

## **BAB 3**

# **ETHICAL GOVERNANCE DAN GOVERNANCE SYSTEMS**

## *Mengapa Etika Penting?*

- *Ethical governance and governance system* adalah konsep serta sistem pengelolaan organisasi berbasis etika.
- **Konsekuensi:** prinsip-prinsip etika harus dimasukkan ke dalam **perencanaan, pelaksanaan, dan pertanggungjawaban** pengelolaan organisasi.

## *Mengapa Etika Penting?*

- **Corporate governance (pengelolaan organisasi) “berbasis etika” sangat penting untuk pencapaian kesejahteraan melalui peningkatan kualitas hidup.**
- **Perusahaan tidak hanya berperan dalam mendorong pertumbuhan ekonomi, tetapi juga meningkatkan kesejahteraan sosial dan kualitas hidup atau kebahagiaan hidup.**

## *Mengapa Etika Penting?*

- Alasan pentingnya ***ethical governance*** serta ***governance systems***.
  - ✓ Pengelolaan organisasi tanpa mengindahkan prinsip-prinsip GCG (Good Corporate Governance) bisa menimbulkan kerusakan ekonomi, sosial, politik, serta alam (***natural resources***) secara dramatis.
- ***Governance systems*** adalah sistem yang dirancang untuk memastikan efektifitas dan efisiensi implementasi ***ethical governance***.

## *Mengapa Etika Penting?*

**Sebelum isu Corporate Governance atau Good Corporate Governance (GCG) mengemuka dan menjadi populer, telah muncul konsep SPI (Sistem Pengendalian Internal), yang di kembangkan oleh COSO (Committee of Sponsoring Organizations), yang secara substantif memiliki misi yang sama, yaitu mengendalikan proses bisnis untuk memastikan pencapaian tujuan organisasi.**

## *Mengapa Etika Penting?*

**COSO (*committee of sponsoring organizations*)** adalah organisasi independen yang anggotannya terdiri dari berbagai asosiasi profesi, seperti:

1. *AAA (the American Accounting Association)*
2. *AICPA (the American Institute of Certified Public Accountants)*
3. *IIA (the Institute of Internal Auditors)*
4. *IMA (the Institute of Management Accountants)* dan
5. *FEI (the Financial Executive Institute)*

## *Mengapa Etika Penting?*

**COSO lahir sebagai akibat dari banyaknya perusahaan publik yang melakukan pelanggaran etika dalam bentuk beragam kecurangan (fraud) melalui penerbitan laporan keuangan yang menyesatkan, hingga melahirkan SOX (Sarbanes-Oxley Act, yang dikenal sebagai Undang-Undang Perlindungan Investor).**

- **COSO merumuskan konsep Sistem Pengendalian Interen (SPI) untuk perusahaan-perusahaan publik, yaitu perusahaan yang menjual sahamnya di bursa efek.**
- **SPI dirancang dan diterapkan dalam perusahaan untuk memastikan proses bisnis dijalankan sesuai dengan peraturan dan kebijakan yang berlaku.**

## *Etika VS SPI*

- **SPI harus terukur dan didokumentasikan untuk tujuan pengujian atas kecukupan dan efektifitasnya.**

**Catatan:**

**CG lebih luas dibanding SPI, karena SPI belum memasukkan prinsip-prinsip etika secara eksplisit.**

## **Elemen SPI menurut COSO:**

- 1. Lingkungan pengendalian (control environment)**
- 2. Pengukuran risiko (risk assessment)**
- 3. Aktivitas pengendalian (control activities)**
- 4. Sistem informasi dan komunikasi (information and communication systems)**
- 5. Pemantauan (monitoring)**

- *Corporate governance* merepresentasikan koordinasi dan harmoni antar stakeholders, untuk menentukan dan mengendalikan kinerja dan arah strategis organisasi.
- **Bad corporate governance leads to bad strategy formulation and implementation** (CG yang buruk akan berakibat pada formulasi dan implementasi strategi yang buruk).

## *Mengapa Etika Penting?*

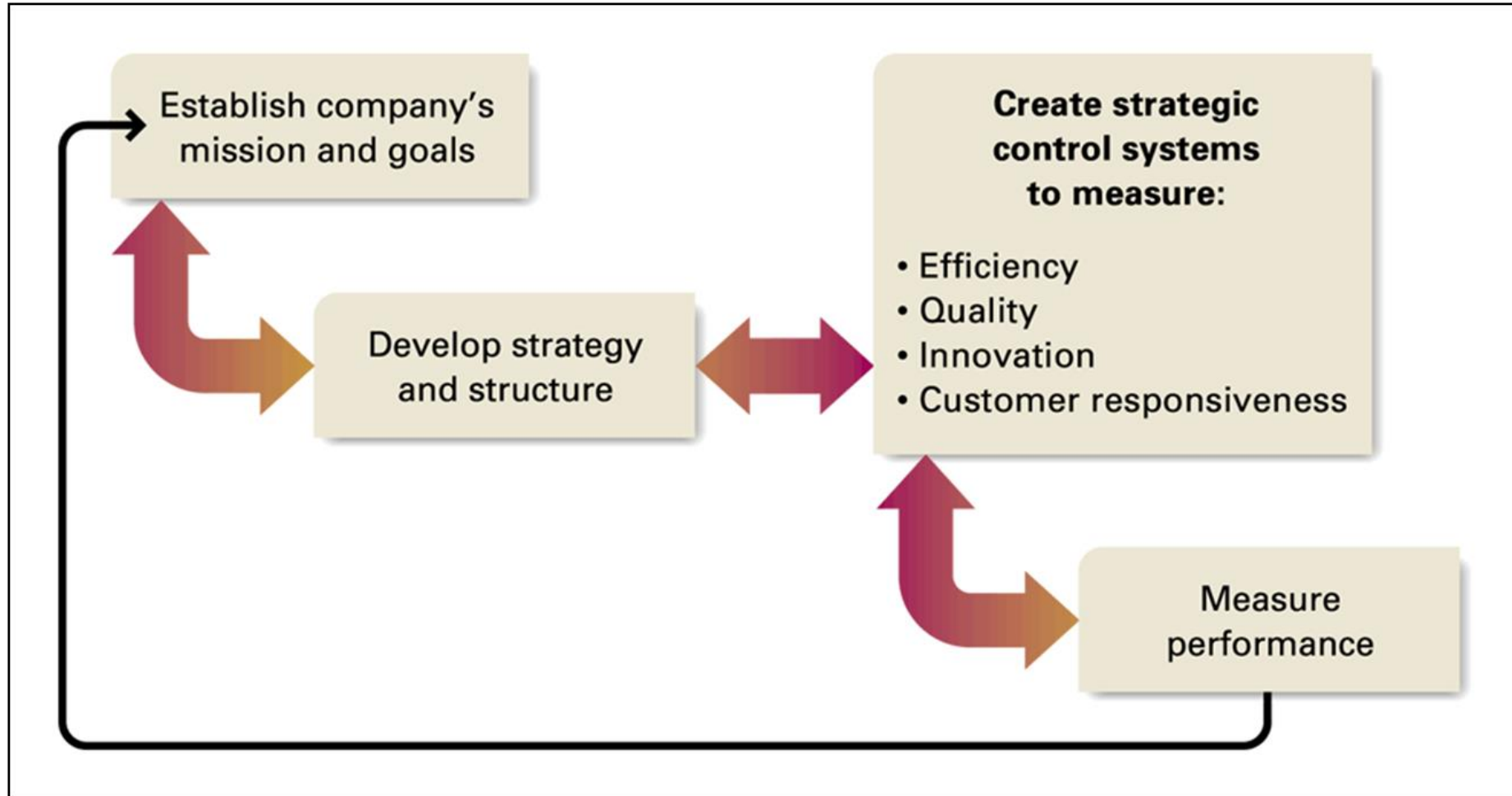
- **Strategi adalah penyesuaian sumberdaya dan kemampuan internal organisasi dengan peluang di lingkungan eksternal organisasi.**
- **Pertanyaan dalam perumusan strategi:**
  1. *Do we have the right strategy, given what we do well?*
  2. *Is our strategy matched to the external environment (economy, social expectations, etc.)?*
  3. *Are we capable of executing the strategy?*
  4. *Do we have the right top management team?*
  5. *If the answer to one or more of these questions is “no,” what do we need to change?*

- ***Bad strategy (bad corporate governance) makes it harder for firms to fulfill their economic and ethical responsibilities to stakeholders, including shareholders and employees.***
- **Strategi yang buruk (CG yang buruk) akan menyulitkan perusahaan dalam memenuhi tanggungjawab ekonomi dan etika terhadap *stakeholders*, termasuk pemegang saham dan karyawan.**

## *Dampak Corporate Gov.*

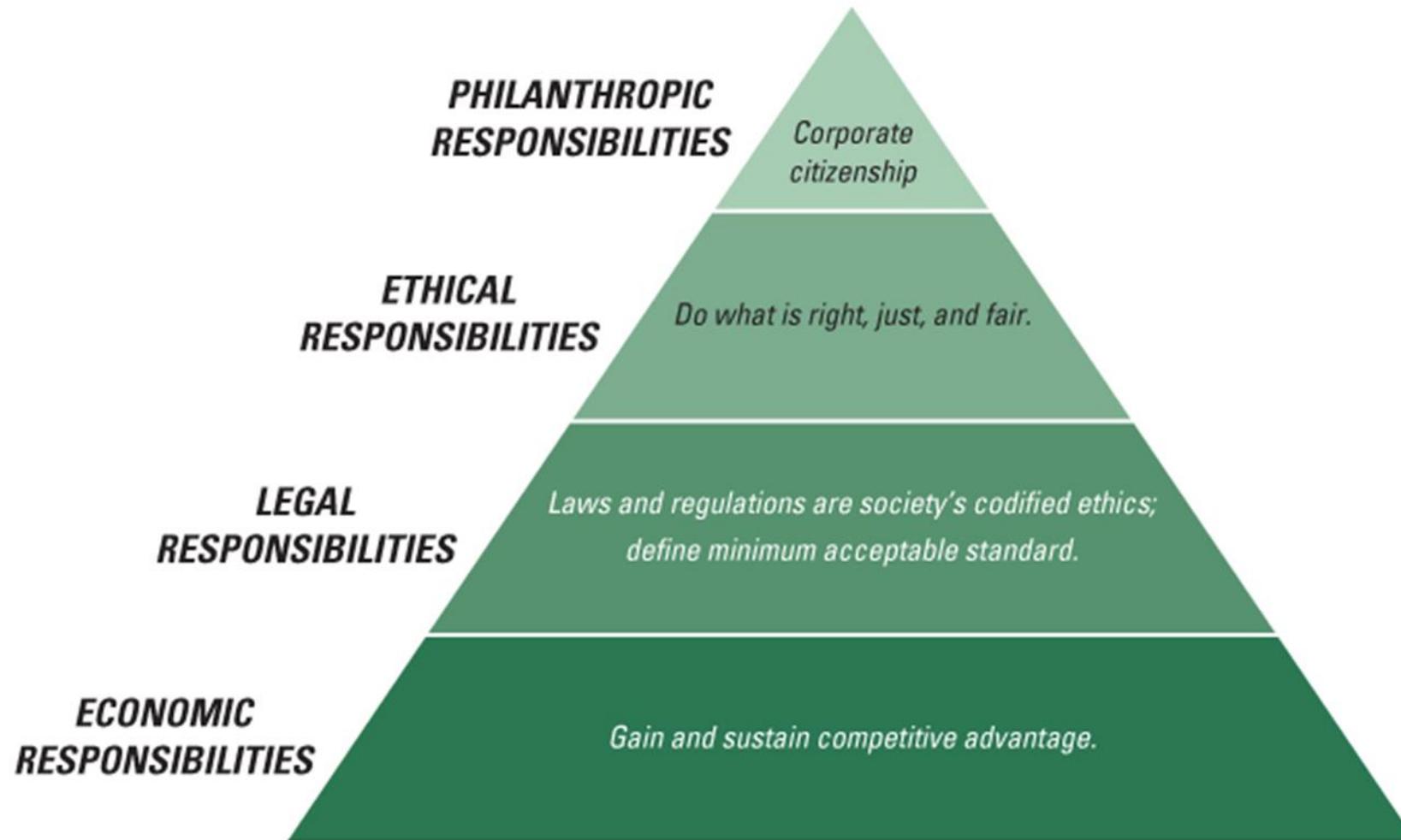
1. Peningkatan tuntutan transparansi pelaporan keuangan dan tanggungjawab sosial organisasi.
2. Peningkatan tuntutan keterlibatan dewan komisaris dalam penetapan strategi serta tanggungjawab organisasi terhadap isu-isu sosial.
3. Peningkatan keterlibatan *institutional shareholders* (*pension funds, mutual funds*) dalam proses corporate governance.
4. Peningkatan pengawasan terhadap komisaris perusahaan dan manajer oleh pemerintah, pemegang saham, ***dan non-shareholder stakeholders.***

## *Pendekatan Pengendalian Organisasi*



- Budaya organisasi berbasis etika dibangun melalui kesadaran tentang peran penting etika untuk keberlangsungan dan kesuksesan jangka panjang organisasi.
- **Prinsip dasar:** kesadaran tentang peran penting hubungan harmonis antara organisasi dengan stakeholders.

## *Hirarki Sukses Organisasi*

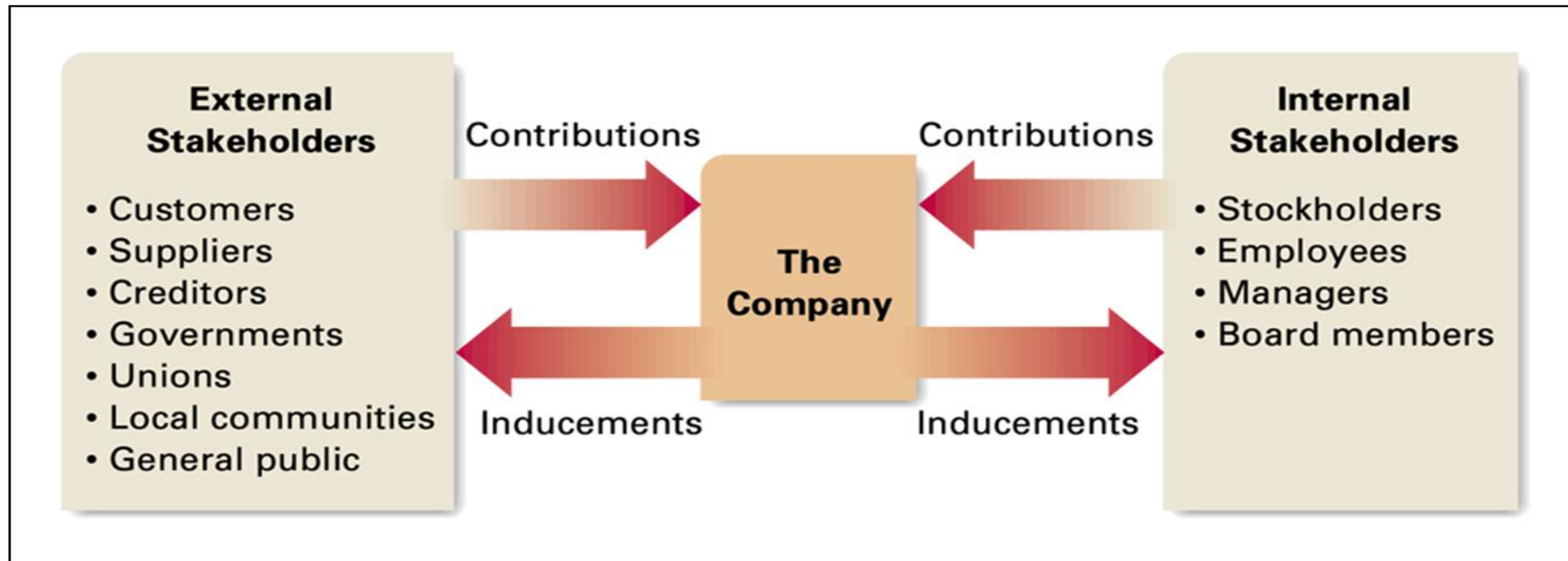


## *Pertanyaan Budaya Organisasi Berbasis Etika*

Pertanyaan-pertanyaan penting untuk membangun budaya organisasi berbasis etika.



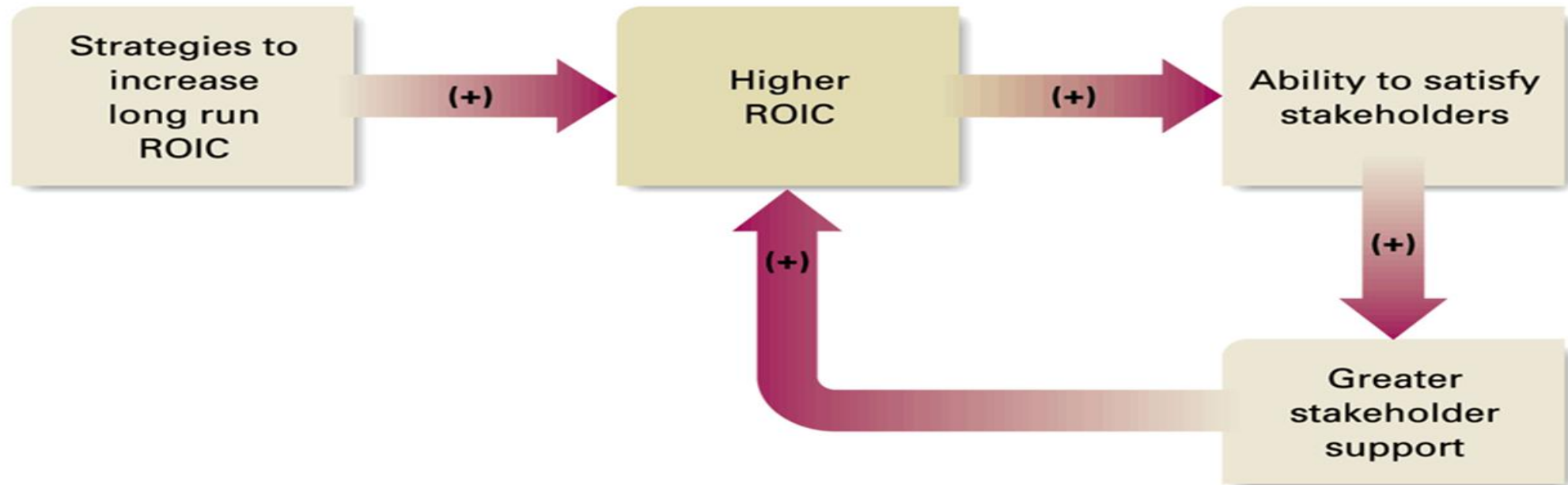
## Interaksi organisasi dengan stakeholders



Inducements = keputusan dan tindakan untuk mendorong stakeholders memberikan kontribusi kepada organisasi secara optimal.

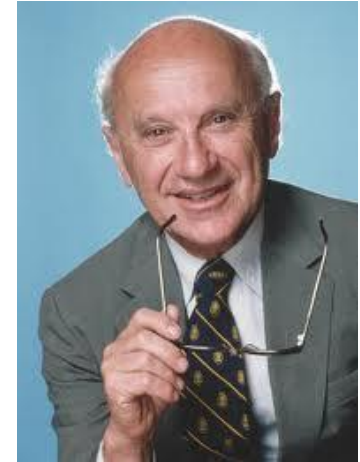
## Proses Pembentukan ROIC

Hubungan antara ROIC (Return on Invested Capital), Kepuasan Stakeholder, dan Dukungan Stakeholder.



## *Pesan Everlasting Milton Friedman*

- **Milton Friedman 1962, mengatakan:**  
“Tanggungjawab sosial bisnis yang utama adalah meningkatkan keuntungan dengan syarat tetap berada pada area aturan bermain (rules of the game).”
- **Today’s businesses tend to do more than just make profits** (pada saat ini, bisnis cenderung tidak hanya berorientasi keuntungan) → **tetapi juga untuk memenuhi tanggungjawab sosial (laba untuk jangka panjang)**



## Core Value Organisasi

Hubungan tiga aktivitas strategis dalam organisasi



## **Penentuan Arah Organisasi (Setting a Direction)**

- Pemahaman lingkungan untuk memperoleh:
  - Pengetahuan tentang stakeholders
  - Pengetahuan tentang tendensi dan kejadian di lingkungan bisnis yang penting untuk diperhatikan.
- Pengintegrasian pengetahuan ke dalam visi organisasi.

## **Designing the organization**

Aktivitas strategis untuk membangun struktur organisasi, tim, sistem, dan proses bisnis untuk memfasilitasi implementasi visi dan strategi pimpinan organisasi.

- Hambatan dalam implementasi visi dan strategi pimpinan:
- Keterbatasan pemahaman tentang tanggungjawab dan akuntabilitas antar manaje.
  - Sistem penghargaan yang tidak memotivasi individu dan kelompok untuk mewujudkan sasaran organisasi.
  - Ketidalcukupan atau ketidaktepatan anggaran dan sistem pengendalian.
  - Ketidalcukupan mekanisme untuk koordinasi dan integrasi aktivitas lintas organisasi.

## **Nurturing an Excellent and ethical organizational culture**

Pengembangan budaya organisasi untuk focus pada kompetensi utama dan standar etika yang tinggi.

Mengatasi hambatan untuk berubah

- Penyebab organisasi menolak dan atau lamban untuk berubah:
  - Kepentingan pribadi pada kelompok *status quo* (kelompok mapan)
  - Hambatan sistematis
  - Hambatan perilaku
  - Hambatan politis
  - Keterbatasan waktu

## **Pemanfaatan Kekuasaan Secara Efektif**

- **Kekuasaan**

- ✓ Kemampuan pemimpin untuk membuat sesuatu terlaksana sesuai cara yang diinginkannya.

- **Organisasi berbasis pada kekuasaan**

- ✓ Posisi formal dalam struktur manajemen sebagai basis pemberdayaan kekuatan pemimpin.

Memotivasi dan menginspirasi orang dengan visi dan misi:

- Lingkungan pembelajar, mencakup:
  - ✓ Komitmen untuk berubah pada seluruh lini organisasi
  - ✓ Berorientasi pada tindakan nyata.
  - ✓ Penggunaan alat dan metode secara tepat.
  - ✓ Pedoman filosofis.
  - ✓ Memotivasi dan menginspirasi dengan visi dan misi.

## Pemberdayaan SDM

- Pemberdayaan SDM pada seluruh lini dan level, mencakup:
  - ✓ **Top-down perspective**
    - Dimulai dari atas.
    - Kejelasan visi, misi, dan sistem nilai perusahaan.
    - Kejelasan tugas, peran, dan penghargaan untuk karyawan.
    - Pendelegasian tanggungjawab.
    - Kejelasan ukuran outcome pada setiap pegawai.

### ✓ **Bottom-up View**

- Dimulai dari bawah melalui pemahaman terhadap kebutuhan pegawai.
- Ajari pegawai dengan keterampilan dan pengendalian diri secara efektif.
- Bangun tim untuk mendorong keterampilan Kerjasama.
- Dorong keberanian mengambil risiko secara cerdas.
- Beri kepercayaan kepada karyawan untuk berkinerja baik.

- Tantangan Status Quo (Kelompok Mapan) dan Pengembangan Kreativitas.
  - ✓ Membangun sensitifitas terhadap hal-hal yang penting.
  - ✓ Membangun “culture of dissent” atau budaya inovatif.
  - ✓ Lindungi budaya keberanian mengambil risiko.
  - ✓ Kembangkan budaya keberanian uji coba dan rasa ingin tahu.

- Membangun Organisasi Yang Beretika
  - ✓ **Ethical orientation (Berorientasi Etika)**
    - Mengembangkan beragam praktik untuk mempromosikan budaya bisnis berbasis etika.
    - Membangun role model etika, credo perusahaan, panduan praktik etika, penghargaan serta sistem evaluasi kinerja berbasis etika, dan secara konsisten mendorong kebijakan dan prosedur berbasis etika.

### ✓ **Ethical values**

- Mengembangkan budaya pencarian peluang praktik etika.
- Mengembangkan sistem organisasi berbasis etika.
- Mengembangkan basis proses pengambilan keputusan berbasis etika, baik oleh individu maupun kelompok)
- Mengembangkan rerangka dasar untuk referensi kesetaraan pandangan tentang etika.

- **Compliance-Based versus Integrity-Based Approaches**
  - ✓ **Compliance-based ethics programs**

Adalah program untuk membangun organisasi berorientasi etika melalui model pencegahan, deteksi, dan denda atas pelanggaran hukum/etika.

- ✓ **Integrity-based ethics programs**  
Adalah program untuk membangun organisasi berorientasi etika dengan cara mengkombinasikan antara perhatian (concern) terhadap hukum dengan penekanan pada tanggungjawab manajerial terhadap perilaku etika.

## **Integrity-based Ethics Programs mencakup:**

1. Pengembangan keterampilan perilaku beretika.
2. Mengevaluasi pedoman utama bagi organisasi dan individu tentang nilai, pemikiran, dan tindakan.
3. Mendeskripsikan tanggungjawab dan gagasan yang diinginkan oleh organisasi tentang arah sasaran dari kebijakan dan praktik etika.

## Key Elements of Highly Ethical Organizations

- Role models
- Corporate credos and codes of conduct
- Reward and evaluation systems
- Policies and procedures

# Excerpts from the Foreign Corrupt Practices Act and Fines

### Prohibited Foreign Trade Practices

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It shall be unlawful for *any domestic concern* or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any foreign official for purposes of—

- A. influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, or
- B. inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or
- C. inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

Also prohibited is any offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value *when given to any person, while knowing* that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of A through C above.

# Pendekatan Legal Formal Etika

## Definitions

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- (1) The term “*domestic concern*” means any individual who is a citizen, national, or resident of the United States; and any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.
- (2) The term “*foreign official*” means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality.
- (3) A person’s state of mind is “*knowing*” with respect to conduct, a circumstance, or a result if—
  - (i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or
  - (ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.Knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.
- (4) The term “*routine government action*” means only an action which is ordinarily and commonly performed by a foreign official in such as obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country. The term “*routine governmental action*” does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.
- (5) The term “*interstate commerce*” means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof.

## Pendekatan Legal Formal Etika

### Exceptions

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- A. Facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or *to secure the performance of a routine governmental action* by a foreign official, political party, or party official.
- B. The payment, gift, offer, or promise of anything of value that was made, *was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country*; or
- C. The payment, gift, offer, or promise of anything of value that was made, was a *reasonable and bona fide expenditure*, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to the promotion, demonstration, or explanation of products or services; or the execution or performance of a contract with a foreign government or agency thereof.

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## Pendekatan Legal Formal Etika

### Penalties

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- A. Any domestic concern that violates this section shall be fined not more than \$2,000,000 and shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.
- B. Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates this section shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.
- C. Any employee or agent of a domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who willfully violates this section, shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.
- D. Any officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.
- E. *Whenever a fine is imposed upon any officer, director, employee, agent, or stockholder of a domestic concern, such fine may not be paid, directly or indirectly, by such domestic concern.*

Source: U.S. Code, Title 15—Commerce and Trade, Chapter 2B—Securities Exchanges, Section 78dd-1.

## **A Code of Conduct for the Multinational Company**

### **Respect Basic Human Rights and Freedoms**

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- Respect fundamental human rights of life, liberty, security, and privacy
- Do not discriminate on the basis of race, color, gender, religion, language, ethnic origin, or political affiliation
- Respect personal freedoms (e.g., religion, opinion)
- Respect local cultural values and norms

## **A Code of Conduct for the Multinational Company**

### **Minimize Any Negative Impact on Local Economic Policies**

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- ▶ Conform to local economic and development policies
- ▶ Avoid adverse effects on currencies and balance of payments
- ▶ Follow policies regarding local equity participation
- ▶ Provide truthful information for accurate taxation
- ▶ Pay fair taxes
- ▶ Source raw materials locally
- ▶ Reinvest profits in local economy

### **A Code of Conduct for the Multinational Company**

#### **Maintain High Standards of Local Political Involvement**

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- ▶ Avoid illegal involvement in local politics
- ▶ Don't pay bribes or other improper payments
- ▶ Do not interfere in local government internal relations

#### **Transfer Technology**

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- ▶ Enhance the transfer of technology to developing nations
- ▶ Adapt technologies to local needs
- ▶ Conduct local R&D when possible
- ▶ Grant fair licenses to use technology

## **A Code of Conduct for the Multinational Company**

### **Protect the Environment**

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- ▶ Follow local environmental-protection laws
- ▶ Actively protect the environment
- ▶ Repair damage to the environment done by company operations
- ▶ Help develop local standards
- ▶ Provide accurate assessments of environmental impact of the company
- ▶ Provide complete disclosure of the environmental effects of operations
- ▶ Develop standards to monitor environmental effects

### **A Code of Conduct for the Multinational Company**

#### **Consumer Protection**

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- ▶ Follow local consumer-protection laws
- ▶ Ensure accurate and proper safety disclosures

#### **Employment Practices**

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- ▶ Follow relevant manpower policies and employment laws of host nation
- ▶ Help create jobs in needed areas
- ▶ Increase local employment opportunities and standards
- ▶ Provide local workers stable employment and job security
- ▶ Promote equal employment opportunities

## **A Code of Conduct for the Multinational Company**

- ▶ Give priority to local national residents when possible
- ▶ Provide training opportunities at all levels for local employees
- ▶ Promote local nationals to management positions
- ▶ Respect local collective-bargaining rights
- ▶ Cooperate with local collective-bargaining units
- ▶ Give notice of plant closings
- ▶ Do not use threat of leaving country in collective-bargaining dealings

## **A Code of Conduct for the Multinational Company**

- ▶ Provide income protection to terminated workers
- ▶ Match or improve local standards of employment
- ▶ Protect employees with adequate health and safety standards
- ▶ Provide employees information on job-related health hazards

**Terima Kasih**