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Legal Protection for Directors Related to Agreements with Third Parties that Cause Losses to the Company

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Abstract

The Board of Directors is obliged to take responsibility for its actions on the employment contract agreement of any responsibility born of any transaction or employment contract activity carried out by it in accordance with the duties and responsibilities given by the board of commissioners to it as a director of the company, with the consideration that the activity has been carried out with due regard to prudential standards and good faith from the duties and functions as a director. The research method used is normative juridical research using primary, secondary, and tertiary legal materials and research places, data collection techniques in this research are literature studies and document studies and interviews, data analysis is carried out by collecting, classifying, and analysing based on the results of literature study research and studies in several companies, the results of the study show that the legal protection of the Board of Directors on agreements with third parties that harm the company so that if something undesirable happens, the sanctions for violations of the Board of Directors in their position as budget users will face criminal, civil and administrative sanctions. So that directors who get authority based on applicable laws and regulations in carrying out a work contract activity either obtained through delegation of authority, then have fulfilled the criteria in each agreement.

***Keywords**: Legal Protection, Directors, Third Party Agreements*

INTRODUCTION

The Board of Directors plays a very important strategic role in the management and decision-making of the company. They are responsible for formulating and implementing company policies and strategies to achieve short-term and long-term goals. In making decisions, directors must consider various aspects, including business risks and opportunities, market conditions, and the interests of stakeholders, such as shareholders, employees, customers and the community. In addition, the board of directors must also ensure that all company activities are conducted in accordance with applicable laws and regulations and the principles of good corporate governance (Fuady 2004); (Is 2022). The Board of Directors, also referred to as the "management", functions as the organ that manages the Company's operations. Each Limited Liability Company "must" have at least 1 director, but for some types of Companies, such as those that collect and manage public funds, issue debt acknowledgment letters to the public, and are open (Prasetya 2022).

If the Company's board of directors or directors consists of more than one person, one of them is appointed as the president director, also known as the president director (Ahmad Yani dan Gunawan Widjaja 1999); (Muhayatsyah 2019); (Panjaitan 2020). If the board of directors consists of more than two people, the resolution of the GMS establishes the division of duties and management authority among the members of the board of directors. If the resolution of the GMS does not stipulate it, the decision of the board of directors establishes the duties and authority of the members of the board of directors (Harris 2023). The Indonesian capital market is one of the main components that determines

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how far a country's economy progresses (Widiyanti and Sari 2019); (Sri Handini and Erwin Dyah Astawinetu 2020). The capital market intends to promote the implementation of national development in order to increase equity, growth, and economic stability, which will improve welfare (Mandasari, Asikin, and Sili 2023).

The responsibilities and legal obligations attached to the office of the board of directors are crucial in maintaining the integrity and sustainability of the company (Press 2022). As the ultimate managers, directors are responsible for managing the company's assets and making decisions that have a significant impact on the company's operations and performance. The legal obligations that must be complied with include fiduciary responsibilities, which require directors to act in good faith, loyalty and compliance with the best interests of the company and its stakeholders. In addition, directors are also responsible for ensuring that the company complies with all applicable laws and regulations, including tax, labour, environmental and other laws. Violation of these legal obligations may result in legal sanctions, both civil and criminal, as well as personal liability for members of the board of directors.

The Board of Directors often enters into various types of agreements with third parties that are essential to the Company's operations and sustainability (Susrianti 2016). These types of agreements include business cooperation agreements, purchase and sale agreements, loan or financing agreements, distribution agreements, and technology licence and transfer agreements. All of these agreements are critical as they not only ensure smooth operations but also support the Company's long-term growth and sustainability. The successful execution of these agreements relies on the directors' deep understanding and negotiation skills to ensure that all company and stakeholder interests are protected and benefited.

Identifying risks that may arise from agreements with third parties is a crucial step in enterprise risk management. These risks may include discrepancies in contract performance, such as incomplete or unclear contract terms that could lead to legal disputes. In addition, financial risks may also arise, such as unforeseen additional costs or increased operational costs that could disrupt the company's financial balance. In addition, reputational risks also need to be considered, especially if the agreement with a third party results in a negative impact on the company's image or brand in the eyes of the public.

Since PT is a capital association and an independent legal entity, the form of PT is commonly used in Indonesian business (Rasid 2019). In carrying out its role as an economic actor, a limited liability company is an ideal type of business, both in terms of economic unity and in terms of law. Limited liability companies have more room to grow compared to other types of businesses, especially those that are not in the form of legal entities (Bintang 2022); (Safitri 2022). Law Number 40 of 2007 concerning Limited Liability Companies regulates legal entities in the form of capital companies established based on agreements and running their business by dividing all authorized capital into shares. A limited liability company as a technology company requires limited labor according to Statute Book of the Republic of Indonesia Number 106 and Supplement to Statute Book of the Republic of Indonesia Number 4756 on August 16, 2007, according to the Law on PT (Agustina 2020); (Bunirah 2022).

Regarding the definition of a limited liability company, Law Number 40 of 2007, Article 1 Paragraph 1 is as follows (Indrapradja 2020): "A Limited Liability Company, hereinafter referred to as a company, is a legal entity that is a capital partnership, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares and meets the requirements set forth in this Law and its implementing regulations."

From an economic perspective, limited companies have been regulated by law so that they can function as perfect companies. This is because, as a legal entity, this company has the status of a subject

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that has the ability to carry out legal acts and as a supporter of rights and obligations in legal proceedings (Kurniawan 2023). Therefore, a limited liability company has a higher legal value than other legal entities, both economically and legally, because the two aspects are correlated with each other.

Unlike natural persons (humans), a limited liability company is an independent subject of law and has different rights, obligations, and wealth from its founders or shareholders. Due to its artificial nature, companies are unlikely to have a will and, as a consequence, cannot take action on their own (Nugraha and Katherina 2019). As a result, directors need organizations that manage businesses, oversee assets, and represent the community on and off the court.

The purpose of this study is to comprehensively analyze the roles and responsibilities entrusted to the board of directors within a company's governance framework. This includes examining their strategic oversight, decision-making processes, and fiduciary duties towards shareholders and stakeholders. Additionally, the study aims to evaluate the effectiveness of existing legal protection mechanisms available to directors, such as the application of the business judgment rule and statutory provisions under corporate law. By exploring these aspects, the research seeks to provide insights into how these protections safeguard directors from undue legal liabilities while ensuring they can effectively steer the company towards sustainable growth and profitability.

RESEARCH METHODS

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In this study, there are two different approaches. The first is the normative juridical approach, which is centered on law and studies the theories, concepts, principles, and laws and regulations related to this topic. The normative juridical approach sees law as what is written in the law (*law in books*) or as a rule or norm. Primary and secondary legal materials—research on laws and regulations—are the basis of this normative legal research. Both S1, S2 and S3 students often conduct normative legal research. This is due to the fact that the research was conducted only in a workspace and did not involve the collection of complex community data. In English, the term "normative legal research" is derived from the word "normative legal research", which in Dutch is called "*normatieve* juridisch onderzoek", and in German it is called "normatieve juridische recherche". These experts share their views on normative research.

RESULTS AND DISCUSSION

Application of Legal Protection Arrangements to the Board of Directors for Agreements with Third Parties that Cause Losses to the Company

The Board of Directors, as the party responsible for the management and operation of the company, often has to make decisions involving third parties. These decisions, although taken with the best intentions for the benefit of the company, do not always result in the expected outcome and may incur significant losses. It is therefore important to understand the extent to which the law provides protection to directors in these kinds of situations, as well as the mechanisms in place to ensure that directors can carry out their duties without fear of unfair legal consequences. Therefore, it is necessary to know in advance the rights and obligations of directors.

Rights of the Board of Directors

The rights of the Board of Directors of a Limited Liability Company are:

1. Authorized to administer the firm in accordance with its objectives and policies, within the constraints provided in the law and/or articles of association. (Article 92, paragraphs 1 and 2).

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2. Salary and allowances are determined by the General Meeting of Shareholders (Article 96, paragraph 1).
3. Representing the corporation in and out of court (Article 98 paragraph 1).
4. Granting formal power of attorney to one or more employees or other individuals to conduct legal activities on behalf of the Company. (Article 103).
5. Defending themselves in the GMS (Article 105 paragraphs (2) and (3).

The determination of salary and benefits for members of a company's Board of Directors typically hinges on decisions made during the General Meeting of Shareholders (GMS). However, in practice, this authority can be delegated to the Board of Commissioners as per relevant regulations. Should this delegation occur, the Board of Commissioners is empowered to decide on the compensation and benefits for Board of Directors members through a resolution passed during their own meetings. Each member of the Board of Directors is obligated to fulfill their duties in good faith and with full accountability in managing the company. They bear personal responsibility for any losses incurred by the company if they are found to have made errors or omissions in their duties, in accordance with applicable regulations.

If the Board of Directors comprises two or more members, each member shares joint and several responsibility. Members of the Board can avoid liability for losses if they can demonstrate:
1. The loss did not result from their fault or negligence.
2. They managed affairs in good faith and with prudence, aligning with the company's goals and objectives.
3. They did not have any conflict of interest, whether direct or indirect, concerning management decisions that led to losses.
4. They took measures to prevent the occurrence or continuation of such losses.

Shareholders holding at least 1/10 (one tenth) of the total voting shares can sue members of the Board of Directors on behalf of the Company in district court if they cause losses due to mistakes or negligence. This provision does not affect the rights of other Board members or Commissioners to initiate legal action on behalf of the Company. The Board of Directors represents the Company in all legal matters. If there are multiple members on the Board, each member serves as an authorized representative of the Company unless stated otherwise in the Articles of Association. The authority of the Board to represent the Company is generally unrestricted unless specified otherwise by law, the Articles of Association, or decisions of the General Meeting of Shareholders, which must not contradict legal provisions or the Company's Articles of Association.

Obligations of the Board of Directors

While fulfilling their responsibilities in company management, the board of directors acts in good faith. However, distinguishing between actions mandated by the principle of acting in good faith and those that are reasonable in carrying out their duties can pose challenges. Typically, the assessment of whether directors' actions were appropriate or not usually becomes apparent only after the company incurs a loss.

As good faith in performing duties is obligatory, failure to adhere to it carries consequences. Sanctions include individual accountability, where each member of the Board of Directors is personally liable for any losses incurred by the company due to their actions that do not uphold these obligations of good faith.

What if there is a Board of Directors who does not want to pay losses while the company only has one Board of Directors? If this is the case, the settlement must be through a civil lawsuit to the District Court, but who is authorized to represent because there are no other members of the Board of

Directors? Based on the provisions of article 97 paragraph (1), shareholders are authorized to file a civil lawsuit on behalf of the company. For this purpose, the shareholder concerned is required to represent at least 1/10 (one-tenth) of the total number of shares with valid voting rights. The shareholder is not the result of the resolution of the GMS, therefore the shareholder because of the right or not of the shareholder to sue on behalf of the shareholder concerned can directly file a lawsuit to the company's court will be proven through the trial process.

The Board of Directors of a limited liability company must fulfill the following obligations:

1. Prepare shareholder lists, special lists, minutes of General Meetings of Shareholders (GMS), and Board of Directors meetings (Article 100, paragraph (1)(a)).
2. Compile annual reports as stipulated in Article 66 and financial documents of the Company in accordance with Corporate Document Law (Article 100, paragraph (1)(b)).
3. Maintain all registers, minutes, financial documents mentioned in (a) and (b), and other Company documents at the Company's registered office (Article 100, paragraph (1)(c)).
4. Upon written request from shareholders, allow them access to the shareholder list, special list, GMS minutes, annual reports, and provide copies of GMS minutes and annual reports (Article 100, paragraph (3)).
5. Board members must disclose their own and their families' ownership of shares in the Company and other companies, which must be recorded in a special register (Article 101, paragraph (1)).
6. Board members failing to fulfill obligations under (a), (b), (c), and (d) and causing losses to the Company are personally liable for those losses (Article 101, paragraph (2)).
7. Obtain approval from the GMS for:
   a. Transfer of Company assets, or
   b. Pledging Company assets as collateral for debts, where the total exceeds 50% of the Company's net worth in one or more transactions, whether related or not (Article 101, paragraph (3)

In the Theory of Legal Protection

This is in line with (Soekanto 2020) theory of legal protection, which states that legal protection is essentially protection given to legal subjects through legal instruments. This preventive and repressive protection is used by the government to protect the rights of the community, including the right of the business world, to operate (Jerman 2017).

Theory is used to solve this research problem. The theories used include the theory of legal protection, the theory of liability, and the theory of substantial guarantees. Legal protection theories include theories that protect legal entities from the responsibility and right to provide secured loans.

"Law is a general regulation of life that is important to protect the interests of human beings in society," (Sinaulan 2018). The theory of rights and obligations is related to the theory of legal protection. Rights were defined by Soetjipto Rahardjo as the power granted to a person by law to protect his interests. So this right is the granting of certain power to a person to act in the framework of his interests (Qothrunnada Lubis 2024); (Rasyidi 2022).

The subjective has the authority to act, according to Van Apeldoorn, "In every legal relationship there are two parties, on the one hand the right and on the other the obligation." However, an obligation requires a legal entity to do something through a law that serves to guarantee the protection of the legal entity, including rights, obligations, property, a legal entity can be affected and its physical assets. If a legal entity fails to meet its obligations.

Legal protection is divided into internal and external legal protection. Internal legal protection is provided by the parties through an agreed contract, whereas external legal protection is provided by the legislature (Mahfirah et al. 2021). Certain regulations are arranged in such a way that they can be applied

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without infringing on the rights of others. The agreement also provides a mechanism for restoring rights even if those rights have been violated (Putra and Nugroho 2021).

Hajon said legal protection is an effort to protect the rights and obligations of certain parties. The concept of legal protection is a universal concept of the rule of law. Legal protection exists against violations or illegal actions committed by the government, regardless of whether the government's actions violate the law or not, and whether or not the government's actions deserve attention by the public. The purpose of legal protection is to guarantee protected rights in accordance with the obligations that must be fulfilled.

Legal protection can be defined as the protection provided by law against a certain object or object so that law enforcement officials are not harmed and do not cause multiple interpretations (Wijaya 2022). Mertokusumo (1993) also divided the legal protection of citizens into two categories: preventive and repressive. Preventive legal protection means providing the widest possible opportunity for the public to sue and express their opinions about decisions made by the government before the decision is decided. For examaple, before the official announcement of a bill, the public is given the opportunity to provide feedback and contribute. Government regulations, regulations, and other legislation are also made in the same way. Repressive legal protection is the last method used to resolve disputes. This type of legal protection should be used when preventive legal protection has been used but has not been successful. One way to protect the public from repressive laws is to implement the general justice system in Indonesia (Wijaya 2022).

In the Company's Legal Theory

A Limited Liability Company (PT), formerly known as Naamloze Vennootschaap (NV), is a business partnership characterized by share capital that grants ownership proportionate to the shares held. Unlike other business forms, PTs allow for ownership changes without requiring dissolution, as ownership is represented by tradable shares. PTs are formed by private entrepreneurs collaborating to manage a shared business venture. They offer the public an opportunity to invest in the company by purchasing shares.

Moreover, PTs are currently the most popular and in-demand corporate entity among entrepreneurs. According to Law No. 40 of 2007 concerning Limited Liability Companies, a PT is defined as follows:

"A Limited Liability Company is a legal entity established based on an agreement that carries out business activities with authorized capital which is entirely divided into shares and conclusions from several business relationships, and meets the requirements set forth in this law and its implementing regulations."

From the aforementioned points, we can summarize the following key aspects:
1. A Limited Liability Company is a legal entity established to conduct business activities.
2. Its formation is based on an agreement among the involved parties.
3. The company is established to engage in specific activities or businesses.
4. Capital in a Limited Liability Company is divided into shares.
5. Compliance with laws and government regulations is mandatory for Limited Liability Companies.

In Theory of Responsibility

According to the regulations of the 2007 Constitution, there are norms concerning responsibilities, including those of directors and commissioners in mergers and acquisitions as outlined in Article 97, paragraphs (1) to (5). It stipulates that the Board of Directors' responsibility is not restricted, particularly in cases where annual financial statements are incorrectly prepared or

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misleading. Paragraph (3) clarifies that each member of the Board of Directors bears full personal responsibility for any losses incurred by the Company if they are found guilty or negligent in performing their duties as specified in paragraph (2).

The existence of a limited board of directors is life for the company (Negara 2020); (Suratminingsih 2023). There is no company without directors; On the other hand, there is no company without directors. Therefore, the board of directors is very important for a limited liability company. Although the exact role of the board of directors in a limited company is not explicitly defined, it is understood that the board possesses the requisite authority to manage the company, acting on its behalf both within and outside of legal proceedings. Article 1, Section 5 in conjunction with Article 92, Paragraph (1) of the 2007 Constitution stipulates that the board bears responsibility for overseeing and conducting the company's operations in alignment with its interests and objectives.

Thus, according to Article 92, Paragraph (1) of the 2007 UUPT, the organ responsible for managing the company is clearly the board of directors. Each member of this board is obligated to perform their duties in good faith and with full responsibility toward the company's interests and operations. This implies that personal liability rests with each member of the board should they be found guilty or negligent in fulfilling their responsibilities. The Limited Liability Company Law does not elaborate further on the board's role in managing the company. Fred B.G. Tumbuan, as quoted by Gunawan Widjaja in "Responsibilities of Directors and Commissioners and Position of GMS of Limited Liability Companies," states that the legal authority for management is entrusted by law to the board of directors, acting for the benefit of the company as an independent legal entity (*Persona standi in judicio*).

When performing its duties, the board of directors of the company is obligated to prioritize the interests of the company as a distinct legal entity. It serves as the sole entity within the company responsible for its management functions. Essentially, the board of directors of a company typically encompasses two primary functions, namely:

1. The management function, in the sense that the board of directors performs the task of leading the company. This management function in German law is called Geschaftsfuhrungs-befugnis, and
2. The function of representation, in the sense that the board of directors represents the company inside and outside the court. The principle of representing the company outside the court causes the company as a legal entity to be bound by transactions or contracts made by the board of directors on behalf of and for the benefit of the company. This function of representation in German law is called Vertretungsmacht.

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CONCLUSION

Based on Law Number 40 of 2007 concerning Limited Liability Companies and focusing on articles 92 and 97 and already related to the Legal Protection Theory (*Grand Theory*), its directors are protected when there is a loss to the underlying company from the Company's Legal Theory (Middle Range Theory) then regarding the underlying legal rules in articles 92 and 97 there have not been clearly regulated and in the *Applied Theory of Responsibility (Applied Theory*) directors feel responsible and get justice because when a mistake occurs, the director is not required to compensate for the losses that occur to the company, of course based on articles 92 paragraphs 1 to 6 and 97 paragraphs 1 to 7 have been described. However, not all companies have yet applied it to articles 92 and 97. Therefore, he asked the government to revise article 92 paragraphs 2 and 97 5 because of the uncertainty of the regulation so that there are still companies that have not made payments after the completion of the work and there are also even though the work has been completed, they are still waiting for the process which takes more than a minute, even 6 months before this payment is made, which causes the company to suffer losses because the initial capital is withheld and has not been paid and to finance the next work must wait for the process The previous disbursement can only be carried out in the next work process, because from the agreement in this case the director represents the company for every employment contract agreement that arises, then every agreement when something goes wrong, what must be sued is a lawsuit for default because the director represents the company in his position and not in his personal name.

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