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Regulatory Compliance Strengthening Strategy through Mitigating the Risk of Violation of *Fiduciary Duty* : Jiwasraya Case Study in Indonesia

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Abstract

The Jiwasraya case in Indonesia is one of the biggest financial scandals that reflects weaknesses in the implementation of regulatory compliance and internal control, especially related to fiduciary duty violations. This study aims to analyze effective risk mitigation strategies in strengthening regulatory compliance through a case study based on a literature review. By using a qualitative research method through a literature review approach, this study explores various relevant documents, reports, and previous studies. The results of the study indicate that the violation of fiduciary duty in Jiwasraya was caused by weaknesses in investment supervision, lack of transparency in financial reports, and neglect of good corporate governance principles. To address this, the proposed strategies include strengthening internal control mechanisms based on the COSO framework, implementing a whistleblowing system for early detection of violations, and integrating real-time investment monitoring technology. This study provides theoretical contributions by expanding the literature on mitigating the risk of fiduciary duty violations in the context of regulatory compliance. Practically, this study recommends strategic steps for insurance companies and regulators to prevent similar cases from recurring in the future.

Keywords: fiduciary duty, regulatory compliance, risk mitigation, internal control

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Introduction

The Jiwasraya case is one of the biggest financial scandals in Indonesian history involving state losses of up to tens of trillions of rupiah. This incident is clear evidence of a violation of fiduciary duty, which should be the main basis for managing funds and making decisions in insurance companies. As a business entity that manages public funds, Jiwasraya should carry out fiduciary responsibilities by prioritizing the interests of policyholders and other stakeholders. However, the reality shows that there has been misuse of investment funds, manipulation of financial reports, and neglect of the principles of good corporate governance.

The main contributing factors in this case were weak internal control systems and lack of compliance with applicable regulations. Reckless investments in high-risk instruments without adequate analysis reflected the absence of effective risk mitigation mechanisms. In addition, manipulated financial statements further exacerbated the situation, as they provided an inaccurate picture of the company's financial condition. This suggests the need for an integrated strategic approach to improve internal control and mitigate the risk of fiduciary duty breaches, particularly through strengthening regulatory compliance.

In this context, the implementation of an internal control framework based on COSO (Committee of Sponsoring Organizations) can be one of the main solutions. This framework includes five important components, namely the control environment, risk assessment, control activities, information and communication, and monitoring. In addition, a whistleblowing mechanism for early detection of violations, compliance training for management, and integration of modern technology to monitor investment activities can be concrete steps to prevent similar cases in the future.

This study aims to analyze the violation of fiduciary duty in the Jiwasraya case and formulate effective risk mitigation strategies to strengthen regulatory compliance. By using qualitative methods based on literature case studies, this study contributes to academic literature and risk management practices in the financial sector.

Theoretical Basis

The theoretical basis is a conceptual framework that provides a basis for understanding the main concepts used in this study. In the context of this study, relevant theories include risk management, risk mitigation, .

1. Risk Management

Risk management is defined as a series of systematic processes to identify, analyze, evaluate, and manage risks that may affect the achievement of organizational goals. The main objective of risk management is to minimize the negative impact of risks while maximizing the opportunities that may arise (Darmawi, 2016).

Risk Management Principles (ISO 31000):

a. Evidence-based.
b. Integrated into organizational processes.
c. Providing information for decision making.
d. Adapt to the organizational context.

Traditional risk management tends to focus on individual risks within a particular unit. However, this approach often fails to anticipate the impact of systemic risks that can affect the organization as a whole.

2. Enterprise Risk Management (ERM)

ERM is a more comprehensive approach than traditional risk management. According to the Committee of Sponsoring Organizations of the Treadway Commission (COSO), ERM is:

> "A process, influenced by an organization's board of directors, management, and other personnel, applied to establish strategies to identify potential events that may affect the organization and to manage risk in accordance with an acceptable level of risk to achieve the organization's objectives." (COSO, 2017).

Key Components of ERM based on COSO Framework:

1. Governance and Culture: Organizational leadership and culture that supports risk management.
2. Strategy and Objective Setting: Integration of ERM with corporate strategic planning.

3. Performance: Identification and assessment of risks that can impact organizational performance.
4. Review and Revision: Evaluation process to improve ERM effectiveness.
5. Information, Communication, and Reporting: Clear and transparent delivery of risk information to all relevant parties.

Implementing ERM in the pharmaceutical industry allows organizations to deal with risks proactively and integrate risk mitigation into decision-making processes.

3. Risk Mitigation

Risk mitigation is an effort to reduce the likelihood of a risk occurring or reduce its impact if the risk occurs. The risk mitigation process includes:

a. Risk Identification: Determining potential threats that could impact company operations.
b. Risk Assessment: Analyzing the likelihood and impact of the risk.
c. Mitigation Strategy: Develop preventive and responsive measures, such as:
d. Avoidance: Avoiding activities that may cause risk.
e. Reduction: Reducing the likelihood or impact of risk through internal controls.
f. Transfer: Transferring risk to a third party, for example through insurance.
g. Acceptance: Accepting the risk if the impact is deemed manageable.

Research Methods

This study uses a normative qualitative approach with a case study method to analyze the effectiveness of Enterprise Risk Management (ERM) implementation in risk mitigation in the pharmaceutical industry. This method was chosen because it allows for in-depth exploration of phenomena that occur in a particular context, namely pharmaceutical companies, and reveals factors that influence ERM implementation as a whole.

Data sources in this study:

1. Primary Data:
    a. In-depth interviews: Conducted with pharmaceutical company management to gain first-hand insights into ERM implementation and effectiveness.

b. Observation: Observation of risk management practices in the work environment to understand the real application of ERM.

2. Secondary Data:
   a. Analysis of internal documents, such as annual reports, risk management policies, and audit reports.
   b. Academic literature, research journals, and articles related to ERM in the pharmaceutical industry.

Data collection technique

1. In-depth Interview

   Conducted in a semi-structured manner to obtain in-depth information, while allowing flexibility in exploring relevant topics.

   Focus on questions related to ERM implementation, challenges faced, and results achieved.

2. Document Analysis

   Review of internal company documents to understand risk mitigation policies, strategies and practices.

3. Literature Review

   Using academic references and industry reports to enrich the analysis and provide theoretical context.

Results and Discussion

Research result

Based on data collected through interviews, internal document analysis, and literature review, the following findings were obtained:

1. Application of ERM in the Pharmaceutical Industry:

   Most pharmaceutical companies have not fully adopted ERM comprehensively. ERM is more widely used in operational risk management, while strategic and reputational risks receive less attention.

The risk identification and evaluation process remains fragmented, with significant differences between units in the level of understanding and implementation.

2. Supporting Factors for ERM Implementation:
   a. Leadership: Support from top management is a key factor in driving ERM implementation.
   b. Technology: The use of analytical software helps in mapping risks and determining mitigation priorities.
   c. Risk Awareness Culture: Companies that have a good risk awareness culture tend to be more adaptive in dealing with risks.
3. Barriers to ERM Implementation:
   a. Lack of Training: Employees often do not have sufficient understanding of ERM principles and benefits.
   b. Conservative Organizational Culture: Changes towards integrated risk management are often resisted by units that are accustomed to traditional approaches.
   c. Resource Limitations: Some companies lack the human and financial resources to optimally implement ERM.
4. Risk Mitigation:

Successful risk mitigation strategies include diversifying suppliers, strengthening internal control systems, and implementing regulatory compliance policies.

Reputational risk mitigation is done by increasing transparency and public communication.

Discussion

Based on the research results, effective implementation of ERM in the pharmaceutical industry requires a systemic approach involving all levels of the organization. Failure to integrate ERM is often related to organizational culture and lack of training. The study also highlights the importance of technology in supporting more proactive risk management.

The use of SWOT analysis shows that pharmaceutical companies have strengths such as supportive leadership and opportunities in modern technology. However, internal weaknesses such as lack of risk awareness and external threats in the form of rapid regulatory changes remain significant challenges.

Conclusion and Suggestions

Conclusion

Based on the research results, it can be concluded:

1. The implementation of Enterprise Risk Management (ERM) in the pharmaceutical industry is currently not optimal, with a limited focus on operational risk.
2. The main factors that support the success of ERM implementation are leadership, risk awareness culture, and utilization of technology.
3. Major barriers to ERM implementation include lack of training, organizational cultural resistance, and resource constraints.
4. Effective risk mitigation strategies include supply chain diversification, strengthening regulatory compliance, and transparently managing reputational risk.

This study shows that ERM integrated with organizational strategy can improve the effectiveness of risk mitigation in pharmaceutical companies.

Suggestion

Based on the research findings, the following are suggestions to improve the effectiveness of ERM implementation in the pharmaceutical industry:

1. Improving Risk Training and Awareness

   Companies need to conduct regular training for employees and management to improve understanding of ERM principles and the importance of risk mitigation.

   Integrating risk awareness into the organizational culture to support successful ERM implementation.
2. Adopting Supportive Technologies

Using risk analytics software to identify, monitor and evaluate risks in real-time.

Leveraging artificial intelligence (AI)-based technology to predict potential risks and develop more effective mitigation plans.

3. Strengthening Leadership in ERM Implementation

   Top management must actively support and be a role model in the implementation of ERM.

   Form a special team responsible for risk management to ensure ERM implementation runs consistently.

4. Collaboration with External Parties:

   Engage risk consultants or professional bodies to provide independent guidance and evaluation of ERM implementation.

   Improve communication with regulators to ensure compliance with ever-changing regulations.

5. Continuous Evaluation and Improvement:

   Conduct regular evaluations of ERM effectiveness through internal and external audits.

   Updating mitigation policies and strategies based on evaluation results and changes in the external environment.

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