian	9		
BPK	4	Perdagangan	9		
Lain	19	Bapenas	8		
		Lainnya	68		
Total	112		254		397

Source: Ombudsman of Indonesia, 2020

moonlighting-based SOE requires a special favourable regulation, indicating that the affected commissioners are likely to propose organizational regulation-making procedures. This explains that moonlighting is capable of distorting fair business competition, which promotes the ICC (Indonesia Competition Commission) to explore the company issue.

This study aims to develop inventory of laws and regulations explicitly and implicitly prohibiting moonlighting. The analysis is carried out through the conflicts of interest prohibition within the framework of *stufenbautheorie*, adopted by Indonesia as stated in Law Number 12/2011 on Legislation Establishment. In Article 7 paragraph (2), the principle of *lex superiori derogat legi inferiori* stated that "The legal force of laws and regulations is appropriate to the hierarchy, as referenced in pg. (1)". This derogation norm is the most effective method used to avoid interpretative differences, due to its explicitness in providing solutions through the valid legal force between 2 or more conflicting standards (Nurfaqih Irfani, 2020).

2. LITERATURE REVIEW AND HYPOTHESIS

The business form was initially similar to "Ma 'n Pa' Grocery", regarding the consideration of both owners and managers. However, many problems have reportedly originated since the adoption of the corporation form, which separates ownership from management. Regarding this issue, Ambrose Bierce, a journalist, published *The Devil's Dictionary* in 1906. This publication emphasized the satirical expressions and definitions of common words, to capture and expose social phenomena within American society in the early 20th century. In this dictionary, CORPORATION was defined as an ingenious device for obtaining individual profit without personal responsibility.

Twenty-five years after Ambrose Bierce's publication, a "journal war" was observed in 1932 between Adolf Augustus Berle Jr. and Edwin Merrick Dodd, which

prioritized shareholders and stakeholders, respectively. These scholars subsequently reconciled after a while, through a common wedge that the business owner (shareholder) often provided authority to the organizational management. Since the management and employee commonly cheat and steal, a supervisory institution was then developed to sit with managers at one table known as the Board of Directors. In this development, the supervisors and managers were referenced as non-executive and executive directors. From this description, the supervisors need to carry out daily supervision because the managers frequently work and cheat regularly. Therefore, supervision is considered a full-time job and not part-time work. According to Jensen and Meckling (1976), the intersection of Berle and Dodd's opinions was rewritten and titled "Agency Theory", where a company's owner and manager were referenced as the principal and agent, respectively. The relationship between these parties was also filled with agent-principal problems, leading to various agency costs.

The occurrence observed in the early 20th century (*l'histoire se répète*) was then repeated in the early 21st century regarding corporate scandals, such as Enron, WorldCom, etc. During this period, an intertwined scientific taxonomy was emphasized, where securities and corporate law with financial recording and reporting techniques were observed. This led to the provision of a functional name, known as corporate governance.

Based on the trust provided by the GMS organ and not the interests of individual shareholders, the Board of Commissioners and Directors carried out their respective duties. In this process, both organs need to be bonafide in performing their duties for organizational benefits only. Regarding Law Number 40/2007 on Limited Liability Companies, fiduciary duties were commonly attached to each of the directors and commissioners, as regulated in Articles 97 and 114, paragraph 2, respectively.

Table 2. **Concept of Fiduciary Duties in Law Number 40/2007 on Limited Liability Companies**

Article	Subject	Verbatim
Article 97 paragraph 2	All Board of Directors	<ul style="list-style-type: none"> a. The Board of Directors is responsible for the company management as referenced in Article 92 paragraph (1). It needs to carry out appropriate management for organizational benefits only, according to the set purposes and objectives. b. Based on paragraph (1), the management should be carried out by each Board of Directors member in good faith and with full responsibility.
Article 114 paragraph 2	All members Board of Commissioners	<ul style="list-style-type: none"> a. The Board of Commissioners is responsible for the supervision of the Company, as referenced in Article 108 paragraph (1), which stated the following: <ul style="list-style-type: none"> b. The Board of Commissioners needs to generally supervise the management policy and course, as well as provide advice to the Director groups. c. The supervision and provision of advice should be appropriately conducted for the companies' benefit, concerning the set purposes and objectives. b. In good faith and prudence, each Board of Commissioners member is responsible for conducting supervisory and advisory duties to the Director groups, for organizational benefits only.

Source: Law Number 40 of 2007 on Limited Liability Companies

Based on Table 2, the difference between the two Limited Liability Companies organs emphasized the prudential principles used by the board of commissioner members to implement fiduciary duties.

Article 114 paragraph (5) of the Company Law also stipulated the conditions guiding the Board of Commissioners against the liability of losses. This stipulation is similar to that of paragraph (3) and useful "*when it is able to prove*" the following, (a) Appropriate supervision in good faith and prudence for only organizational benefits, based on the set purposes and objectives, (b) No direct or indirect personal interest in the management of the Board of Directors causing the loss, and (c) Adequate

performance of advisory duties for the Board of Directors, to prevent increased or continuous losses. From these conditions, the phrase "*when able to prove*" indicated that the burden of proof depended on the affected Board of Commissioners members.

Based on Caliph Umar bin Abdul Azis (682-720 AD) that turned off the oil lamp every time personal matters were assessed, the patterns by which conflicts of interest need to be avoided were adequately explained. This was due to the observation of the issue as a form of corruption often performed without the knowledge of the actor. It is also considered a norm that includes the use of state or company facilities (office supplies, telephone, internet, and car) and working

time for personal purposes. Furthermore, conflicts of interest have reportedly caused bias in decision-making processes (Moore, Tanlu and Bazerman, 2010), and have affected thinking procedures (cognitive) through two patterns, namely conscious and subconscious (self-interest). This issue is declared as "human nature" when a moral dilemma is observed, indicating that individuals prioritized personal interests over common or organizational goals. Although these moral selections are not developed in sterile conditions, they are still part of social interaction, leading to the emergence of "collusion" and "nepotism". In this case, decisions commonly depend on social motives, such as showing loyalty, maintaining trust, and returning favours (Moore and Loewenstein, 2004).

From these descriptions, conflict of interest is a significant issue that affects ethics by distorting decision-making processes and generating destructive organizational consequences. This issue is mostly observed in various types, with Cossin and Lu (2017) categorizing it into 4 tiers, where the occurrence of moonlighting was ranked as a tier-I conflict. Regarding this explanation, tier-I conflicts of interest are the actual or potential issues found between the board members (directors and commissioners in civil law) and the corporate organization. This simple concept indicates that directors should not capitalize on the personal interests attached to their organizational positions. As the primary decision-makers in the organization, the board members only need to act in the interest of the company owners. Subsequently, the key conflicts of interest include setting salaries and benefits, misusing company assets, self-dealing, insider information and trading, as well as neglecting board work. Directors and board members are also expected to always act ethically, promptly disclose material facts/potential issues, and perform appropriate corrective action. In this case, the organizational organs that fail to dedicate their efforts, commitment, and time to their work, often constitute a conflict

between themselves and the company. For example, the moonlighting performance of directors or commissioners in several companies to gain personal benefits from remuneration and compensation packages is a conflict of interest form.

In tier-I, conflicts of interest are commonly inherent within individual actors, leading to the immediate portrayal of their integrities. The embodiment of a member's integrity also falls within the domain of "official ethics", both in the private (corporate organizations) and public (government/public service organizations) spheres. One of the key principles of public service is the subordination of private interests under governmental goals. In this case, the failure to perform is a major cause of most unethical behavior in the public sector. Furthermore, conflicts of interest often occur in situations where public officials have personal or other goals, such as influencing the impartial and objective performance of their organizational duties. Public ethics also reflects the standards or norms determining the good-bad and right-wrong values of the individual policy actors' behaviours, actions, and decisions. These actors are mostly the state administrators to exponents of corporate organs. In Indonesia, a state organizer actor is bound by the **General Principles of Good Governance (GPGG)**. This principle is used as a reference during the implementation of authority for government officials, regarding issuing a one-time decision (*einmalig beschikking*) and developing a continuous regulation (*dauerhaftig regeling*) within the public administration (Soeprapto, 2007).

Individual actors of state administrators are defined in several policies, including Law Number 28/1999 on Clean and Free Administration from Corruption, Collusion, and Nepotism. In the general provisions of this Law, State Administrators are the Officials that carry out executive, legislative, or judicial functions. Their main roles and duties are also related to the administration of the state, concerning

the appropriate provisions of applicable laws and regulations. As explained in Article 2, State Officials emphasized the following, (1) Highest State Institution, (2) High State Institutions, (3) Ministers, (4) Governors, (5) Judges, (6) Individuals applicable by laws and regulations, and (7) Other officials with appropriate strategic functions. In this context, the phrase "other officials with appropriate strategic functions", prioritized the organizational organs *whose duties and authority in carrying out state administration were prone to practices of corruption, collusion, and nepotism. These officials included the following, (1) Directors, Commissioners, and other structural organs at State and Regional-Owned Enterprises, (2) Head of Bank Indonesia and National Banking Restructuring Agency, (3) Heads of State Universities, (4) Echelon 1 and equivalent officials in the civil, military, and Indonesian Police, (5) Prosecutors, (6) Investigators, (7) Court clerks, and (8) Project leaders and treasurers.*

According to Law Number 37 of 2008 on the Indonesia Ombudsman, public services were organized by state and government officials, including those coordinated by SOE, ROE, and private entities. They were commonly assigned to organize specific public services, with some or all sourced from the State and Regional Budgets. Law Number 14/2008 on Public Information Disclosure also indicated that *Public Institutions were executive, legislative, judicial, and other sources, whose main functions and duties prioritized the administration of the state. In this case, part or all of its funds originated from the State/Regional Revenue and Expenditure Budget, public donations, or abroad.*

From these aforementioned laws, a "Public Official is a person that occupies a specific position in government and non-government institutions, whose functions emphasized the administration of the state. In addition, the fund source originates from the State and Regional Budgets". Regarding the treasury of policies at the level of the Law, a prohibition of moonlighting was explicitly (*per se*) and implicitly observed through

the conflicts of interest restriction after inventory performances. Subsequently, this observation was carried out through affiliate relationships in general policy, such as government administration, public services, and limited liability companies. The moonlighting prohibition was also observed through the associations in specific laws, including State civil apparatus, Indonesian Armed Forces and Police, Lecturers, SOE, and capital markets.

Based on Table 3, besides the aforementioned legal materials, the prohibition against moonlighting is also contained in the hierarchy of the laws one level lower than the government or high state institution regulations, for example,

- a. Government Regulation Number 11 of 2017, concerning the Management of State civil apparatus.

Article 53: *Administrative Positions (AP)* is prohibited from moonlighting with *Functional Positions (FP)*. This indicates that "The prohibition of moonlighting aims to optimize the implementation of tasks and achieve organizational performance".

Article 98: In optimizing the implementation of tasks and achieving organizational performance, functional officials are prohibited from moonlighting with *Administrative or High Leadership Positions (AP & HLP)*. However, the competence and work scope of these positions are similar and inseparable from the duties of FP. The exceptions to Article 98 are also specifically explained in its Elucidation as follows, (a) Prosecutors appointed as the head, deputy leader, or overseer of the district attorney's office, (b) Associate Expert Drafter of Constitution appointed as Director of Drafting or Harmonization at the Directorate General of Legislation, and (c) Principal Expert Diplomat appointed as Director General for America and Europe.

To avoid conflicts of interest, moonlighting is prohibited in the organizational unit. Based on the

- Government Regulation Number 11 of 2017, 18 and 26 words of morality and integrity were observed, respectively.
- b. Government Regulation Number 45 of 2005, regarding the Establishment, Management, Supervision, and Dissolution of SOE
Paragraph 2 of Article 49 states that the "Members of the Supervisory Board consists of the official elements under the Technical and Finance Ministers, as well as the Authority and Heads of departments/non-departmental institutions, whose activities are directly related to public companies". Regarding the *argumentum a contrario*, this provision applies to the SOE of a Public Company, whose administrative organ prioritizes the Supervisory Board. This shows the prohibition of the SOE of a company, whose managerial organ encompasses the Board of Commissioners.
 - c. Regulation of the Indonesia Audit Board Number 4/2018 concerning the Ethics Code
Law Number 15 of 2006 concerning the Indonesia Audit Board strictly prohibits moonlighting, *per se*, and only applies to its members. Article 29 of this Law also requires the Board to compile a code of ethics containing the norms each member and auditor should obey in carrying out their duties. This policy is used to maintain their dignity, honour, image, and credibility. It has also been severally amended, most recently by the Indonesia Audit Board Regulation Number 4 of 2018, concerning the Code of Ethics applied to members and examiners. Article 6, paragraph 2 of this regulation subsequently contains a prohibition for auditors/investigators to become business administrators financed by the state budget.
Some regulations still allowed the implementation of moonlighting despite the several prohibitions observed. In the hierarchy of policies, this implementation is one level lower than Government Regulations, namely:
 - a. Financial Services Authority Regulation No 33/POJK.04/2014 concerning Issuers or Public Company Directors and Board of Commissioners.
(1) The Board of Commissioner Members implemented moonlighting with the following, (a) maximum of 2 Issuers or other Public Company's Director groups, and (b) no more than 2 Issuers or other Public Companies.
(2) When a member does not moonlight as the Board of Directors and Commissioners, the process is subsequently implemented by concerned parties with a maximum of 4 other Issuers or Public Companies.
This regulation negates the fiduciary duties through the prudentiality principle of the Board of Commissioners member. For the Financial Services Authority (FSA), the duties and functions of the commissioner group, to supervise and provide advice, are performed as a part-time job. Furthermore, in the FSAR treasury, no cooling-off period term is required for an FSA employee who has stopped working based on the ability to work in a business entity supervised by the FSA.
 - b. SOE Ministerial Regulation Number PER-10/MBU/10/2020 concerning Amendments to SOE Ministerial Regulation Number PER-02/MBU/02/2015 regarding Requirements and Procedures for Appointment and Dismissal of Board of Commissioners and Supervisors.
This regulation permits the Board of Commissioners and Supervisors to implement moonlight in other non-SOE companies, according to the provisions of sectoral laws and regulations. In this case, the moonlighting permission is conditional as an obligation to meet 75% of attendance at SOE Board of Commissioners or Supervisors meetings for at least one year. This requirement emphasizes the acquisition of bonuses or performance incentives for those concerned.

Besides deviating from Article 33 of the SOE Law and the *raison d'être* prohibition of moonlighting, SOE Ministerial Regulation Number PER-10/MBU/10/2020 also explicitly explains the position of the State-owned Enterprise Ministry. This indicates that the measure of a person's performance is to meet the attendance and not oversee. From this context, the duty and responsibility of the commissioner are performed as a part-time job.

Based on the comparison, SOE Ministerial Regulation Number PER-10/MBU/10/2020 contradicts Government Regulation Number 11 of 2017. This shows that the Government Regulation is above the Ministerial law in the hierarchy of policies, asides from contradicting 5 Laws that *per se* prohibit public officials from moonlighting. Meanwhile, only Public Companies are exempted as the Supervisory Board.

In Indonesia, "integrity" is a popular term since the signing of the Pact was declared mandatory for officials, civil servants, and state apparatus, through the Regulation of the Minister for Administrative and Bureaucratic Reform Number 49 of 2011. This prioritizes the General Guidelines for Integrity Pacts within Ministries/Agencies and Local Governments. It is also accompanied by a 7-point Pact format, which includes (1) playing a proactive role in preventing corruption, collusion, and nepotism, as well as not involving oneself in disgraceful acts, (2) not directly or indirectly asking for or obtaining gifts in the form of bribes, presents, assistance, or other forms, (3) being transparent, honest, objective, and accountable in task performances, (4) **avoiding conflicts of interest in carrying out tasks**, and (5) setting an example in compliance with the policies of task performance.

Law Number 14 of 2005 concerning Teachers and Lecturers has also provided guarantees for the adequacy of professorship income, leading to

the support for the implementation of moonlighting and conflicts of interest. Based on the Regulation of the Finance Minister Number 164/PMK.05/2010, a professor is expected to obtain professional and honorary allowances of 1 and 2 times the basic salary, respectively. In this case, a mistake is immediately claimed and categorized when a professor implements moonlighting, due to violating public ethics through greed. This is in line with Gebhard Kirchgässner (2014), where "moneygrubbing" or "money-seeking" was easily found in the academic community, whose currency is reputation. From this context, the behaviour of several leading economists during the financial crisis was responsible for the greedy attitude. In this case, they often risked their reputation as independent scientists by obtaining large sums of money from the industry in exchange for writing supportive scientific papers for them. This was in line with A Report on Harvard's Enron Entanglements, as quoted by da Silveira (2013). Therefore, moonlighting is unable to be carried out with a Lecturer Workload of at least 12 to 16 credits per semester, except by stealing time or manipulating efficiency forms.

Besides integrity being easily emphasized, its meaning is also very easy to reduce. In this case, many definitions are observed for the term, including those available on Merriam-Webster as follows, **1:** company adherence to a code of specifically moral or artistic values (INCORRUPTIBILITY), **2:** an unimpaired condition (SOUNDNESS), and **3:** the quality or state of being complete or undivided (COMPLETENESS).

In one of the seminal, Jensen, Erhard, and Zaafron (2009) attempted to convey the idea that integrity was a positive model, regarding the combination of three normative phenomena, such as morality, ethics, and legality. It was also known as a positive model due to its describing behavioural patterns, with other scholars referencing it as an approach capable of being empirically

tested. Subsequently, morality, ethics, and legality were considered normative phenomena, regarding their emergence from the standards determining desired or undesired behavior.

A year after the publication of the Minister of State Apparatus Empowerment and Bureaucratic Reform Regulation Number 49 of 2011, No. 37/2012 of the same policy was issued, concerning General Guidelines for Handling Conflicts of Interest. This regulation explained that 11 forms of conflict of interest commonly encountered included the following, (1) the use of office/agency assets for personal gain, (2) the use of office/agency confidential information for private benefits, (3) moonlighting that causes the utilization of one position for the benefit of another, (4) granting special access to specific parties in the auction for goods and services procurement, and (5) moonlighting or outside employment asides from the main job. In this case, moonlighting or outside employment was the main source of the conflicts of interest, due to its frequent recurrence. This regulation has reportedly not considered the United Nations Convention Against Corruption (2004), which includes post-employment work/business activities in the public sector, without going through cooling-off periods.

Since integrity is defined as the quality/state of being complete or undivided, moonlighting is then an unclean (*mala per se*) behavior that should be prohibited (*mala prohibita*). For example, a director general of a ministry or a professor doubling as a company commissioner often tend to encounter difficulties when answering questions emphasizing the SOE or institution they are employed with. In this case, the affected person is declared not to have met the completeness criteria irrespective of the answers provided.

3. METHODS

This doctrinal legal analysis was only aimed at written regulations or other legitimate materials (Soekanto & Mamudji, 2004), and

began with an inventory of positive laws, principles, and constitutional philosophy (Wiradipradja, 2016). In this analysis, an authoritative primary material containing legislation, official records, and policy decisions obtained from the National Legal Documentation and Information Network was used (<https://jdihn.go.id/>). The publication of the Annual Report (<https://idx.co.id/perusahaan-tercatat/laporan-keuangan-dan-tahunan/>) accountable to the GMS available on the Indonesia Stock Exchange's website was also included in the primary data. Meanwhile, the secondary material included textbooks, legal journals, and related Ministry websites. After the collection of these materials, all the laws and regulations regarding the concerned legal issues were reviewed using a statute approach (Marzuki, 2014).

The consideration of the analytical focus was the moonlighting of the commissioners at public SOE, which contained the word "persero" (company) in its name. Besides, the state was also the majority shareholder and subject to the SOE Law. Since public state-owned enterprise differed from other business organizations, it was then simultaneously bound to various Laws (Appendix 1) and Government Regulations. In this analysis, two sample choices were observed, namely (1) the public SOE companies that are the constituent components of the IDXBUMN20 index, and (2) the stock information data available on <https://bumn.go.id/investor/stock>. From this context, option (1) was completely ruled out because of the naming inconsistency, by including 2 public SOE and "grandchildren" of SOE. Based on the legal fact that "SOE was only bound by Law Number 40 of 2007 concerning Limited Liability Companies", screening was subsequently carried out to determine the appropriate state-owned enterprise. This process emphasized 14 SOE, with the rest being the limited liability companies only subject to the Company Law.

Table 3. Public SOE from Initial Data and Screening Results

No	Public SOE (initial data)	Public SOE (screening result)	No
1	Krakatau Steel (Persero) Tbk	Krakatau Steel (Persero) Tbk	1
2	Semen Baturaja (Persero) Tbk	Semen Baturaja (Persero) Tbk	2
3	Semen Indonesia (Persero) Tbk	Semen Indonesia (Persero) Tbk	3
4	Telekomunikasi Indonesia (Persero) Tbk	Telekomunikasi Indonesia (Persero) Tbk	4
5	Bank Negara Indonesia (Persero) Tbk	Bank Negara Indonesia (Persero) Tbk	5
6	Bank Rakyat Indonesia (Persero) Tbk	Bank Rakyat Indonesia (Persero) Tbk	6
7	Bank Tabungan Negara (Persero) Tbk	Bank Tabungan Negara (Persero) Tbk	7
8	Bank Mandiri (Persero) Tbk	Bank Mandiri (Persero) Tbk	8
9	Adhi Karya (Persero) Tbk	Adhi Karya (Persero) Tbk	9
10	Pembangunan Perumahan (Persero) Tbk	Pembangunan Perumahan (Persero) Tbk	10
11	Waskita Karya (Persero) Tbk	Waskita Karya (Persero) Tbk	11
12	Wijaya Karya (Persero) Tbk	Wijaya Karya (Persero) Tbk	12
13	Garuda Indonesia (Persero) Tbk	Garuda Indonesia (Persero) Tbk	13
14	Jasamarga (Persero) Tbk	Jasamarga (Persero) Tbk	14
15	Perusahaan Gas Negara Tbk		
16	Bukit Asam Public Tbk		
17	Timah Tbk		
18	Aneka Tambang Tbk		
19	Indofarma Public Tbk		
20	Kimia Farma Tbk		
21	Indosat Public Tbk		
22	Bank Bukopin Tbk		

Source: Data Processed

An examination was also carried out on the 2020 Annual Report of the 14 public SOE. In this survey, the results obtained were subsequently confirmed by the data available on the website of each ministerial or non-ministerial state institution. This was to ensure whether the members of the commissioners were Public Officials or not. Based on Table 4, the names of the members were re-screened with the data available on the Higher Education Database, specifically the academics, through the website, <https://pddikti.kemdikbud.go.id/>.

4. RESULTS AND DISCUSSION

Based on the results (Figure 1), 63 moonlighting activities were conducted at the 14 public SOE companies with 105 members of the board of commissioners. This indicated that a total of 30, 23, and

10 of these activities were carried out by the Ministry, Non-Ministry, and Non-state civil apparatus, respectively. In this case, 13 of the 63 moonlighting was also performed by professors/lecturers.

Regarding the observations on the 2020 Annual Report of the 14 public SOE, a systematic failure was found to understand the term "affiliated relationship". For example, a person was described as the Inspector General of the Ministry of Public Works and Public Housing, as well as other position column. However, the description in the affiliation column was filled with "Has no association with other members of the Board of Commissioners, Directors, or Major/Controlling Shareholders". Since Law Number 17 of 2003 stipulated that SOE assets were part of state finances, every Public Official and Special Staff of the Minister automatically obtained

a salary from the State Budget. The private university lecturers who obtained honorary allowances from this budget also had an affiliated relationship with their shareholders, namely the State.

According to the results, the term, "Ministerial Special Staff", was described. To determine the appropriate description of this term, a reference was used in the form of Presidential Regulation Number 68 of 2019, concerning the Organization of State Ministries. In this regulation, the special staff were not directly appointed by the Minister, although they were nominated by the President. When the President declared approval, the relevant Minister was then permitted to issue a Decree of Appointment. From these results, the basic difference between the concerned Ministerial organs proved that the Expert Staff was an organic position, one unit with the institutional organization of the ministry. It was also a state civil apparatus with an Admiral Middle High Leadership Position. Meanwhile, the Special Staff was not included in the Admiral or Primary High Leadership Position varieties. Even when they were not included in the High Leadership Position, the financial rights and other facilities still showcased maximum equivalents to the Admiral group and were paid from the State Budget. In this case, a Ministerial Special Staff was described as any individual not bound by Law Number 5 of 2014 concerning the State Civil Apparatus. This included those paid through the State Budget despite not carrying out the oath of a federation civil apparatus. Subsequently, new nomenclatures, namely "Ministerial Expert and Assistance Team", as well as "Professional Advisors", did not have references to regulatory provisions.

Moonlighting was found by the state internal supervisory apparatus, regarding Article 49 of Government Regulation Number 60/2008 concerning the Internal Control System. This included the echelon 1 officials of supervisory agencies, namely 1 inspector general of the Ministry of Public Works and Housing, as well as

2 echelons 1a staff of the BPKP (FDSA). Moonlighting by Ministry and Non-Ministry state civil apparatus was also entirely carried out by echelon 1 or officials one level below the Minister, namely (1) Director, Secretary, and Inspector General, (2) Main Secretary of the Agency, (3) Deputy Minister, and (4) Deputy Agency. Meanwhile, the activity by non-state civil apparatus, Ministerial Special Staff, and academics were intertwined with up to 3 or 4 varieties. For example, a professor concurrently implemented the positions of Study Program Director and Head of the Center at a university, and also served as an Expert Advisor in a non-ministerial agency. In this case, the performances of the professor in teaching, supervising, analyzing, and carrying out all assigned duties at every position held were unimaginable. Another moonlighting also claimed to be a professor, although the name was not found in the Higher Education Database.

According to Government Regulation Number 45 of 2005, moonlighting in an SOE was understandable when companies were observed as Perusahaan Umum (Perum) entity, regarding the stipulation in Article 49. This stipulation was subsequently a form of the prohibition against moonlighting, as a public official under the technical ministries and Ministry of Finance (echelon 1) in the SOE companies. From this context, all the public officials nominated and elected by the Attorney of SOE Shareholders to become members of the Board of Commissioners in the state-owned enterprise did not abide by the Government Regulation Number 45 of 2005.

The Deputy Minister of SOE was also found to be a commissioner of Bank Rakyat Indonesia. Based on Article 65 of Presidential Regulation Number 68 of 2019 concerning the Organization of State Ministries, some Ministers and their deputies were a unified element of Ministry leaders. Subsequently, the prohibition of moonlighting by the Minister was regulated in Article 23 of

Law Number 39/2008 concerning State Ministries. Besides the violations of Government Regulation Number 45/2005 and Article 23 of Law Number 39/2008, the moonlighting of a Deputy Minister as Commissioner of public SOE also caused difficult experiences for company auditors, as well as the regulators and supervisors of the industrial sector. This was because the regulated, supervised and inspected parties were the companies where the shareholders' power of attorney depended on the organ of the board of commissioners (Appendix 2).

Based on the results, 2 FDSA leaders met the criteria for Article 4 of Presidential Regulation Number 192/2014, namely commissioners at Krakatau Steel and Pembangunan Perumahan. Meanwhile, the main duties of the FDSA were the implementation of audits, reviews, evaluations, monitoring, and other supervisory activities on the planning, implementation, and accountability of state/regional. Their duties also emphasized revenue and state/regional financial expenditure accountabilities, as well as national development. Subsequently, they prioritized other activities, whose finances were wholly or partly funded by the state/regional budget and subsidies, including the business entities where various interests of the Central and Regional Governments were embedded. This Presidential policy was also a derivative and technical guidance from Government Regulation Number 60/2008, concerning the Internal Control System. In addition, Article 49 of this Regulation explicitly stated that the government's internal control apparatus included the FDSA (Appendix 2).

According to the perspective of morals, ethics, and **the General Principles of Good Governance**, moonlighting was prohibited. This activity was explicitly prohibited through 7 laws and regulations in the policy hierarchy, namely (1) Article 17 of Law Number 25/2009 concerning Public Services, (2) Article 2 of Law Number 2/2002 regarding the Indonesian Police, (3) Article 47 of Law Number

34/2004 concerning the Indonesian Armed Forces, (4) Article 33 and its elucidation of Law Number 19/2003 regarding SOE, which prohibited public officials, service implementers, as well as the members of the Armed Forces and Police from actively moonlighting, (5) Article 28, letter d Law Number 15/2006, concerning the Supreme Audit Institution prohibiting its members from moonlighting, (6) Article 22 of Law Number 21/2011, regarding the Financial Services Authority (FSA) restricting its commissioners from moonlighting, and (7) Article 23 of Law Number 39 of 2008, concerning State Ministries prohibiting Ministers from holding moonlighting as commissioners or directors in public or private companies.

Based on the results, moonlighting was restricted through a prohibition approach for public officials, service implementers, directors, and boards of commissioners. This was to prevent the conditions causing conflicts of interest, which were subsequently regulated through 4 other policies, namely (1) Law Number 8/1995 concerning the Capital Market, which prohibited affiliation relations, (2) Law Number 40 of 2007 regarding Limited Liability Companies, (3) Law Number 5 of 2014 concerning State Civil Apparatus, and (4) Law Number 30 of 2014 regarding Government Administration.

One level below the Law in the hierarchy of statutory regulations, two Government Policies were also observed. Firstly, Government Regulation Number 45/2005 concerning the Establishment, Management, Supervision, and Dissolution of State-Owned Enterprises. This stated that the officials under the technical ministries and Ministry of Finance became the Supervisory Board of SOE, with legal status as Public Companies. Secondly, Government Regulation Number 11/2017 regarding the Management of Civil Servants. This indicated that administrative officers were prohibited from concurrently implementing Administrative and Functional Positions with the considerations explained in Article

53. In this explanation, "The prohibition of moonlighting aimed to optimize the implementation of tasks and achieve organizational performance". Regarding Article 98 of this Government Regulation, functional officials were also prohibited from performing moonlighting with Administrative or High Leadership Positions. However, restrictions were not implemented for the positions whose competence and field of duties were similar and inseparable from FP (Functional Positions).

The results also showed that 2 former FSA officials were found at Bank Rakyat Indonesia (BBRI) and Bank Mandiri (BMRI). Despite this observation, no prohibition was still legally stipulated for former FSA officials to work anywhere after leaving the organization. This included becoming a commissioner of a Public Company, which was likely to be carried out after observing a cooling-off period, as stated in Article 12 of the United Nations Convention Against Corruption in the following verbatim: *preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure*. Based on this stipulation, the prevention of conflicts of interest should be performed by appropriately imposing restrictions on the professional activities of former public officials after their resignation or retirement. This convention had been ratified as Law Number 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption 2003 as a regulation. In this case, the stipulation explicitly prohibited all forms of moonlighting by public officials, even for those that had retired, until the cooling-off period was over.

5. CONCLUSION

According to the results, weaknesses were observed in the following, (1) the internal control and supervision (inspectorate) functions within each ministry/non-ministerial institution, (2) the low supervision function by the FDSA in the originating agencies, and (3) the audit function by the FDSA. Regarding SOE, Supreme Audit Institution established three types of audits, namely financial, performance, and Pemeriksaan Dengan Tujuan Tertentu (PDTT), which is an inspection of compliance with laws and regulations (BPK, 2017). In a compliant audit, moonlighting should have been detected earlier, compared to the Ombudsman of Indonesia and the Business Competition Supervisory Commission. The Ministry of State Apparatus Utilization and Bureaucratic Reform also administered two regulations, namely (1) Law Number 25 of 2009 concerning Public Services, and (2) Law Number 30 of 2014 concerning Government Administration, which had become a powerful rule by not enforcing regulations against position trap actors. This was slightly similar to the State Civil Apparatus Commission, which did not carry out its main functions, including the implementation of basic norms, codes of ethics and behavior. Besides, it also had functions as the implementation of the merit system in policy and management within government agencies. Based on these results, the state was harmed by the moonlighting of public officials as commissioners, which were paid remuneration. Performance and honorary allowances were also very expensive for the size of the main job partly performed due to the subsequent services as a commissioner. Moreover, Public SOE was disadvantaged in paying honorariums, allowances, facilities, and bonuses for the part-time job of the commissioners and vice versa. The climate of healthy business competition was also disrupted by the

officials regulating the industry with their interests as commissioners in Public SOE. In response to these disruptions, moonlighting was prohibited. At the same time, this prohibition was a form of the conflict-of-interest arrangement selected by the state, through the laws that explicitly and implicitly restricted moonlighting. In this case, the moonlighting of the public officials issued in the 14 Public SOE showed a lack of integrity caused by ignorance or incompetence. From this context, ignorance is an insubordination jointly carried out by the following, (1) the attorney power of Public SOE Shareholders that nominated and elected public officials to become commissioners, (2) the concerned public officials willing to be nominated and elected, and (3) the oversight work unit at Public SOE, which prioritized the applicable law. Meanwhile, incompetence focused on the three parties' legal literacy, namely the ability to read laws and regulations, including compliance.

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Appendix 1. The Treasury of the Law Prohibiting Moonlighting/Conflicts of Interest

Explicit Prohibits Moonlighting		
No	Law	Verbatim
1	Law Number 2 of 2002 concerning the Indonesian Police	Article 28 (3) states that members of the Indonesian Police are likely to occupy positions outside the force after resigning or retiring.
2	Law Number 19 of 2003 concerning State-Owned Enterprises	Article 33 states that the Board of Commissioner members are prohibited from holding moonlighting as the following, Members of the Board of Directors in SOE, ROE, privately-owned enterprises, and other positions causing a conflict of interest, Other positions appropriate to the provisions of the legislation. Since the prohibition of moonlighting is intentional, the Board of Commissioner members needs to avoid conflicts of interest, as well as devote all their energy and thoughts to the duties, obligations, and achievement of the Persero's goals.
3	Law Number 34 of 2004 concerning the Indonesian Armed Forces	Article 47 (1) explains that soldiers are only capable of occupying civil positions after resigning or retiring from active military service
4	Law Number 15 of 2006 concerning the Indonesia Audit Board	Article 13 states that candidates should meet the following requirements to be elected as a member of the Audit Board, ..., (j) at least 2 years left in their positions as officials in the state financial management environment, Article 28 letter d proves that the Audit Board members are prohibited from performing moonlighting within other state institutions and agencies managing national/foreign private finance.
5	Law Number 39 of 2008 concerning State Ministries	Article 23 demonstrates that the Minister is prohibited from moonlighting as, ..., (b) commissioners or directors in state or private companies, and (c) organizational leadership financed from the State and Regional Expenditure Budget.
6	Law Number 25 of 2009 concerning Public Services	Article 17 explains that the implementers are prohibited from the following, Concurrently serving as a commissioner or administrator of a business organization, regarding the executors originating from government agencies, SOE, and ROE, Leaving their duties and obligations unless they have clear, rational, and valid reasons appropriate to laws and regulations.
7	Law Number 21 of 2011 concerning the Financial Services Authority	Article 22 indicates that the Board of Commissioner members are prohibited from the following, Having a conflict of interest in a Financial Services Institution supervised by the FSA, Becoming a member of the executive or professional organization in the Financial Services Institution, Becoming administrators of political parties, Possessing positions in other institutions, except in carrying out the functions, duties, and authorities of the FSA, based on law.
Prohibiting Conflicts of Interest and Affiliate Relationships		

Explicit Prohibits Moonlighting		
No	Law	Verbatim
1	Law Number 8 of 1995 concerning Capital Markets	These laws prohibit affiliation, inside information, and insiders. In this case, affiliate is defined as follows: a. The family relations due to second-degree horizontal and vertical marriage and heredity, b. The relationship between the Party and the employees, directors, or commissioners, c. The relationship between two companies, where one or more members of the same Board of Directors or Commissioners are observed, d. The direct or indirect relationship between the companies and the authoritative Party, e. The relationship between two companies directly or indirectly controlled by the same Party, f. The relationship between the companies and major shareholders
2	Law Number 40 of 2007 concerning Limited Liability Companies	No verse or article prohibits moonlighting, although every sentence or word "interest" that is an Amar (command), is always accompanied by "company". Meanwhile, "interest", as a prohibition in all sentences, is always followed by the word "personal". Every word, "conflict of interest", is stated in the prohibition sentence. This shows that the prohibition substance of the company organs is inputted into a conflict of interest situation, such as prioritizing personal interests over organizational goals.
3	Law Number 5 of 2014 concerning State Civil Apparatus	The law does not regulate the permissibility or prohibition of moonlighting, although state civil servants need to adhere to a code of ethics or behavior. These ethics include safeguarding against conflicts of interest when carrying out duties. They also emphasize the appropriate use of internal information, tasks, status, power, and position, to obtain or seek profit for oneself or others.
4	Law Number 30 of 2014 concerning Government Administration	In this Law, conflict of interest is defined as the condition of a Government Official, which has a personal interest to benefit themselves or other people in the use of authority. This condition subsequently affects the neutrality and quality of the Decisions or Actions performed. In Article 43, the background of the conflict of interest indicates the following, (a) a personal or business interest, (b) relationships with relatives and family, (c) association with the representatives of the involved parties, (d) a relationship with the organ working and obtaining a salary from the party involved, (e) association with other parties prohibited by the provisions of laws and regulations.
Explicitly Prohibit Moonlighting Within the Framework of Business Competition		
1	Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition	In this Law, moonlighting is prohibited based on the control of the market for specific goods or services. This often leads to monopolistic practices or unfair business competition. As regulated in Article 26, a company director or commissioner is prohibited from concurrently serving another enterprise when the following features are observed for both organizations, Present in the same relevant market, Possess a close relationship in the field and type of business, Collectively control the market share of specific goods or services, leading to monopolistic practices and unfair business competition.
Do Not Prohibit Moonlighting Due to Guaranteed Sufficient Income		
1	Law Number 14 of 2005 concerning Teachers and Lecturers	This law explains that lecturers are professional educators. In this case, a professional is defined as a job or activity that became a source of income for a person. This activity often requires the expertise, skills, or abilities to meet specific quality standards and education. In carrying out professional duties, lecturers are required to earn income above the minimum living needs and social welfare guarantees. These requirements include basic salary, attached allowances, professional, functional, special, and honorary incentives, as well as additional related benefits. The phrase, "an income above the minimum living needs", also emphasizes the monetary values sufficient to reasonably meet the needs of teachers and their families, including clothing, food, shelter, health, education, recreation, and old age security.

Source: Data Processed

Figure 1. Tabulation Results of Moonlighting at Public SOE

No	State Own Enterprises	IDX Code	Σ of commisioner	CONCURRENT			LECTURER/ PROFESSOR	Σ of CONCURRENT	%	%	%	%
				NON	ASN				TOTAL	CONCURRENT		
				ASN	GOV AGENCY	MINISTERIAL				NON ASN	ASN	ACADEMICIAN
1	PT Krakatau Steel (Persero) Tbk	KRAS	6	1	1	2	0	4	67%	17%	50%	0%
2	PT Semen Baturaja (Persero) Tbk	SMBR	7	1	0	2	0	3	43%	14%	29%	0%
3	PT Semen Indonesia (Persero) Tbk	SMGR	7	0	1	3	1	4	57%	0%	57%	14%
4	PT Telekomunikasi Indonesia (Persero) Tbk	TLKM	9	0	0	4	2	4	44%	0%	44%	22%
5	PT Bank Negara Indonesia (Perseo) Tbk	BBNI	10	1	1	3	1	5	50%	10%	40%	10%
6	PT Bank Rakyat Indonesia (Persero) Tbk	BBRI	10	3	3	1	2	7	70%	30%	40%	20%
7	PT Bank Tabungan Negara (Persero) Tbk	BBTN	6	0	1	2	0	3	50%	0%	50%	0%
8	PT Bank Mandiri (Persero) Tbk	BMRI	14	3	3	6	4	12	86%	21%	64%	29%
9	PT Adhi Karya (Persero) Tbk	ADHI	6	0	2	2	0	4	67%	0%	67%	0%
10	PT Pembangunan Perumahan (Persero) Tbk	PTPP	6	0	3	1	0	4	67%	0%	67%	0%
11	PT Waskita Karya (Persero) Tbk	WSKT	7	1	0	3	1	4	57%	14%	43%	14%
12	PT Wijaya Karya (Persero) Tbk	WIKA	7	0	4	1	2	5	71%	0%	71%	29%
13	PT Garuda Indonesia (Persero) Tbk	GIAA	5	0	0	0	0	0	0%	0%	0%	0%
14	PT Jasamarga (Persero) Tbk	JSMR	5	0	4	0	0	4	80%	0%	80%	0%
			105	10	23	30	13	63	60%	10%	50%	12%

Source: Processed Data