

Board Of Directors Accountability In Good Business Practice

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Abstrak: *In a Limited culpability Company (PT), where directors are frequently held responsible for their acts pertaining to the company's administration, this study examines the legal concerns surrounding the board of directors' culpability. This obligation may result in civil liability, criminal liability, or even removal from office. Finding the legal void surrounding acquit et de charge (free from liability) under Law No. 40/2007 on Limited Liability Companies (UUPT), which does not specifically govern the procedure, is the primary goal of this study. This study employs the normative technique, which focuses on examining relevant laws and regulations, specifically the UUPT, as well as jurisprudence and doctrine pertaining to the Board of Directors' liability. Using this method, the study discovered that while the Company Law governs the Board of Directors' power and duty, there are no explicit guidelines governing the acquit et de charge process in PT's Board of Directors' accountability process. This creates ambiguity in the way the Board of Directors' responsibility to the General Meeting of Shareholders (GMS) is implemented and raises the possibility of power abuse that could hurt family members. In order to give the Board of Directors legal certainty and fairness in the performance of their obligations, this conclusion necessitates additional regulation of the absolve et de charge mechanism.*

Keywords : *Accountability; Acquit et de Charge; Board of Directors*

INTRODUCTION

In the past, the term "limited liability company" (abbreviated "PT") was known as "Naamloze Vennootschap." Perseroan Terbatas is a combination of the words "Perseroan" and "Terbatas," where "Perseroan" refers to the capital of a Limited Liability Company, which is made up of shares, or sero-sero, and "Limited" refers to the responsibility of shareholders, which is only the nominal value of the shares they own.¹ A Limited Liability Company can act legally through its "representative" since it is a legal entity or artificial person. Because of this, there is a person who represents the company and acts on its behalf, known as a "agent." As a result, the company is also a legal subject—specifically, persona standi in judicio, or an independent legal subject. Like a regular human being, natural person, or natuurlijke persoon, it may have rights and obligations in legal relationships. Like a human, it has rights and obligations, debts and credits, the ability to sue or be sued, and the capacity to make decisions.²

¹ H.M.N. Purwosutjipto, *Pengertian Pokok Hukum Dagang Indonesia, dikutip dari Ridwan Khairandy Perseroan Terbatas Doktrin, Peraturan Peraturan Perundang-Undangan, dan Yurisprudensi Edisi Revisi*, (Ctk. Kedua, Total Media, Yogyakarta, 2009), hlm. 1.

² Rachmadi, *Dimensi Hukum Perusahaan Perseroan Terbatas*. Bandung: Alumni. 2004. Hlm. 50



Establishing a capital partnership through an agreement, a Limited Liability Company is a legal entity that carries out business operations using authorized capital that is fully divided into shares and satisfies the requirements set forth in Law Number 40 of 2007 concerning Limited Liability Companies and its implementation. A limited liability company must complete the steps and requirements for ratification of limited liability companies as outlined in the Company Law, specifically the ratification of the Republic of Indonesia's Minister of Law and Human Rights, in order to become a legal entity. The processes involve preparing the Articles of Association, submitting and reviewing the proposed name for the Limited Liability Company, and having the Minister ratify the articles of association. Since a PT is a capital partnership, its assets are made up of capital that is completely split up into shares. As a form of capital involvement, the PT's founders are required to provide capital in the form of shares and are given proof of share certificates. Shareholders' liability is restricted to the amount of money or shares they invested in the business (limited liability). Only to the extent of the shareholders' share capital put in the business may all of the company's debts be imposed on their personal assets.

An agreement is the foundation for the creation of a PT. A PT must be established as a result of an agreement between multiple individuals who pledge to start a business together and to invest their money in the business in the form of shares. The agreement needs to be in the form of an Indonesian notarial deed. The notary in question is a notary whose office is located in the company's domicile. The Republic of Indonesia's Minister of Law and Human Rights must legalize the notarial deed for it to become a legal body.

Restricted Responsibility Businesses are formed in order to generate wealth and profits through the board of directors' execution efforts. Due to competition from other businesses, corporations must constantly create corporate strategy in order to grow or survive. In actuality, the deeds of establishment include the Limited Liability Company's "Articles of Association," which are created by a notary public and require the Minister of Justice's permission and confirmation. The articles of association were created to serve as guidelines for the Persero in conducting its operations, which undoubtedly do not violate public order or decency standards. For a Persero to serve as a guide in managing the business, the Articles of Association are crucial.

One of the people in charge of running the business in line with its goals is the Board of Directors. This is due to the fact that "directors are both agents and trustees for limited liability companies." It is referred to as an agent as the board of directors works on behalf of the company and as a trustee since it oversees the management of the firm's assets.³ A board of directors' fiduciary obligation is to oversee the company's management; it is not accountable for the company's other organs, such as the board of commissioners or the general meeting of shareholders, let alone shareholders. According to company law, fiduciary obligation requires the Board of Directors to deviate from the tenet that the responsibilities and powers they are granted are founded on two principles in order to fulfill their duties and govern the company. The two guiding concepts are the confidence bestowed by the company and the principle pertaining to the competence and wisdom of the Board of Directors' decisions.

Within the bounds set forth by this law and/or the articles of organization, the General Meeting of Shareholders (GMS) is an organ of the corporation with jurisdiction not otherwise provided to the

³ Gunawan widjaya, 150 Tanya Jawab Tentang Perseroan Terbatas, Forum Sahabat, 2008, Hal. 65

board of directors or the board of commissioners. Articles 75 through 91 of Chapter VI of the Limited Liability Company Law cover regulations pertaining to the GMS. In its tangible form, the GMS serves as a venue for shareholders to request information about the company from the Board of Directors and the Board of Commissioners. The GMS uses the data as the foundation for deciding on the Company's policies and strategic course of action when making decisions as a legal body. The GMS forum's information-sharing and decision-making processes are methodical and structured in accordance with the agenda. The General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners are the three organs of a Limited Liability Company that are governed by Article 1 of Law No. 40 of 2007. The Board of Directors is one entity that is crucial to the operations of limited liability companies. In actuality, though, there are problems with directors' liability that arise and delegitimize a director, which can result in the board of directors being removed, the directors being held civilly liable, or even criminally liable.

METHODOLOGY

In order to examine the culpability of the Board of Directors in a Limited culpability Company (PT) in light of sound business practices, this study employs a normative method with a legislative and conceptual approach. In order to comprehend the power and duty of the Board of Directors and the rules pertaining to sound corporate governance, the statutory approach looks at Law No. 40/2007 on Limited Liability Companies (UUPT). Legal ideas like fiduciary duty and acquit et de charge are analyzed using the conceptual approach in order to evaluate how the concepts of caution, accountability, and transparency are used in company operations. The goal of this study is to offer suggestions for enhancing open and accountable corporate governance and elucidating the Board of Directors' accountability system.

RESULTS AND DISCUSSION

The Limited Liability Company Law establishes that the board of directors is in charge of managing the business for the company's benefit and in line with its goals and objectives. This management must be done fully and in good faith.⁴ Darian M. Ibrahim distinguishes between personal responsibility and joint liability in relation to the board of directors' responsibilities. Specifically, directors are held personally liable if they fail to uphold the duty of loyalty (good faith, conflict of interest, or self-interest), and joint liability is triggered if they fail to uphold the duty of care by failing to implement the standard of conduct.⁵ Each member of the board of directors is personally liable for the company's losses if he/she is guilty or negligent in carrying out his/her duties in managing the company.⁶ In the event that the board of directors consists of

⁴ Pasal 97 ayat (1) dan ayat (2) Undang-undang Perseroan Terbatas. Sebagai pembanding Australian The Corporation Act 2001, dalam Section 181-183, mengatur juga hal yang sama Dimana Direksi harus bertindak dengan itikad baik dan tidak menyalahgunakan posisi dan informasi yang dia dapat karena kedudukannya sebagai direksi. (Company Directors must act in a good faith in the best interest of the company and for proper purpose, not misuses one's position within the company, and not misuse information obtained because of their position as a director or officer of the company).

⁵ Duty of care sebagai standard of conduct tercantum pula dalam Model Business Corporation Act Section 8.30. Darian M. Ibrahim, Individual or Collective Liability for Corporate Director, Iowa Law Review, Vol. 93. 2008, hal. 933 dan 945

⁶ Pasal 97 ayat (3) Undang-undang Perseroan Terbatas. Di Amerika Serikat terdapat contoh kasus dimana Inside Director Prosser, Inside Director and Company Counsel John Raynor dan Outside Director and Financial Expert Salvatore Mouio dihukum oleh Delaware Supreme Court, bertanggung jawab secara pribadi karena dinilai melanggar duty of loyalty., sedangkan 4 (empat) direksi lainnya tidak. Dalam kasus ini Justice Jacob berpegang bahwa, "[t]he liability of the directors must be determined on an individual basis because the nature of their breach of duty (if any), and whether they are exculpated from liability for that breach, can vary for each director." Berdasarkan pendekatan individual ini Justice Jacob menjatuhkan hukuman sebagai berikut, "imposed liability on Prosser for violating his duty of loyalty by self-dealing, Raynor for breaching his duty of loyalty "and/or" good faith by assisting Prosser in the privatization and by "consciously disregarding his duty to the minority stockholders," and Mouio for breaching his duty of loyalty "and/or" good faith because he was not independent of Prosser and "voted to approve the transaction even though he knew, or at the very least had strong reasons to believe, that the \$10.25 per share merger price was

at least 2 (two) persons, the loss of the company caused by the fault of the board of directors shall be their responsibility jointly and severally.⁷

Members of the board of directors or the board of directors as a whole are not liable for the company's losses as long as they can show that: (1) no mistake or negligence was made; (2) the management was done in good faith and in accordance with the principle of prudence; (3) there was no conflict of interest; and (4) preventive measures were taken. This is known as the business judgment rule. The evidence presented by the aforementioned directors has no bearing on the ability of other members of the Board of Directors and/or the Board of Commissioners to file a lawsuit on the company's behalf. The duties of the Board of Directors are closely linked to the spirit of collegiality.

The Board of Directors is required by the Limited Liability Company Law to represent the Company in court and outside of it, unless the articles of association specify otherwise. Each member may represent the company if the board of directors is made up of several people.⁸ Therefore, each member of the Board of Directors is regarded as the person authorized to represent the firm under the Limited Liability Firm Law, unless the Articles of Association specify otherwise. The GMS, the Board of Commissioners, and the Board of Directors all effectively occupy the same or equal position within the company, even from a doctrinal standpoint. Each has certain duties that are outlined in the articles of association and the law.⁹ Another effect is that when it comes to operating the company, the board of directors and/or the board of commissioners are more concerned with the interests of the company than with the interests of the shareholders.

Common law nations like the United States are where the business judgment rule theory originated. when directors are protected under the doctrine. "The rule that shields management from liability in corporate transactions completed within the corporation's and management's power when there is a reasonable basis to indicate that the transaction was made with due care and in good faith" is known as the "business judgment rule."¹⁰ Therefore, the business judgment rule doctrine is the solution to directors' fiduciary duties in managing the firm if it is connected to the doctrine of fiduciary responsibility. As previously said, directors must be able to make choices fast and precisely in business activities that are fraught with uncertainty and intense competition. It is unjust that the directors' constant concern about making a poor choice that may hurt the business overshadows their management duties.

It is obvious that this will negatively impact the company and interfere with its performance. The notion of business judgment rule does, in fact, provide directors' freedom to innovate and give priority to corporative and profit-oriented management in addition to answering their fiduciary duties. Easterbrook and Fischel highlight this as follows:¹¹ :

unfair," given his financial expertis." Re Emerging Communication, Inc. Shareholders Litigation, No. Civ.A 16415, 2004 WL 1305745 (Del. Ch. May 3, 2004)

⁷ Pasal 97 ayat (4) Undang-undang Perseroan Terbatas. Di Amerika Serikat terdapat contoh dimana 10 (sepuluh) orang anggota direksi dari Trade Union Corporation dinyatakan bersalah dan bertanggung jawab sebesar US \$ 23.5 Million oleh Delaware Supreme Court, karena melanggar duty of care. Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985)

⁸ Pasal 98 ayat (1) dan (2) Undang-undang Perseroan Terbatas. Sebagai pembanding di Amerika Serikat, tidak diatur dengan tegas mengenai anggota direksi mana yang berwenang mewakili perseroan di dalam dan di luar pengadilan dalam hal anggota direksi lebih dari 1, karena RULLCA 2006 Section 110 (a) menyatakan bahwa wewenang manager diatur dalam Operating Agreement. Lihat juga catatan kaki nomor 76.

⁹ Pramono, Op. Cit., hal. 22.

¹⁰ Bernard S. Black, The Principles Fiduciary Duties of Board of Directors, 3rd Asian Roundtable on Corporate Governance, Singapore April 2001, hal. 200

¹¹ Frank H. Easterbrook and Daniel R. Fischel, The Economics Structure of Corporate Law, (Cambridge: Harvard University Press, 1991), hal. 91.

The business judgment rule is based on the understanding that investors' wealth would decrease if managers' choices were regularly subjected to stringent judicial review. It is unclear exactly why closed judicial scrutiny would not maximize investors' wealth. The common defenses are that courts are incompetent at making business judgments and that corporate managers will be more cautious out of fear of personal culpability, which will also make less talented individuals willing to serve as directors.”.

To put it another way, Easterbrook and Fischel were concerned that too stringent laws that constantly make a director fear personal culpability would (1) reduce investor returns and (2) discourage competent individuals from wanting to serve as directors of a corporation. The business judgment rule doctrine is based on this idea. According to the aforementioned interpretation, directors are protected by the business judgment rule for business decisions that make up company transactions, provided that they are executed with extreme prudence and good faith and within the authority parameters outlined in the articles of association. Additionally, according to Robert Charles Clark, the business judgment rule is a straightforward principle of directors' business judgment that will not be contested in court; directors and shareholders are not accountable for the outcomes of their business choices.¹²

Based on the above description, one issue that needs to be taken into consideration is how the legal force of granting the Board of Directors and the Board of Commissioners the principle of Acquit et de Charge will be affected if it turns out that the Annual Financial Statements that the two parties attached at the Annual GMS contain an error. However, it also raises the question of how much accountability the Board of Directors and the Board of Commissioners have for the Financial Statements they have included in the Annual GMS. When the Acquit et de Charge principle has successfully completed a rigorous control function and a lengthy accountability process, it is deemed legitimate. Natural disasters and modifications to governmental rules are two examples of the various elements that may impact the use of the Acquit et de Charge concept. Therefore, a Legal Subject who has been bound by the Acquit et de Charge Principle of Exemption from Legal Liability cannot be held accountable for an error that results in losses because of these conditions. This is because he had no control over it.

In February 2006, ECW Neloe was acquitted by the South Jakarta District Court, having been found not guilty. A year later on September 13, 2007, he along with I Wayan Pugeg as Director of Risk Management and M. Sholeh Tasripan as Director of Corporate Banking were sentenced to 10 years imprisonment each and a fine of Rp. 500,000,000,- in lieu of 6 months imprisonment. The sentences were handed down at the cassation level in the Supreme Court in an open meeting. When ECW Neloe passed away, it was evident that his business policy of extending credit to a number of debtors had yielded good results, which ultimately benefited Bank Mandiri.¹³ If we look closely, this case falls under the scope of corporate law, namely the doctrine of Business Judgement Rule (BJR). The BJR doctrine is a doctrine that teaches that the Company's Board of Directors is not responsible for losses arising from business policies it has made, if the business policy is based on good faith and the principle of prudence. Without having to seek explanations from the shareholders or the court for the decisions it makes when operating the business, the

¹² the rule is simply that the business judgement of the directors will not be challenged or overturned by court or shareholder, and the directors will not be held liable for the consequences of their exercise of business judgement – even for judgement that appear to have been clear mistakes – unless certain exceptions apply.” Robert Charles Clark, Corporate Law, New York: Aspen Publisher, 1986, hal. 123.

¹³ Anita Khoerunnisa, “Kasus E.C.W Neloe”, diakses dari <http://anita.khoerunnisa.blogspot.com/2016/01/ecw-neloe.html?m=1>, pada tanggal 27 juni 2023

Board of Directors is legally protected.¹⁴ Because it is a business risk, it might be concluded that this instance does not truly represent a criminal violation. According to company law standards, ECW Neloe shouldn't be considered a suspect.

When one party acts to further the interests of another party at the expense of their own, they are assuming fiduciary duties. The following guidelines are included in the Fiduciary Duties of Directors:¹⁵

- a. The Board of Directors cannot carry out its responsibilities for personal gain or the benefit of third parties without the company's consent or knowledge;
- b. Without the company's consent, the board of directors may not use their position as management to benefit themselves or other parties;
- c. Directors are prohibited from abusing the company's resources for their personal gain or the benefit of other parties.

According to the theory, directors have fiduciary duties to the corporation rather than to shareholders. Therefore, the directors can only be forced to use the Fiduciary Duties concept by the firm. Nonetheless, they must generally consider the interests of shareholders when performing their duties as directors. In every meeting he attends, he is free to vote and express his ideas in line with his values and interests, despite adhering to the notion of fiduciary duties as a director. Additionally, as long as the choice does not negatively impact the company, directors are allowed to follow their business instincts and judgment.¹⁶

In reality, it frequently happens that the Board of Directors, which is tasked with managing the business, finds itself in legal hot water as a result of the choices or policies it takes. The episode demonstrates the importance of a decision made by the board of directors, which is an organ of the firm. In the event that the decision proves detrimental to the business, it is not unusual for law enforcement to file personal charges against directors in both the criminal and civil domains.¹⁷

The business judgment rule doctrine's purpose is to provide directors with direction and guidance so they don't make snap decisions. A board of directors must base its decision-making on the standards outlined in the business judgment rule doctrine because every choice it makes will have a significant impact. These standards include maintaining the principles of good faith and prudence by concentrating solely on the interests of the company, while adhering to the laws and regulations as well as the articles of association.

Essentially, the business judgment rule gives directors acting in good faith legal protection, allowing them to freely conduct business on behalf of the firm. This type of legal protection is an excellent way to address the worries of any director who wants to take advantage of possibilities and innovate in the face of business climate uncertainty but is concerned about the possibility of lawsuits. There might not be any directors who dare to take action to make business judgments if each director is held personally responsible for any losses

¹⁴ Muhammad Gary Gagarin Akbar, "Business Judgement Rule sebagai Perlindungan Hukum bagi Direksi Perseroan dalam Melakukan Transaksi Bisnis", *Jurnal Justisi Ilmu Hukum Universitas Buana Perjuangan Karawang*, Volume 1 Nomor 1, 2016, hlm. 13

¹⁵ Ridwan Khairandy, 2013, *Pokok-Pokok Hukum Dagang Indonesia, cetakan ke-1*, FH UII Press, Yogyakarta, hlm. 109, dikutip dari Bryan A. Garner, *Black's Law Dictionary, Eight Edition*, (St.Paul/Minn: West Publishing Co, 2004), hlm 110

¹⁶ Munir Fuady, *Op,cit*, hlm 61

¹⁷ Hertawan, Penerapan Doktrin *Business Judgment Rule* di Indonesia, <https://www.hukumonline.com/klinik/a/penerapan-doktrin-ibusiness-judgment-rule-i-di-indonesia-lt62565dbe855a0/>, diakses pada 22 maret 2023

incurred without being granted a defense. It will therefore impede the company's expansion and cause it to stagnate. The restriction of the national economy's flow has a wider effect.

In carrying out its duties, the Board of Directors is burdened with various obligations in connection with the management of the Company, in this case including organizing the GMS. Shareholders are entitled to the organization of the GMS, attend and vote in the GMS. The Board of Directors of the company has an obligation to hold a GMS as an accountability for the activities of the company's activities, under certain conditions the Board of Directors of Terang Lintas Fantasi does not always hold GMS and extraordinary GMS as regulated in the legislation. With the principle of Fiduciary Duty owned by the directors, it becomes a guideline in carrying out company activities as long as it is for the company's goals and ideals.¹⁸

In addition, the Board of Directors has two existing responsibilities in managing the organization. The first is the management role, which is carried out by the directors. The second is the representation function, whereby the directors act as the company's spokesperson both within and outside of court. The link between directors and the corporation is the subject of various theories. According to some viewpoints, the fiduciary connection—a trust granted by the company—is the reason why directors and limited liability firms have a relationship. In addition to the relationship of trust, limited liability companies and directors have a contractual relationship because, upon appointment, the directors agree to fulfill the duties assigned to them, including those governed by laws and regulations as well as internal company regulations.¹⁹

As time passes and the business world in both developed and emerging nations develops quickly, company development is founded not only on business but also on the creation of laws and regulations. Laws and regulations serve as the foundation and backbone of corporate operations. It is impossible to separate the awareness and adherence to laws and regulations by businesspeople from the development and growth of businesses. Law as a tool for transactions, as a safeguard for parties engaged in business operations, and as a tool for resolving disputes when business issues arise.

The one who keeps the law is an understanding son, but the one who hangs out with gluttons humiliates his father. Understanding means wise. So, the attitude of keeping the right and good laws is wise. On the other hand, the criminal not only brings shame or humiliation to himself in front of the community but also to his parents.²⁰

Therefore, every businessman must be aware of various forms of business irregularities or crimes that can drag him into legal cases. The mindset that needs to be built is an anti-crime attitude. Unlawful acts or crimes in the business world cannot be separated from the wrong perspective on business itself. In Indonesia, the concept of business judgment rule against directors is adopted in Article 97 paragraph (5) of the Company Law which reads in full: Board of Directors members will not be held accountable for the losses mentioned in paragraph (3) if they can demonstrate:

- a. He or she was not negligent or at fault for the loss;
- b. He or she has managed in good faith and prudently for the benefit of the company and in line with its goals and objectives;

¹⁸ Hasil wawancara dengan Bapak Dave Njikuluw, Direksi PT Weida Terang Lintas Fantasi, Jakarta Utara, pada tanggal 02 Mei 2023, Pukul 11.00

¹⁹ *Ibid*

²⁰ Agustinus Simanjuntak, Hukum Bisnis, sebuah pemahaman integratif antara hukum dan praktik bisnis, Depok, Rajawali Pers, 2018, Hal 2.

- c. has no direct or indirect conflicts of interest regarding the management decisions that caused the loss; and
- d. has taken measures prevent the incidence or continuation of such losses.

The four conditions mentioned above are cumulative, i.e. they must be fulfilled in their entirety in order for the directors to be free from personal liability. The above conditions are essentially the basis for the application of the business judgment rule doctrine in a defense for directors. It should be underlined that the board of directors cannot take refuge under the principle of business judgment rule if the decisions they make contain elements of fraud, conflict of interest, illegality, and gross negligence.²¹

Instead than reference to the decision's actual content, the application of the business judgment rule doctrine focuses on the steps and processes the board of directors takes prior to making a decision. In theory, the existence or lack of the element of intent—knowing (*willens*) and willing (*wettens*)—will have a significant impact on the application of the business judgment rule.²² during the decision-making process by the directors. Directors may be held personally accountable for their deeds, provided that the deeds result in a loss due to error or neglect. Whether or not it complies with the company's Articles of Association and applicable rules and regulations, the formality of the action indicates the presence of error or neglect on the part of the board of directors. The board of commissioners is subject to the *mutatis mutandis* application of the Business Judgment Rule in Law No. 40 of 2007 respecting Limited Liability Companies, as stipulated in Articles 114 and 115.

As long as the decision is made in good faith, does not conflict with personal interests, and is in line with the needs of the company at the time it is made, the Business Judgement Rule doctrine can be used to exempt the board of directors from personal responsibility if it is sued by an individual or shareholder who claims that the board has made a decision that has harmed the company.

According to the Business Judgement Rules principle, the company's directors are not legally liable for the choices they make, even if such choices result in losses for the business. For directors, the business judgment rule principle may serve as a shield. However, if a director's decisions involve elements of fraud, conflict of interest, illegality, or gross carelessness, they cannot claim protection under the business judgment rule. Liability in the civil sphere is emphasized by the business judgment rules premise.

The business judgment rule is based on a number of US cases, including one that the Delaware Supreme Court addressed, which asserts that the business judgment rule contains two (two) elements: method and substance.²³ Although the business judgment rule process entails the formality of corporate decision-making, it cannot be utilized in a transaction; instead, it requires proof that the action materially fails to benefit the company. In another case, *Grobow v. Perot*, it was explained that the board of directors must consider good faith, give the firm the best consideration, and undertake a review based on loyalty to the company in order for the business judgment rule to be implemented. However, for civil law system countries where the source of law lies in laws and regulations, the court is tasked with interpreting the business judgment rule due to the absence of a comprehensive, clear and specific regulation regarding the

²¹ Hendra Setiawan Boen. *Bianglala Business Judgment Rule*, Cetakan Pertama, Jakarta: PT Tatanusa, 2008, hal. 100

²² Hotasi Nababan. *Hukum Tanpa Takaran: Penjara Korupsi Bagi Korban Penipuan*. Jakarta: Q Communication, 2015, hal. 114

²³ Gunawan Widjaja, 2008, *Risiko Hukum Pemilik, Direksi dan Komisaris*, Jakarta, Forum Sahabat.hlm 80

business judgment rule. Business judgment rule arises as a result of the implementation of the fiduciary duty by a director, which includes the implementation of the duty of skill and care.²⁴

One of the states in the United States that applies the Business Judgment Rule is Delaware, where according to the provisions of the Delaware Corporate Law, the Business Judgment Rule is derived from the basic principle, codified in Del Code Ann. tit. 8, s 141(a), where the business decisions and affairs of a company in Delaware are managed by or under the authority of the board of directors. Where in carrying out the role of managing the company, the directors are required to not easily despair in fulfilling their fiduciary duty for the benefit of the company and the company's shareholders.²⁵ The responsibility of the Board of Directors as the management of the company, creates juridical consequences in its capacity as an organ of the company. The authority and capability of a Board of Directors can be seen from its responsibility as a Board of Directors in carrying out management of the company in accordance with the aims and objectives of the company and the laws and regulations and / or the Company's Articles of Association. It is concluded that if a Board of Directors is deemed to have violated the principle of fiduciary duty towards the company, its decision-making actions are not based on good faith and prudence and are deemed to have violated the laws and regulations / Articles of Association of the company, it can be held personally and jointly liable.

So with this fiduciary duty, the board of directors must have high good faith and high loyalty in carrying out their duties, while the company must have great trust in its directors. Thus, if for example the directors only carry out their duties with full care, or good faith, or loyalty. Thus, a director in carrying out his duties is still not strong enough to say that he is free from legal responsibility if by his actions there are parties who are harmed. Conversely, when a director of a company does not carry out his duties with due care towards his company, then he can be held legally responsible, although according to the theory of fiduciary duty, the limit of legal responsibility is more than just carrying out duties with caution. In other words, legal caution is still not enough.

then to ascertain the application of the business judgment rule principle. When applied to situations such as these, the business judgment rule principle is frequently understood differently:²⁶

- a. The existence of a more compelling business judgment rule, in which the court makes its principal application in addition to applying the business judgment rule.
- b. The court may nonetheless use the business judgment rule even if it seems that the directors or management have a personal interest in the matter, which is more concerned with the reason for an action.
- c. There is a personal interest of the directors/management, in which case the business judgment rule is usually not applied.
- d. In situations when business decisions are in conflict with government policies or regulations, the business judgment rule is inapplicable, and it may even be argued that the director has breached his fiduciary obligation to the company.

Improving the laws and regulations pertaining to the business judgment rule is necessary because the current understanding of the rule is still restrictive and incomplete, making it impossible to implement the principle

²⁴ Hendra Setiawan Boen, *Op Cit*, hlm 100.

²⁵ Susan Ellis Wild, 2006, *Webster's New World Law Dictionary*, Canada, Wiley Publishing, Inc, hlm 58.

²⁶ Ningrum Natasya Sirait, *Hukum Kontrak Bisnis*, USU Press, Medan, 2017, hal 60

without a thorough and thorough understanding. Laws and regulations must be harmonized with one another in order to establish continuity rather than laws and regulations that undermine one another.

According to the Business Judgement Rule in corporate law, if a decision-making activity is made with prudence and good faith, the Board of Directors is not responsible for any losses that result from it. Directors are legally protected, and they can make choices on how to run the firm without having to get approval from the courts or shareholders.²⁷

Basically, the Board of Directors is the organ that manages the activities of the Company. Therefore, every Limited Liability Company must have a minimum of 1 (one) Board of Directors. However, for some types of Company, it is mandatory to have a minimum of 2 (two) Directors, namely a Company that collects and/or manages public funds, a Company that issues debt acknowledgment letters to the public and a Company that is a public Company. If the Company has more than one Director or Board of Directors, then one of the Directors shall be appointed as the President Director.²⁸

The Board of Directors has the capacity to represent the Company both inside and outside the Court for and on behalf of the Company, this provision is emphasized in Article 1 number 5 jo. Article 99 paragraph (1) of the Company Law of 2007. Based on the article, it can be said that the capacity of the Board of Directors in representing the Company is unlimited and unconditional. The broad capacity possessed by the Board of Directors must be balanced with its ability to be responsible. In general, based on Article 97 of the Company Law of 2007, there are three kinds of responsibilities owned by the Board of Directors, including:

1. Fully responsible for the management of the Company based on good faith.
2. Fully personally responsible for the losses suffered by the Company if the Board of Directors is proven negligent and guilty in carrying out their duties.
3. Jointly and severally liable if the Board of Directors consists of two or more persons for their errors and omissions.

The Board of Directors can fulfill its management responsibilities by fulfilling a number of duties. The Company Law of 2007 contains a number of articles that outline duties that the Board of Directors of the Company must do, including: First, as stated in Article 100, paragraph (1) of the 2007 Company Law, the Board of Directors has the following responsibilities:

1. The Board of Directors is required to maintain the GMS minutes, a special register, and a registry of shareholders.
2. The Board of Directors is responsible for creating the company's financial records and annual report.
3. All company registers, minutes, and financial records must be kept up to date by the Board of Directors.

Second, according to Article 101, paragraphs (1) and (2) of the Company Law of 2007, the Board of Directors is responsible for the following duties: The board of directors is required to report and record in a separate register the shares they and their family members own in the company and other businesses. Any

²⁷ Erman Rajagukguk, Nyanyi Sunyi Kemerdekaan Menuju Indonesia Negara Hukum Demokratis, Fakultas Hukum Universitas Indonesia, (Depok : Lembaga Studi Hukum dan Ekonomi, 2006), hal. 390

²⁸ Immanuel Rivanda S, *Jurnal Hukum Bisnis*, USU Press, Medan, hal 20

board member who fails to fulfill their responsibilities and results in losses for the business will be held personally liable.

According to Article 4 of the Company Law of 2007, the Board of Directors must not only fulfill its duties as outlined above, but also refrain from breaking any applicable laws, the Company's Articles of Association, or other statutory regulations. This clause demonstrates the crucial role that the Articles of Association play as the foundation upon which the Board of Directors executes its duties, in addition to depending on the GMS and relevant laws.

The annual report must be submitted to each shareholder of the Company to be ratified in the GMS. The ratification of the annual report reflects that the Board of Directors has been able to carry out its responsibilities and obligations properly. Along with the ratification of the report, the Board of Directors obtained a release and discharge of responsibility (*acquit et de charge*). The release and discharge of responsibility (*acquit et de charge*) as contained in Black's Law Dictionary states that *acquit* which is translated as "to clear (a person) of criminal charge"²⁹, It can be interpreted that a person will be free from criminal charges. Meanwhile, the Dictionary of law states that "in discharge of his duties as director means carrying out his duties as director"³⁰, which can be interpreted that the release of responsibility can be given after the Board of Directors has carried out its duties. The principle of *acquit et de charge* essentially exempts the Board of Directors from any future liabilities resulting from legal actions taken in the year the Board of Directors is awarded *acquit et de charge*.

Directors who obtain *acquit et de charge* have the force of law so that they cannot simply be held liable for their alleged errors and omissions. Pursuant to Article 97 paragraph (5) of the 2007 Company Law, the Board of Directors cannot be held liable for alleged losses to the Company if it can prove the following: a. The loss incurred by the Company is not due to the fault and negligence of the Board of Directors. b. The Board of Directors has carried out management in good faith, prudence and full responsibility in accordance with the objectives of the Company. c. There is no conflict of interest over the management actions that cause losses to the Company. d. The Board of Directors has taken measures to prevent such losses.

The Directors' Report is in compliance with the facts and performance that have fulfilled the standards, and it most importantly includes the profits and losses for a single fiscal year. For this reason, the provision of release and discharge of duty (*acquit et de charge*) is granted. The harmed party may hold the Board of Directors jointly and severally accountable and cannot be freed from such duty if the Board of Directors' activities go outside the scope of the allowed annual report or if the annual report presented is false and misleading (*acquit et de charge*).³¹

If the directors' losses in the annual GMS have been reported, the GMS has acknowledged that the directors' actions are a violation of the Business Judgment Rule, and the company has accepted all of the losses, then the company cannot be held accountable if future losses result from the directors' previously reported actions. This is in line with the *Acquit De Charge* or *Acquit Et De Charge* doctrine, which states that directors and commissioners are released from any future obligations associated with any legal actions they may have taken during the year in which they were granted *acquit de charge*. *Acquit De Charge*, also known as *acquit Et De Charge*, is the process of relieving directors and commissioners of any future liability they may still have for any legal conduct they took during the year they were granted *acquit de charge*. According to article 97 paragraph of Law number 40 of 2007 concerning Limited Liability Companies, the

²⁹ Garner, Bryan A. 1999, Black's Law Dictionary, West Group, United State Of America, h.24

³⁰ Collin, P.H. 1999, Dictionary Of Law 2nd Edition, Fitzroy Dearborn Publishers, United State Of America, h. 75

³¹ Rumata Rosininta Sianya, 2018, „Tanggung Jawab Direksi atas Laporan Keuangan Perusahaan Publik”, Jurnal Fakultas Hukum, Universitas Sumatera Utara, Sumatera Utara

Board of Directors, as the company's management and manager, is required to manage the business well (good corporate governance) in good faith and full responsibility. Each member of the board of directors is responsible for carrying out management as stated in paragraph 1 in good faith.

The openness or transparency principle, which calls for being transparent about the decision-making process and providing accurate and timely information about all facets of the business, particularly those pertaining to the interests of the public and shareholders.³² The accountability concept, which states that each organ of the firm must have its roles, responsibilities, and powers clearly defined and tested in order for management to be carried out properly and efficiently. The principle of responsibility, which is the understanding that the organization's organs have a duty to report on whether the management of the company is in compliance with the relevant laws and regulations and whether the company has succeeded or failed in accomplishing its established vision, mission, goals, and objectives. The independence principle, which is in opposition to current laws and regulations as well as the fundamentals of sound corporate governance, is the state in which the business is professionally run without conflicts of interest, influence, or pressure from any party, particularly the majority shareholder.

Article 66 of Law Number 40 of 2007 regulating Limited Liability Companies requires the directors to submit an Annual Report to the Board of Directors as a means of accountability. The company's progress, accomplishments, and performance during the current year are all covered in detail in the Annual Report. The Annual General Meeting of Shareholders must approve the report. The Board of Directors' power to act extends beyond what is specifically stated in the goals and objectives:

- 1) The Board of Directors is responsible for managing the company for the benefit of the company and in line with its goals and objectives.

The Board of Directors has the authority to carry out the management as mentioned, but it can also take other actions, such as those that are appropriate, fair, and customary based on the goals and purposes of the organization. based on Law Number 40 of 2007 Concerning Limited Liability Companies, Article 92, paragraphs (1) and (2), which stipulate that paragraph (1) should be followed in line with policies judged suitable, within the parameters specified in this law and/or the articles of organization.

The Board of Directors has the power to take action beyond what is specifically stated in the company's goals and objectives. This includes acting in accordance with custom, justice, and propriety, which can be inferred from the goals and objectives of the business. According to Law Number 40 of 2007's Article 92, paragraphs (1) and (2), which deals with limited liability companies,

- 1) The Board of Directors performs the management of the company for the company's advantage and in line with its goals and objectives.

- 2) Within the parameters established by this law and/or the articles of association, the Board of Directors is empowered to perform the management mentioned in paragraph (1) in compliance with policies judged suitable.

The duties and responsibilities of the Board of Directors externally, namely the duties and responsibilities of the Board of Directors of a Limited Liability Company towards third parties are manifested in the obligation of the Board of Directors to make disclosure to third parties of any activities of the Company

³² Tuti Rastuti, *Seluk Beluk Perusahaan & Hukum Perusahaan*, op.cit, hlm. 136.

that are considered to affect the assets of the Company. The obligations imposed on the Board of Directors are, among others, contained in:

- a. Article 44 paragraph (2) of Law No. 40 on Limited Liability Companies, in the event that the Company wishes to make a capital reduction.
- b. Article 127 paragraph (2) of the Law on Limited Liability Companies, in the event that a Limited Liability Company intends to carry out a merger, consolidation and acquisition and for:
 - 1) a company whose line of business is related to the mobilization of public funds.
 - 2) a company that issues debt acknowledgment letters.
 - 3) a publicly listed company.

It is common practice in corporate practice that at the end of their term of office and/or in submitting the Annual Report of a Limited Liability Company, The Annual General Meeting of Shareholders grants the Board of Directors a release of responsibility (acquittal de charge). This is specifically mentioned in the minutes of the Limited Liability Company's general meeting of shareholders. Given that the General Meeting of Shareholders, the Limited Liability Company's highest authority, grants the release of duty (acquittal de charge), The Limited Liability Company's Board of Directors is responsible for enforcing the resolution made by the General Meeting of Shareholders. Consequently, with a few exceptions, the Board of Directors of a Limited Liability Company that has been granted an Exemption from Liability (acquittal de charge) is legally immune from future lawsuits for its activities.

Acquittal de charge, or the granting of release and settlement of the responsibility (management) of the Board of Directors for one fiscal year, is essentially not specifically regulated by Law No. 40 of 2007 respecting Limited Liability Companies. According to Law No. 40 of 2007 on Limited Liability Companies, Article 66, the board of directors is required to write an annual report within six months of the end of the company's fiscal year and present it to the General Meeting of Shareholders, The Board of Directors will then propose that this waiver of directors' responsibilities be granted. However, Law No. 19 of 2003 on State-Owned Enterprises (henceforth referred to as the SOE Law) stipulates in Article 71 Paragraph (1) that in order to apply the principle of Acquittal de Charge to the Board of Directors and the Board of Commissioners, an external auditor's judgment is necessary.³³

This absolute de charge provision is granted since the Directors' Report includes the earnings and losses for a single fiscal year, as well as facts and performance that satisfy the conditions. The harmed party may hold the Board of Directors jointly and severally accountable and cannot be relieved from this obligation if the Board of Directors' activities go outside the scope of the authorized annual report or if the annual report presented is false and misleading (acquittal de charge).³⁴

Although the Company Law of 2007 does not specifically address the legal ramifications of the Board of Directors obtaining acquittal de charge, there are a number of provisions in the articles that can serve as a guide, such as: first, if the Board of Directors has fulfilled its duties and obligations in the management of the Company as required by several provisions, such as Article 97, The Board of Directors can be said to have successfully fulfilled its duties and responsibilities in accordance with Articles 100 and 101 of the

³³ Lembaran Negara Republik Indonesia Tahun 2003 Nomor 70, Tambahan Lembaran Negara Republik Indonesia Nomor 4297.

³⁴ Rumata Rosininta Siyana, 2018, „Tanggung Jawab Direksi atas Laporan Keuangan Perusahaan Publik”, Jurnal Fakultas Hukum, Universitas Sumatera Utara, Sumatera Utara

Company Law of 2007 and the annual report that conforms with Articles 66 to 69 of the Company Law of 2007 and does not contravene the provisions of the Articles of Association and the GMS. As a result, the Board of Directors is entitled to acquit et de charge. With a few exceptions, the Board of Directors' success has the legal consequence that it cannot be sued for its activities in the future.³⁵

The principle of Acquit et de Charge will have legal force when the accountability of the Board of Directors and the Board of Commissioners for the Financial Statements has been approved at the Annual GMS. Based on Article 13 Paragraph (3) of the Company Law, GMS resolutions are considered valid when the GMS is attended by Shareholders representing all shares with voting rights and the resolutions are unanimously approved.³⁶ The granting of Acquit et de Charge is considered valid when it has passed through a long accountability mechanism and a strict control function. There are several factors that can affect the application of the Acquit et de Charge principle, such as natural disasters and changes in government regulations. Thus, when a Legal Subject who has been attached with the Principle of Exemption from Legal Liability (Acquit et de Charge) commits a mistake that causes losses due to these factors, then he cannot be blamed. This is because it happened outside of his control.

The exemption from liability (acquit et de charge) given by the Limited Liability Company to the Board of Directors is limited to civil law actions, while they can be held accountable for actions and management that are included in actions outside the authority of the General Meeting of Shareholders. Therefore, acquit et de charge is never given to the Board of Directors of a Limited Liability Company who are suspected or alleged to have committed acts outside their authority towards the company, such as doing something without the approval of the General Meeting of Shareholders and not in accordance with the Articles of Association of the Company, all of these actions are determined to be personal, so they cannot be represented or transferred. If the Board of Directors at the time of making a decision, has done so with careful consideration, full of responsibility, then given the uncertain business atmosphere, if it turns out that the decision is wrong, the Board of Directors should be able to be sued personally, because the Company must also bear the loss, this is the basic concept of applying the Business Judgement Rule.

It can be said that the decision taken by the Board of Directors must be the decision that according to them is the best for the Company given the dynamic business world. The dynamism of the business world also affects the quality of a BOD's business decision, a business thought is likely to be a fatal mistake. Therefore, there is no standard formula to define a good business decision. Directors cannot be held liable, based on corporate law as follows:

- 1) There must be a loss, either to the Company or to the shareholders, loss can also be caused by loss of profits.
- 2) The Board of Directors exercised its fiduciary duty.
- 3) There is a causal relationship between the loss incurred and not an act of the Board of Directors.
- 4) There is an absence of negligence or intent on the part of the Board of Directors.

Directors who obtain acquit et de charge have legal power so that they cannot simply be held liable for their alleged errors and omissions.

³⁵ Bhakti Moelyono Arief, 2015, *Pembebasan Tanggung Jawab Hukum Bagi Direksi Perseroan Terbatas*. Tesis Fakultas Hukum Uiniversita Gadjah Mada, Yogyakarta, h. 7.

³⁶ Lembaran Negara Republik Indonesia Tahun 2007 Nomor 106, Tambahan Lembaran Negara Republik Indonesia Nomor 4756.

Based on Article 97 paragraph (5) of the Company Law of 2007, the Board of Directors cannot be held liable for alleged harm to the Company if it can prove the following:

1. The loss incurred by the Company is not due to the errors and omissions committed by the Board of Directors.
2. The Board of Directors has carried out management in good faith, prudence and full responsibility in accordance with the objectives of the Company.
3. There is no conflict of interest over the management actions that cause losses to the Company.
4. The Board of Directors has taken measures to prevent such losses.

This provision of release and discharge of responsibility (*acquit et de charge*) is given because the Directors' Report is in accordance with the facts and performance that has met the requirements and most importantly contains the profits and losses in one financial year. If the actions of the Board of Directors are outside the authorized annual report or the annual report submitted is untrue and misleading, the Board of Directors can be held jointly and severally liable by the injured party and cannot be released from such liability (*acquit et de charge*).³⁷

The granting of release and liability (*acquit et de charge*) of a director or all members of the board of directors and the board of commissioners is not regulated in the law on limited liability companies. The granting of release and discharge is not a mandatory agenda at the GMS. The granting of repayment and release of liability does not fully release the responsibility for management and supervisory duties by the board of directors and commissioners in one period. The board of directors or the board of commissioners can still be held accountable, even though they have been given a release and discharge of liability at the GMS, if there are shareholders who do not agree with the company's performance, have at least 10% of the voting rights or if there are actions that violate applicable regulations, both civil and criminal, if not exempted in the GMS decision.

CONCLUSIONS

Directors' decisions must be supported by the principles of sound business judgment and good faith. On the other side, the GMS has legitimized the *absolve et de charge* principle, which exempts directors from accountability. There are restrictions on activities based on the fiduciary duty principle when the *acquit et de charge* principle is applied. There is legal ambiguity because Law Number 40 of 2007 governing Limited Liability Companies does not specifically govern the requirements for awarding the Board of Directors *acquit et de charge*. It should be made clear that *acquit et de charge* is only granted for activities that adhere to the business judgment rules, despite the fact that directors believe they will be entirely exempt from accountability if they receive it.

REFERENCES

- Agustinus Simanjuntak, *Hukum Bisnis, sebuah pemahaman integratif antara hukum dan praktik bisnis*, Depok, Rajawali Pers, 2018, Hal 2.
- Ahmad Yani dan Gunawan Widjaja, *Op,cit*, hlm. 116.

³⁷ Rumata Rosininta Sianya, 2018, „Tanggung Jawab Direksi atas Laporan Keuangan Perusahaan Publik”, *Jurnal Fakultas Hukum, Universitas Sumatera Utara*, Sumatera Utara.

- Anita Khoerunnisa, “Kasus E.C.W Neloe”, diakses dari <http://anita.khoerunnisa.blogspot.com/2016/01/ecw-neloe.html?m=1>, pada tanggal 27 juni 2023
- Australian The Corporation Act 2001
- Bernard S. Black, The Principles Fiduciary Duties of Board of Directors, 3rd Asian
- Bhakti Moelyono Arief, 2015, Pembebasan Tanggung Jawab Hukum Bagi Direksi Perseroan Terbatas.TesisFakultas Hukum Uiniversita Gadjah Mada, Yogyakarta, h. 7.
- Blackstone Press Limited, 2001, hlm 492
- Buana Perjuangan Karawang, Volume 1 Nomor 1, 2016
- Collin, P.H. 1999, Dictionary Of Law 2nd Edition, Fitzroy Dearborn Publishers, United State Of America, h. 75
- Corporation Act Section 8.30. Darian M. Ibrahim, Individual or Collective Liability for Corporate Director, Iowa Law Review, Vol. 93. 2008, hal. 933 dan 945
- Eko Priyono, Agus Surono, Sadino, 2022.”Doktrin Business Judgement Rule Dalam Memberikan Perlindungan Hukum Kepada Direksi BUMN (Studi Kasus PT PLN), (Jurnal Hukum dan Kesejahteraan Universitas Al Azhar Indonesia, Vol. VII, Nomor 02, Juli 2022), <https://jurnal.uai.ac.id/index.php/JMIH/article/view/1264> DOI: <http://dx.doi.org/10.36722/jmih.v7i2.1264> , diakses pada 19 Maret 2023
- Erman Rajagukguk, Nyanyi Sunyi Kemerdekaan Menuju Indonesia Negara Hukum Demokratis, Fakultas Hukum Universitas Indonesia, (Depok : Lembaga Studi Hukum dan Ekonomi, 2006), hal. 390
- Frank H. Easterbrook and Daniel R. Fischel, The Economics Structure of Corporate Law,(Cambridge: Harvard University Press, 1991), hal. 91.
- Garner,Bryan A. 1999, Black’s law Dictionary, West Group, United State Of America, h.24
- Gita Wanda Sesara, 2020, Konsep Penerapan Prinsip Business Judgement Rule Pada Keputusan Direksi Badan Usaha Milik Negara (BUMN), (Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia, Volume 1 Nomor 1 (Maret 2020) 213-225) <https://scholarhub.ui.ac.id/dharmasiswa/vol1/iss1/32> , diakses pada 19 Maret 2023
- Gunawan Widjaja, 2008, Risiko Hukum Pemilik, Direksi dan Komisaris, Jakarta, Forum Sahabat.hlm 80
- Gunawan widjaya, 150 Tanya Jawab Tentang Perseroan Terbatas, Forum Sahabat, 2008, Hal. 65
- H.M.N. Purwosutjipto, Pengertian Pokok Hukum Dagang Indonesia, dikutip dari Ridwan Khairandy Perseroan Terbatas Doktrin, Peraturan Peraturan Perundang-Undangan, dan Yurisprudensi Edisi Revisi, (Ctk. Kedua, Total Media, Yogyakarta, 2009), hlm. 1.
- Hendra Setiawan Boen. Bianglala Business Judgment Rule, Cetakan Pertama, Jakarta: PT Tatanusa, 2008, hal. 100
- Hertiawan, Penerapan Doktrin Business Judgment Rule di Indonesia, <https://www.hukumonline.com/klinik/a/penerapan-doktrin-ibusiness-judgment-rule-i-di-indonesia-lt62565dbe855a0/> , diakses pada 22 maret 2023
- Hotasi Nababan. Hukum Tanpa Takaran: Penjara Korupsi Bagi Korban Penipuan. Jakarta: Q Communication, 2015, hal. 114
- <https://www.islampos.com/kepemimpinan-dalam-al-quran-242443/> diakses pada 14 Januari 2023
- I.G. Rai Widjaya, Hukum Perusahaan Perseroan Terbatas, Megapoint, Jakarta, 1996, hlm. 64
- Immanuel Rivanda S, Jurnal Hukum Bisnis, USU Press, Medan, hal 20

- Indriyani Kusumawati, Yeti Sumiyati, 2021, Penerapan Prinsip Business Judgement Rule Terhadap Direksi Atas Perbuatan Melawan Hukum Karyawan Karena Menetapkan Diskon Pembelian Emas Antam Secara Sepihak. (Jurnal Hukum Bisnis Dan Investasi, Volume 13 Nomor 1, November 2021, p. 097-112) DOI: <https://doi.org/10.28932/di.v13i1.3880> , diakses pada 19 Maret 2023
- Kusmono, 2016 “Pembelaan Melalui Prinsip-Prinsip Business Judgement Rule Bagi Direksi BUMN Persero Bila Terjadi Kerugian” (Jurnal Informasi Keuangan Dan Akuntansi, Vol 3 Edisi Maret), <https://jurnal.pknstan.ac.id/index.php/JIA/article/download/36/26/130>, DOI: <https://doi.org/10.31092/jia.v3i0.36> , diakses pada 19 Maret 2023
- Kuswiratmo, Bonifasius Aji. 2016, Keuntungan Dan Resiko Menjadi Direktur, Komisaris dan Pemegang Saham , Visimedia, Jakarta, h. 12
- Laporan Keuangan Perusahaan Publik”, Jurnal Fakultas Hukum, Universitas
- Lembaran Negara Republik Indonesia Tahun 2003 Nomor 70, Tambahan Lembaran Negara
- Muhammad Gary Gagarin Akbar, “Business Judgement Rule sebagai Perlindungan Hukum bagi Direksi Perseroan dalam Melakukan Transaksi Bisnis”, Jurnal Justisi Ilmu Hukum Universitas
- Muhammad Gary Gagarin Akbar, 2016, Business Judgement Rule Sebagai Perlindungan Hukum Bagi Direksi Perseroan Dalam Melakukan Transaksi Bisnis, (Jurnal Justisi Ilmu Vol 1, N0 1), <https://journal.ubpkarawang.ac.id/index.php/JustisiJurnalIlmuHukum/article/view/77> DOI <https://doi.org/10.36805/jjih.v1i1.77> , diakses pada 19 Maret 2023
- Muhammad Hafizh Akram, Nisriina Primadani Fanaro, 2019, Implementasi Doktrin Business Judgement Rule Di Indonesia.(Ganesha Law Review, Volume 1 Issue 1, May), <https://ejournal2.undiksha.ac.id/index.php/GLR/article/view/21>, DOI <https://doi.org/10.23887/glr.v1i1.21> , diakses pada 19 Maret 2023
- Mulhadi, 2010, Hukum Perusahaan Bentuk-Bentuk Badan Usaha Di Indonesia, Ghalia Indonesia, Bogor, h. 105
- Nalendra Pradipto, Clara Renny Kartika, Agung Jaya Kusuma 2022, Pemberhentian Terhadap Direksi Perseroan Terbatas Dalam Kepailitan Melalui Circular Resolution (Jurnal Suara Hukum, Volume 4 Nomor 1) <https://journal.unesa.ac.id/index.php/suarahukum/article/view/13022/7747> . diakses pada 10 Januari 2022
- Ningrum Natasya Sirait, Hukum Kontrak Bisnis, USU Press, Medan, 2017, hal 60
- Rachmadi, Dimensi Hukum Perusahaan Perseroan Terbatas. Bandung: Alumni. 2004. Hlm. 50
- Re Emerging Communication, Inc. Shareholders Litigation, No. Civ.A 16415, 2004 WL 1305745 (Del. Ch. May 3, 2004) Republik Indonesia Nomor 4297.
- Ridwan Khairandy, 2013, Pokok-Pokok Hukum Dagang Indonesia, cetakan ke-1, FH UII Press, Yogyakarta, hlm .109, dikutip dari Bryan A. Garner, Black’s Law Dictionary, Eight Edition, (St.PaullMinn: West Publishing Co, 2004), hlm 110
- Robert Charles Clark, Corporate Law, New York: Aspen Publisher, 1986, hal. 123.
- Robin Panjaitan, Martono Anggusti, Roida Nababan, 2021.Penerapan Prinsip Business Judgement Rule Terhadap Direksi Yang Melakukan Kebijakan Yang Merugikan Perusahaan (Patik Jurnal Hukum, Volume 10 Nomor 01 April 2021 Page : 1 - 14). DOI <https://ejournal.uhn.ac.id/index.php/patik> . diakses pada 19 Maret 2023

- Ronny Hanitijo, Metodologi Penelitian Hukum, (Jakarta : Ghalia Indonesia, 2000), hlm.24
- Roundtable on Corporate Governance, Singapore April 2001, hal. 200
- Rumata Rosininta Sianya, 2018, „Tanggung Jawab Direksi atas
- Rumata Rosininta Sianya, 2018, „Tanggung Jawab Direksi atas Laporan Keuangan Perusahaan Publik”, Jurnal Fakultas Hukum, Universitas Sumatera Utara, Sumatera Utara
- Rumata Rosininta Sianya, 2018, „Tanggung Jawab Direksi atas Laporan Keuangan Perusahaan Publik”, Jurnal Fakultas Hukum, Universitas Sumatera Utara, Sumatera Utara
- Stephen W. Mayson, Derek French, dan Christoper L. Ryan, Company of Law, London :
- Sumatera Utara, Sumatera Utara.
- Susan Ellis Wild, 2006, Webster’s New World Law Dictionary, Canada, Wiley Publishing, Inc, hlm 58.
- Tuti Rastuti, Seluk Beluk Perusahaan & Hukum Perusahaan, op.cit, hlm. 136.
- Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas. Tambahan Lembaran Negara Republik Indonesia Nomor: 4756
- Undang-undang Nomor 40 tahun 2007 tentang Perseroan Terbatas
- Wawancara dengan Bapak Dave Njikuluw, Direksi PT Weida Terang Lintas Fantasi, Jakarta Utara, pada tanggal 02 Mei 2023, Pukul 11.00
- Winardi, Asas-asas Manajemen, Bandung: Alumni, 1983, hal. 98