Responsibility of The Board of Directors in Bankruptcy of Limited Liability Companies from The Perspective of Law Number 40 Of 2007

Soesi Idayanti, Mukhidin
Faculty of Law, Universitas Pancasakti Tegal, Indonesia

Article Info
Received: 2024-9-22
Revised: 2024-12-31
Accepted: 2024-12-31

Keywords:
Board of Directors, bankruptcy, Company, Law

Abstract

This research was conducted with the aim to explain to the academic world and the wider community regarding the responsibilities of the board of directors on the bankruptcy of a limited company, either caused by the negligence of the directors themselves or due to external error factors of the limited company. This paper uses a normative legal research method by using a statutory regulatory approach. The results of this study show that if the company goes bankrupt caused by the negligence of the board of directors while the bankrupt's debt is not sufficient to pay in full the company's obligations in bankruptcy, then they are jointly and severally liable or jointly responsible for all unpaid obligations of the bankrupt estate, but if the directors have carried out their duties well, apply the principle of prudence for the benefit of the company, not experiencing a conflict of interest, either directly or indirectly, in terms of company management actions which results in loss and has taken action to prevent the loss, then the directors cannot be held responsible for the company's losses. In this paper, the researcher provides input that the regulation Law Number 40 of 2007 concerning bankruptcy, there must be updates, especially article 97 regarding the responsibilities of directors which tend to be general in nature. By explaining specifically what constitutes negligence causing the company to go bankrupt of course it will facilitate the legal process, Are the directors really responsible for the bankruptcy? or caused by external factors beyond the control of the board of directors.

I. Introduction

The progress of the business world is increasingly rapid in this modern era utilized by business actors to carry out transformation by establishing a business entity in the form of a limited liability company[1], as a legal entity used by business actors in running his business.[2] This is because apart from the form of the arrangement being quite adequate also because the legal entity of the limited liability company is a legal entity whose existence is recognized and given legal protection arrangements.[3]

Limited liability companies in their activities are managed and run by the board of directors which is the sole organ of the company responsible and has the authority to represent the company.[4] The board of directors represents the company both in terms of agreements, engagement or other legal action concerning the company with third parties, so that the board of directors has a very big responsibility towards the company,[5] both outside and inside the court in accordance with the company's articles of association.[6]

The responsibility of the board of directors in carrying out their duties must pay attention to the company's articles of association. The board of commissioners supervises and provides advice to the board of directors. for the steps he took, but the responsibility of the board of directors is increasingly crucial if the company experiences losses or even goes bankrupt resulting in legal problems for the company.[7]

Departing from the large number of entrepreneurs establishing limited companies some of whom experienced and were declared bankrupt, so the author is interested in knowing the extent of the directors' responsibilities in the bankruptcy of a limited company. according to the provisions of the Republic of Indonesia Law Number 40 of 2007 concerning Limited Liability Companies.

This research is a recent study. This is proven by a previous study written by Julivia Nur Prisintyas and Elvi Yanti Dwi Mas entitled "Legal Review Regarding Bankruptcy

[1] Ukilah Supriyatin dan Nina Herlina, "Tanggung Jawab Perseroan Terbatas (PT) Sebagai Badan Hukum," *Jurnal Ilmiah Galuh Justisi* 8, no. 1 (2020): 128.
[2] Yuliana Duti Harahap, Budi Santoso, dan Mujiono Hafidh Prasetyo, "Pendirian Perseroan Terbatas Perseorangan Serta Tanggung Jawab Hukum Pemegang Saham Berdasarkan Undang-Undang Cipta Kerja," *Notarius* 14, no. 2 (2021): 731.
[3] Andrian Sutedi, *Buku Pintar Hukum Perseroan Terbatas*, 1 ed. (Jakarta: Raih Asa Sukses, 2015), 96.
[4] Hasbullah F. Sjawie, "Tanggung Jawab Direksi Perseroan Terbatasatas Tindakan Ultra Vires," *Jurnal Hukum Prioris* 6, no. 1 (2017): 13.
[5] Erna Lismayanti, Endang Purwaningsih, dan Chandra Yusu, "Legalitas Tindakan Direksi Perseroan Terbatas," *Jurnal Res Justitia: Jurnal Ilmu Hukum* 2, no. 3 (2023): 195.
[6] Rosida Diani, "Tanggung Jawab Komisaris Dalam Hal Perseroan Terbatas Mengalami Kerugian," *Simbur Cahaya* 25, no. 1 (2018): 32.
[7] Fatrecya Mutiara Anjelina, "Implikasi Hukum Terhadap Tanggung Jawab Direksi Dalam Perseroan Terbatas," *Jurnal Penelitian Ilmu Hukum* 4, no. 3 (2024): 116.

Applications for State-Owned Enterprises in the Form of Limited Liability Companies" which has been published in the Legality Journal Volume 6 Number 1, June 2021.[8]

These two studies have similarities namely discussing limited liability companies, The difference lies in the discussion that the above text explains about bankruptcy applications for limited companies, while this study examines the responsibilities of directors of limited liability companies, so it is necessary to conduct this research to examine how limited liability company regulations are implemented especially in the context of today's increasingly complex industry.

The aim of writing this journal is to explain to the academic world and the wider community regarding the responsibility of directors for the bankruptcy of a limited company, either caused by negligence of the board of directors or due to external errors from the company itself.

2. Research Method

Based on the above background, This paper uses normative legal research reviewing library materials using a statutory regulatory approach (Statuta Opproach). Examining the phenomenon of the existence of several limited companies as a legal entity for business people in the business world who experience bankruptcy related to this research, then analyzed using Law Number 40 of 2007 concerning limited liability companies.

3. Result and Discussion

Legal Regulations Concerning the Obligations and Authorities of Directors in Limited Liability Companies Based on Law No. 40 of 2007

A company is any form of business that carries out any type of business that is permanent in nature, continuously, working, existing and established with the aim of gaining profit or gain, Therefore, to ensure smooth business operations, a legal entity is required. which protects these activities, one of which is in a limited liability company.[9] Limited liability company is a legal entity which is established based on an agreement to carry out business activities with large capital, all of which is divided into shares and meet the requirements that have been set.[10] This is in line with the understanding explained in Article 1 paragraph 1 of the Republic of Indonesia Law Number 40 of 2007 concerning Limited Liability Companies.[11]

To run a company, a board of directors is needed which is an organ of a company in addition to other corporate organs in the form of commissioners and general meetings of shareholders (GMS), who has full duties, authority and responsibility for the management of

[8] Julivia Nur Prisintyas dan Elvi Yanti Dwi Mas, "Tinjauan Yuridis Mengenai Permohonan Pailit Perusahaan Badan Usaha Milik Negara Yang Berbentuk Perseroan Terbatas," *Jurnal LEGALITAS* 6, no. 1 (2021).
[9] Agus Riyanto, *Hukum Bisnis Indonesia*, 1 ed. (Batam: CV. Batam Publisher, 2018), 13.
[10] Zainal Asikin dan Wira Pria Suhartana, *Pengentar Hukum Perusahaan*, 1 ed. (Jakarta: Kencana, 2016), 53.
[11] "Pasal 1 Ayat 1 Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," t.t.

the company he leads for and on behalf of the interests and objectives set by the company.[12] The directors appointed by the company must have good intentions and fully responsible in carrying out his duties, both when managing or representing the company for the interests and purposes of the company as stated in the provisions of the articles of association.[13] This is also in accordance with the provisions of Article 92 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies.[14]

Awareness of the board of directors regarding their duties and obligations as directors in managing the company, This is important because it will have an impact on the actions taken will be in line or not with his duties and responsibilities.[15] Therefore, it is necessary to explain the duties, obligations and guidelines in running the company. According to the Indonesian legal system, the relationship between the board of directors and a limited company is contractual. which means that there is no contract whatsoever between the company and the board of directors, but by law it is deemed that there is a contract granting power of attorney. the legal consequences Directors as power holders may not act in excess of the powers given to them.[16]

The authority held by the board of directors must be rooted on the basis that the duties and positions he obtained based on two basic principles, firstly the trust that the company has given him, The second is the principle that refers to ability and caution. and actions taken by the board of directors in running a company.[17] The authority of the board of directors to take actions in order to achieve the objectives of the limited company which is generally explained in the company's articles of association, so that the authority of the board of directors is oriented towards the company's objectives and business fields, There are some things that are not explicitly written but are not contradictory and are considered necessary carried out to achieve the company's objectives is permitted.[18]

The authority of the board of directors is also regulated in Article 98 paragraphs (1), (2), (3) and (4) said that the board of directors represents the company both in and outside court, if there are more than 1 (one) board of directors then the person authorized to represent the company is each member of the board of directors unless otherwise stated in the articles of association and does not conflict with the UUPT and the company's articles of

[12] Munir Fuady, *Pengelolaan Perseroan Terbatas*, 2 ed. (Bandung: PT Citra Aditya Bakti, 2017), 50.
[13] Siti Hapsah Isfardiyana, "Business Judgement Rule Oleh Direksi Perseroan," *Jurnal Panorama Hukum* 2, no. 1 (2017): 15.
[14] "Pasal 92 Ayat (2) Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," t.t.
[15] Raffles, "Tanggung Jawab dan Perlindungan Hukum Direksi dalam Pengurusan Perseroan Terbatas," *Undang: Jurnal Hukum* 3, no. 1 (2020): 118.
[16] Rosida Diani, "Tanggung Jawab Komisaris Dalam Hal Perseroan Terbatas Mengalami Kerugian," 6.
[17] Uul Fathur Rahmah, "Kewenangan Direksi Dalam Pengurusan Perseroan Terbatas," *Lex Economica Journal* 1, no. 1 (2023): 63.
[18] Abdul Rokhim, "Tindakan 'Ultra Vires' Direksi Dan Akibat Hukumnya Bagi Perseroan Terbatas," *Jurnal Negara dan Keadilan* 9, no. 2 (2020): 290.

association.[19] So it will be clearly seen that there are limits to what is allowed and what is not allowed in taking an action.[20] This shows that the existence of a limited liability company board of directors both in terms of duties and responsibilities are clearly regulated in the company law, so in this case basically the assignment of duties and authority of the board of directors not derived from a decision of the GMS but rather the authority mandated by the laws on companies in Indonesia.

Application of Article 97 of Law Number 40 of 2007 in Bankruptcy Cases of Limited Liability Companies in Indonesia

Bankruptcy or going bankrupt is an event that can happen to anyone, starting from individuals and legal entities, bankruptcy does not recognize the terms rich or poor, because in practice, a millionaire or a multinational company can also experience bankruptcy or insolvency, because in reality bankruptcy is an inseparable part of life, Therefore, bankruptcy law applies to all legal subjects, both individuals and legal entities.[21]

Bankruptcy is related to the cessation of payments by a person (debtor) for his debts that have matured. the cessation of payments must be accompanied by a real action to file a bankruptcy statement with the court, whether it is done voluntarily by the debtor himself or at the request of a third party, and at the request of the creditor himself or at the request of the court itself, the company is declared bankrupt.[22]

The effect of the court decision which determines a company is bankrupt will result in the loss of the company owner's rights the company to manage and control its assets which are also included in the bond, However, even though the person concerned is not allowed to manage his assets further, responsibility for his assets will be taken over and controlled by the estate office for use by all creditors. In such a situation, of course, it is necessary to investigate who will be responsible for the bankruptcy.[23]

Article 97 explains that the board of directors has the responsibility to manage the limited company. with good intentions and full personal responsibility especially if the company experiences losses resulting from failure to carry out duties, if the board of directors consists of 2 (two) or more people, then they are all jointly responsible.[24]

A loss in a particular business transaction does not in itself result in a loss for the company. there must first be a profit and loss calculation in the company's annual financial

[19] "Pasal 98 Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," t.t.
[20] Sylvia Putri dan David Tan, "Analisis Yuridis Perseroan Perorangan Ditinjau Dari Undang-Undang Cipta Kerja Dan Undang-Undang Perseroan Terbatas," *Unes Law Review* 4, no. 3 (2022): 324.
[21] Elyta Ras Ginting, *Hukum Kepailitan Teori Kepailitan* (Jakarta: Sinar Grafika, 2018).
[22] Susanto Adi Nugroho, *Hukum Kepailitan Indonesia Dalam Teori dan Peraktek Serta Penerapan Hukumnya* (Jakarta: Prenada Media Group, 2018), 33–34.
[23] Feberman Laia dkk., "Akibat Hukum Kepailitan Terhadap Harta Warisan Ditinjau Dari Uu No. 37/2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," *Jurnal Rectum* 6, no. 1 (2024): 77.
[24] "Pasal 97 Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," t.t.

balance sheet compiled by the board of directors to be submitted to the GMS which contains the report calculations consisting of the balance sheet at the end of the new year and past and calculation of profit and loss for the year in question, From here we will see what caused the losses to the company.[25]

The decision of the board of directors without the presence of fiduciary duty and without mature consideration, resulting in the company experiencing losses due to these actions can eliminate the personal liability of directors, This could happen the other way around if the board of directors makes decisions by prioritizing the principles of fiduciary duty. but still suffer losses which result in bankruptcy, In this case, the directors cannot be held personally responsible for the losses because they are protected by the principle of the business judgment rule.[26]

Article 97 paragraph (5) states that members of the board of directors cannot be held responsible if the board of directors can prove that the company's losses occurred not due to their fault or negligence, has carried out his duties properly and with care for the interests of the company, not experiencing a conflict of interest either directly or indirectly in the event that company management actions result in losses and has taken action to prevent any loss from occurring .[27]

If a company goes bankrupt due to the fault or negligence of the directors themselves which results in the company's finances being unable to cover all of the company's obligations, then each member of the board of directors is jointly and severally liable responsible for all unpaid obligations of the bankrupt estate. This is explained in Article 104 paragraph (2) of Law Number 40 of 2007.[28]

Settlement of debts with a bankruptcy institution results in the debtor's assets being seized by the court, then it is the curator's authority to manage the continuation of the assets until the bankruptcy process ends, but sometimes bankruptcy is perceived not as a way out but rather as something contradictory, This will result in a decrease in public trust in the ability of the company's directors to manage a company, even in the limited liability company law itself, criteria are made a requirement for directors.[29]

In such circumstances, it is necessary to update the regulations of Law No. 40 of 2007 to deal with bankruptcy. especially by emphasizing the wording of article 97 regarding the responsibilities of directors which seems to tend to be general in nature. By explaining

[25] Eny Suastuti, *Tanggung Jawab Direksi Badan Usaha Milik Negara (Persero)* (Surabaya: Socpindo Media Pustaka, 2022), 19.
[26] Zidna Taqiya, Nyulistiowati Suryanti, dan Aam Suryamah, "Penagihan Utang Pajak Terhadap Direksi Perseroan Yang Dinyatakan Pailit Dalam Putusan Mahkamah Konstitusi Nomor 41/PUU-XVIII/2020 T," *INNOVATIVE: Journal Of Social Science Research* 3, no. 5 (2023): 7.
[27] "Pasal 97 Ayat (5) Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," t.t.
[28] "Pasal 104 Ayat (2) Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," t.t.
[29] Ronald Saija dan Kadek Agus Sudiarawan, "Perlindungan Hukum Bagi Perusahaan Debitur Pailit dalam Menghadapi Pandemi Covid 19," *Civilaw Review* 2, no. 1 (2021): 66.

specifically what is considered negligence that results in the company going bankrupt will facilitate the legal process as to whether the directors are truly responsible for the bankruptcy or whether it was caused by external factors beyond the directors' capabilities.

4. Conclusion

A limited liability company is a legal entity established based on an agreement to carry out business activities with large capital which are all divided into shares and meet the established requirements. The company is led by a board of directors whose duties include managing or representing the company for the interests and purposes of the company. as stated in the provisions of the articles of association. If the company goes bankrupt due to a decision by the board of directors without the presence of a fiduciary duty and without any mature consideration, resulting in the company experiencing losses due to these actions, then the board of directors cannot eliminate the personal responsibility of the board of directors, This could happen the other way around if the board of directors makes decisions by prioritizing the principles of fiduciary duty. but still suffers losses that result in bankruptcy, in this case the directors cannot be held personally responsible for the losses because they are protected by the principle of the business judgment rule. Settlement of debts with a bankruptcy institution results in the debtor's assets being seized by the court, and then it becomes the curator's authority to manage the continuation of these assets until the bankruptcy process ends

Refrences

Abdul Rokhim. "Tindakan 'Ultra Vires' Direksi Dan Akibat Hukumnya Bagi Perseroan Terbatas." *Jurnal Negara dan Keadilan* 9, no. 2 (2020).

Agus Riyanto. *Hukum Bisnis Indonesia*. 1 ed. Batam: CV. Batam Publisher, 2018.

Andrian Sutedi. *Buku Pintar Hukum Perseroan Terbatas*. 1 ed. Jakarta: Raih Asa Sukses, 2015.

Elyta Ras Ginting. *Hukum Kepailitan Teori Kepailitan*. Jakarta: Sinar Grafika, 2018.

Eny Suastuti. *Tanggung Jawab Direksi Badan Usaha Milik Negara (Persero)*. Surabaya: Socpindo Media Pustaka, 2022.

Erna Lismayanti, Endang Purwaningsih, dan Chandra Yusu. "Legalitas Tindakan Direksi Perseroan Terbatas." *Jurnal Res Justitia: Jurnal Ilmu Hukum* 2, no. 3 (2023).

Fatrecya Mutiara Anjelina. "Implikasi Hukum Terhadap Tanggung Jawab Direksi Dalam Perseroan Terbatas." *Jurnal Penelitian Ilmu Hukum* 4, no. 3 (2024).

Feberman Laia, Desrianus Laia, Alusianto Hamonangan, dan Elman Simangunsong. "Akibat Hukum Kepailitan Terhadap Harta Warisan Ditinjau Dari Uu No. 37/2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang." *Jurnal Rectum* 6, no. 1 (2024).

Hasbullah F. Sjawie. "Tanggung Jawab Direksi Perseroan Terbatasatas Tindakan Ultra Vires." *Jurnal Hukum Prioris* 6, no. 1 (2017).

Julivia Nur Prisintyas dan Elvi Yanti Dwi Mas,. "Tinjauan Yuridis Mengenai Permohonan Pailit Perusahaan Badan Usaha Milik Negara Yang Berbentuk Perseroan Terbatas." *Jurnal LEGALITAS* 6, no. 1 (2021).

Munir Fuady. *Pengelolaan Perseroan Terbatas*. 2 ed. Bandung: PT Citra Aditya Bakti, 2017.

"Pasal 1 Ayat 1 Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," t.t.

"Pasal 92 Ayat (2) Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," t.t.

"Pasal 97 Ayat (5) Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," t.t.

"Pasal 97 Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," t.t.

"Pasal 98 Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," t.t.

"Pasal 104 Ayat (2) Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," t.t.

Raffles. "Tanggung Jawab dan Perlindungan Hukum Direksi dalam Pengurusan Perseroan Terbatas." *Undang: Jurnal Hukum* 3, no. 1 (2020).

Ronald Saija dan Kadek Agus Sudiarawan. "Perlindungan Hukum Bagi Perusahaan Debitur Pailit dalam Menghadapi Pandemi Covid 19." *Civilaw Review* 2, no. 1 (2021).

Rosida Diani. "Tanggung Jawab Komisaris Dalam Hal Perseroan Terbatas Mengalami Kerugian." *Simbur Cahaya* 25, no. 1 (2018).

Siti Hapsah Isfardiyana. "Business Judgement Rule Oleh Direksi Perseroan." *Jurnal Panorama Hukum* 2, no. 1 (2017).

Susanto Adi Nugroho. *Hukum Kepailitan Indonesia Dalam Teori dan Peraktek Serta Penerapan Hukumnya*. Jakarta: Prenada Media Group, 2018.

Sylvia Putri dan David Tan. "Analisis Yuridis Perseroan Perorangan Ditinjau Dari Undang-Undang Cipta Kerja Dan Undang-Undang Perseroan Terbatas." *Unes Law Review* 4, no. 3 (2022).

Ukilah Supriyatin dan Nina Herlina. "Tanggung Jawab Perseroan Terbatas (PT) Sebagai Badan Hukum." *Jurnal Ilmiah Galuh Justisi* 8, no. 1 (2020): 128.

Uul Fathur Rahmah. "Kewenangan Direksi Dalam Pengurusan Perseroan Terbatas." *Lex Economica Journal* 1, no. 1 (2023).

Yuliana Duti Harahap, Budi Santoso, dan Mujiono Hafidh Prasetyo. "Pendirian Perseroan Terbatas PerseoranganSerta TanggungJawab Hukum Pemegang Saham Berdasarkan Undang-Undang Cipta Kerja." *Notarius* 14, no. 2 (2021).

Zainal Asikin dan Wira Pria Suhartana. *Pengentar Hukum Perusahaan*. 1 ed. Jakarta: Kencana, 2016

Zidna Taqiya, Nyulistiowati Suryanti, dan Aam Suryamah. "Penagihan Utang Pajak Terhadap Direksi Perseroan Yang Dinyatakan Pailit Dalam Putusan Mahkamah Konstitusi Nomor 41/PUU-XVIII/2020 T." *INNOVATIVE: Journal Of Social Science Research* 3, no. 5 (2023).