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LIABILITY OF THE BOARD OF DIRECTORS IN A LIMITED LIABILITY COMPANY UNDER LAW NO. 40 OF 2007

Dian Mandayani[1], Ismed Batubara[2], Henry Johan Nainggolan[3]
[1,3]Universitas Alwashliyah, [2]Universitas Muslim Nusantara Alwashliyah
nasutionnanda@yahoo.com[1], Ismed.batubara11@gmail.com[2], Nainggolan74henry@gmail.com[3]

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Abstract

The Board of Directors occupies a central position in the governance of a limited liability company (Perseroan Terbatas/PT), possessing the authority to manage and represent the company while simultaneously bearing legal responsibility for decisions and actions undertaken in the company's interests. This study aims to analyze the legal liability of directors under Law Number 40 of 2007 concerning Limited Liability Companies, particularly in relation to the principles of fiduciary duty and the Business Judgment Rule (BJR). The study employs a normative legal research method using statutory, conceptual, and case-based approaches. Data were collected through a literature review of legislation, court decisions, legal doctrines, academic literature, and relevant scholarly journals, and were analyzed using normative-qualitative analysis. The findings demonstrate that directors' liability is inseparable from their managerial authority and fiduciary position. Under Articles 92 through 104 of Law Number 40 of 2007, particularly Article 97, directors may incur personal liability for company losses when proven to have acted negligently, unlawfully, or in violation of their fiduciary obligations. Such liability may arise in civil, administrative, or criminal forms depending on the nature of the violation. At the same time, the BJR provides legal protection for directors who make business decisions in good faith, with due care, based on adequate information, and within the scope of their authority. However, the study identifies continuing legal uncertainty because the parameters for distinguishing legitimate business risk from negligence, bad faith, abuse of authority, or breach of fiduciary duty remain insufficiently clear and comprehensive. Therefore, strengthening the regulation and interpretation of the BJR, together with the reinforcement of Good Corporate Governance principles, is necessary to establish a balanced framework between directors' managerial discretion, corporate accountability, stakeholder protection, and legal certainty.

Keywords: Board of Directors; Limited Liability Company; Fiduciary Duty; Business Judgment Rule; Director Liability; Good Corporate Governance.

INTRODUCTION

Global economic developments have established the Perseroan Terbatas (PT), or limited liability company, as a legal vehicle playing a crucial role in supporting domestic economic growth. In the modern corporate legal context, the PT is viewed not merely as a profit-seeking entity but also as an economic institution that performs broader social and national development functions. As a separate legal entity, the PT possesses its own rights, obligations, and assets, which are legally distinguishable from those of its shareholders and corporate organs. Joharsah (2024) explains that the development of limited liability company arrangements in Indonesia reflects the importance of a clear legal framework governing the establishment and operation of PTs as independent legal entities. Such arrangements provide the juridical foundation for determining the authority, functions, and responsibilities of corporate organs, including the Board of Directors. Within this structure, the Board of Directors occupies a strategic position because it is vested with the authority to manage and represent the company both in and outside court. The attached study similarly emphasizes that directors constitute a strategic corporate organ whose managerial and representative functions inherently generate legal responsibility. The position of directors within the corporate structure entails complex legal consequences because every management action must be undertaken in accordance with the principles of prudence, good faith, loyalty, and fiduciary responsibility. (Wauda, 2019) explains that directors have managerial and representative functions and bear internal and external responsibilities in managing the company. The fiduciary nature of the directors' position requires them to act primarily in the interests of the company rather than for personal or third-party interests. Isfardiyana (2015) further emphasizes that directors' management and representation must be performed according to the fiduciary duty principle, and negligence in fulfilling such duties may result in personal liability. The attached journal likewise characterizes directors as fiduciary organs that must administer the company with prudence, good faith, loyalty, and responsibility toward corporate interests.

Violations of these principles may result in civil, administrative, or criminal liability where directors are proven to have committed errors, negligence, abuse of authority, or actions detrimental to the company. The attached study expressly concludes that directors may be subject to civil, administrative, or criminal responsibility when such conduct is established. Putra (2021) similarly explains that directors may incur personal liability when unlawful acts committed in the management of a PT cause losses to the company or other parties. Sari (2023) distinguishes liability arising from a director's position as a personal guarantor from liability arising because the director is proven to have caused losses through negligence or fault.

Numerous legal issues therefore persist regarding abuse of authority by directors, actions inconsistent with corporate objectives, conflicts of interest, and management practices that fail to comply with Good Corporate Governance (GCG). Rokhim (2020) explains that directors' actions constitute acts of the company only when performed within the authority and purposes of the company; actions exceeding such authority may constitute ultra vires acts and may bind the director personally rather than the company. Similarly, Hariyono's study of ultra vires actions emphasizes that the central legal issue concerns the director's responsibility when management actions exceed the authority granted under the Company Law and the company's articles of association. These issues demonstrate that the legal boundaries of directors' authority cannot be separated from the scope of their personal liability.

The problem is further complicated by conflicts of interest and weaknesses in corporate governance mechanisms. Supriatna and Ermond (2019) explain that independent directors can function as a balancing mechanism among affiliated directors and as a means of accommodating the interests of majority shareholders, minority shareholders, and the public, thereby supporting the implementation of GCG principles. Khameswary (2019), however, identifies weaknesses in the effectiveness of independent directors in Indonesia as part of the GCG framework. More recently, Panggabean, Ginting, and Sukarja (2023) demonstrate that interlocking or concurrent positions among directors and commissioners may affect the principles of responsibility, transparency, and independence in corporate governance.

This situation highlights normative and implementation-related challenges concerning the scope of directors' liability in managing the company. On the one hand, directors require sufficient discretion to make strategic business decisions; on the other hand, they remain accountable for actions that violate the law, the company's articles of association, corporate objectives, or the interests of the company. Raffles (2020) emphasizes that directors are authorized to implement policies considered appropriate for the company, but such authority remains subject to the limitations established by the Company Law and the articles of association. This understanding is consistent with Joharsah (2024), who emphasizes the importance of a clear corporate legal framework in determining the structure and legal operation of limited liability companies in Indonesia. The existence of clear statutory arrangements is therefore important not only for establishing a PT but also for determining the legal boundaries within which its corporate organs exercise their respective powers. The attached journal reaches a similar conclusion, namely that Indonesian corporate law seeks to balance directors' managerial authority with legal accountability.

In essence, the obligations and responsibilities of directors are codified primarily in Articles 92 through 104 of Law No. 40 of 2007 concerning Limited Liability Companies. Article 97 is particularly important because it establishes personal liability for directors when the company suffers losses as a result of their fault or negligence. The attached study emphasizes that Article 97 paragraph (3) connects directors' managerial authority directly with legal accountability and protection for the company, shareholders, and third parties. Wauda (2019) likewise identifies directors' responsibilities as encompassing internal responsibility toward the company and shareholders as well as external responsibility toward third parties. However, significant uncertainty remains concerning the interpretation of the degree of directors' negligence, the boundaries of personal liability, and the appropriate parameters for applying the Business Judgment Rule within Indonesian corporate law. The BJR is intended to protect directors from personal liability for business decisions that subsequently result in losses, provided that such decisions are made in good faith, with due care, based on adequate information, and within the scope of their authority. Pramagitha and

Sukranatha (2019) explain that Article 97 paragraph (5) of the Company Law provides protection to directors where business decisions causing losses are made in good faith and with prudence. Panjaitan, Anggusti, and Nababan (2021) similarly conclude that BJR can protect directors from liability for business policies or transactions that result in corporate losses when the decisions are made in good faith, with due care, and within the directors' authority. Nevertheless, the application of BJR in Indonesia remains problematic because its legal parameters are not sufficiently explicit and comprehensive. Masrurah (2019), through a comparison between Indonesian and Malaysian corporate law, found that the Indonesian Company Law does not explain the concept of good faith in sufficient detail in the context of BJR. Rissy (2020) similarly demonstrates that although Indonesia has adopted BJR through the 2007 Company Law, Indonesian courts have rarely examined directors' business decisions through a systematically developed BJR framework. Irawan, Pujiyono, and Cahyaningtyas (2022) further conclude that BJR can provide legal protection to directors where business decisions are made prudently, in good faith, and within the scope of their authority and responsibility.

The problem is therefore not whether directors should be held responsible for corporate losses, but rather how to distinguish legitimate business risk from negligence, bad faith, abuse of authority, or breach of fiduciary duty. This distinction is particularly important because business activities inherently involve uncertainty and commercial risk. Disemadi, Yusro, and Shaleh (2020) argue that BJR can provide legal protection for directors whose business decisions result in losses when the decisions comply with appropriate business principles and the requirements of the Company Law. Conversely, Ramadhan (2022) demonstrates that where directors undertake ultra vires actions that contribute to corporate bankruptcy, personal liability may arise, although practical enforcement remains challenging.

The contemporary literature also reveals that the uncertainty is not merely theoretical but concerns the interpretation of good faith and prudence as legal standards. Silalahi and Dwijayanthi (2023) identify an ambiguity in the Indonesian regulation of BJR, particularly concerning the boundaries of good faith and prudence under Article 97 paragraph (5) of the Company Law. Sedana and Sarjana (2023) similarly conclude that BJR is implicitly regulated through Article 97 paragraph (5), meaning that directors may avoid liability when they can demonstrate compliance with the statutory requirements. Prasetyo, As Syadili, and Yulianingsih (2023) further emphasize the importance of BJR as legal protection for directors in making business decisions.

Consequently, legal uncertainty often arises when determining whether a loss suffered by the company constitutes a reasonable business risk or the result of director negligence. The attached research explicitly identifies this problem, noting that the absence of clear and comprehensive BJR parameters can produce different interpretations in legal practice. The same study concludes that strengthening regulation and harmonizing legal interpretation are necessary to provide legal certainty while protecting directors who act in good faith and reinforcing Good Corporate Governance. Therefore, a more comprehensive examination of the legal boundaries of directors' liability is necessary to establish an appropriate balance between directors' business discretion, fiduciary accountability, protection of corporate interests, stakeholder protection, and legal certainty.

LITERATURE REVIEW

A Perseroan Terbatas (PT)—or limited liability company—is a legal entity distinct from its founders and all its corporate organs. The company is regarded as a legal subject possessing its own rights and obligations, enabling it to enter into legal relationships autonomously. The existence of a PT in Indonesia is governed by Law No. 40 of 2007, which establishes the framework for the company's formation, management, and the responsibilities of its corporate organs. A key organ within the corporate structure is the Board of Directors, tasked with managing the company and representing it in the conduct of business activities. Within the corporate legal framework, the position of the Board of Directors is crucial, as they serve to execute the will of the company. Every action taken by the Board of Directors must adhere to principles of prudence, good faith, and loyalty to the company's interests. In corporate law, this concept is known as "fiduciary duty," signifying a relationship of trust between the Board of Directors and the company that requires the Board to act solely in the company's best interests. The principle of fiduciary duty essentially emphasizes the responsibilities of care and loyalty as ethical and legal benchmarks for corporate management.

The "business judgment rule" serves as a form of legal protection for directors making business decisions. This principle protects directors provided that their decisions are made in good faith, based on adequate information, and in the company's best interests. Losses incurred by the company cannot automatically serve as grounds to hold directors liable if the business decision was made in a professional and balanced manner. The application of the business judgment rule in Indonesian corporate law still faces various interpretive challenges. Law No. 40 of 2007 does not clearly define the parameters and limits for applying this principle, often leading to divergent interpretations in court practice. This situation creates potential legal uncertainty regarding whether a director's action constitutes a reasonable business risk or an act of negligence giving rise to legal liability.

METHOD

This study adopts a normative legal research method, treating law as a system of norms explored through approaches involving legislation, legal principles, legal theories, and doctrines relevant to the subject matter. The approaches employed include the statutory approach, the conceptual approach, and the case-based approach. The statutory approach involves analyzing legal provisions governing the obligations of directors of limited liability companies (PT)—specifically Law Number 40 of 2007 concerning Limited Liability Companies—while the conceptual approach is used to evaluate the principles of fiduciary duty and the business judgment rule from the perspective of contemporary corporate law. Data collection was conducted through a literature review, involving the inventory and analysis of primary, secondary, and tertiary legal sources related to the liability of PT directors—including legislation, court rulings, legal literature, academic journals, and doctrines from corporate law experts—which were subsequently analyzed using a normative-qualitative method to generate a systematic, comprehensive, and in-depth legal construct regarding the issue under study.

RESULTS AND DISCUSSION

Based on normative research analyzing Law No. 40 of 2007 concerning Limited Liability Companies (the "Company Law"), the Board of Directors is identified as the corporate organ possessing central authority to manage the company in furtherance of its interests and objectives. This provision is explicitly set forth in Article 92 paragraph (1), which affirms that the Board of Directors manages the company for the company's benefit and in accordance with its purposes and objectives. From a legal standpoint, the Board of Directors not only holds authority over business decision-making but also bears legal liability for every management action undertaken. The research findings indicate that the responsibilities borne by the Board of Directors encompass both internal obligations—towards the company and its shareholders—and external obligations towards third parties. Internally, the Board of Directors is liable for losses suffered by the company if proven to have committed errors or negligence in performing management duties, pursuant to Article 97 paragraph (3) of the Company Law. External liability may arise if the Board's actions cause loss to third parties due to unlawful conduct or acts exceeding the company's authority. The study demonstrates that Law No. 40 of 2007 incorporates the principle of fiduciary duty, requiring directors to act in good faith, responsibly, and with due care in the execution of their duties. This is reflected in the obligation to prioritize the company's interests over personal interests or those of specific groups. In practice, however, issues persist regarding the abuse of authority, conflicts of interest, manipulation of corporate financial management, and business decisions made without adhering to the principle of due care. The research also reveals that the application of the "business judgment rule" within the Indonesian corporate legal system lacks clear and comprehensive regulation.

Regulations concerning the liability of the board of directors reflect an effort by lawmakers to strike a balance between the board's authority to manage the company and the principle of legal accountability. While the board is granted the latitude to make business decisions as part of its management function, it must simultaneously be held accountable for any actions that contravene the law, the company's articles of association, or the principle of prudence. The liability of the board is inseparable from the principle of the fiduciary relationship between the board and the company. This fiduciary relationship entails an obligation for the board to act loyally in the company's interests and to avoid any conflicts of interest that could harm the company; consequently, any action taken by the board for personal gain constitutes a breach of fiduciary duty and may give rise to personal legal liability.

1. Legal Provisions Regarding the Liability of the Board of Directors of a Limited Liability Company (PT)

The liability of members of the board of directors of a limited liability company is normatively regulated under Law No. 40 of 2007 concerning Limited Liability Companies, specifically in Articles 92 through 104. The board of directors is a managerial entity possessing full authority to manage the company for the company's own interests and objectives. In exercising their authority, directors are required to act in good faith and with due care, and they bear full responsibility toward the company. Article 97 paragraph (3) affirms that each individual director is personally liable for company losses if proven to be at fault or negligent in the performance of their duties. These legal rules demonstrate that the directors' authority to manage the company is inextricably linked to the principle of legal accountability, thereby ensuring protection for the company, shareholders, and third parties.

2. Forms of Director Liability for Company Losses: An Indonesian Corporate Law Perspective

Under the Indonesian corporate legal system, a director's liability for losses suffered by the company may be civil, administrative, or criminal in nature. Civil liability arises when a director commits a wrongful act or acts negligently, causing loss to the company, thereby exposing them to lawsuits seeking compensation for such losses. Furthermore, a director may face administrative liability for breaching administrative obligations stipulated by applicable regulations. Meanwhile, criminal liability applies if a director commits acts that meet the criteria for a criminal offense, such as embezzlement, fraud, financial statement manipulation, or abuse of power. Fundamentally, the forms of director liability represent the legal consequences of abusing power or violating principles of good corporate governance within the management of a limited liability company.

3. Application of Fiduciary Duty and Business Judgment Rule Principles in Determining the Liability of a Limited Liability Company's (PT) Board of Directors

The principles of fiduciary duty and the business judgment rule are crucial in defining the scope of liability for the board of directors of a limited liability company (PT). The principle of fiduciary duty establishes a relationship of trust between the directors and the company, requiring them to act with integrity, loyalty, and honesty, and to prioritize the company's interests over their own or those of third parties. Conversely, the business judgment rule serves as a legal safeguard for directors regarding business decisions made in good faith, based on adequate information, and aimed entirely at the company's best interests; consequently, not every business loss can simply be attributed to director error or negligence. However, to date, the business judgment rule lacks clear, structured, and comprehensive provisions, leading to divergent interpretations among law enforcement officials and within case law regarding its enforcement.

CONCLUSION

It can be concluded that the liability of the Board of Directors under Law No. 40 of 2007 concerning Limited Liability Companies is essentially a legal consequence inextricably linked to the Board's authority to manage and represent the company. The Board of Directors functions not merely as an administrative component of the company but also as a fiduciary organ bearing legal responsibility for all policies and legal actions undertaken on the company's behalf. Such liability may arise in civil, administrative, or criminal contexts where there is evidence of wrongdoing, negligence, abuse of authority, or actions contrary to the company's interests and the principles of good corporate governance. The application of fiduciary liability principles and the business judgment rule plays a crucial role as a normative mechanism for defining the limits of the Board's liability, while simultaneously balancing legal protection for directors acting in good faith with the promotion of accountability in corporate governance characterized by professionalism, transparency, and integrity.

Regulations concerning the liability of corporate leadership under Law No. 40 of 2007 regarding Limited Liability Companies need to be strengthened—particularly regarding the "business judgment rule"—to provide legal certainty regarding the limits of liability for losses incurred by the company. Clarity in this regard is crucial to ensuring a balance between legal protection for leaders acting in good faith and the principle of corporate management accountability. The implementation of Good Corporate Governance principles must be reinforced by enhancing internal oversight systems and the professionalism of leadership in managing company operations. It is hoped that this will foster corporate governance that is transparent, accountable, and oriented toward legal certainty and the protection of the interests of both the company and all involved parties.

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