



Urgency of the Board of Directors Responsibility in Organizing a Limited Liability Company's General Meeting of Shareholders

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ABSTRACT

This research aims to understand the obligations of the board of directors of a limited liability company in organizing the General Meeting of Shareholders (GMS). The method used by the author is a type of normative juridical research conducted with a conceptual approach. The research results indicate that the board of directors, as the authorized organ of the company, is fully responsible for the management of the company in the interest of the company in accordance with the company's purposes and objectives, and represents the company both in and out of court in accordance with the Articles of Association. The board of directors' role as a manager is more explicit and separate from its dual position as an organ and representative in Article 92 paragraph (1) of the Limited Liability Company Law. Non-compliance with reporting regulations and the failure to hold a GMS can lead to further legal issues and create distrust among various stakeholders in the company. The legal consequences of a company not holding a GMS according to the applicable regulations may result in administrative sanctions imposed by the Financial Services Authority (OJK), as referred to in OJK Regulation No. 15/PJOK.04/2020 concerning the Planning and Organization of General Meetings of Shareholders of Public Companies. These sanctions may include warnings, fines, the obligation to pay a certain amount of money, license revocation, or cessation of activities.

KEYWORDS:

Responsibility, Limited Liability, Board of Directors, General Meeting of Shareholders.

1. INTRODUCTION

Article 92 paragraph (1) of the Limited Liability Company Law (UUPT) states that the corporate organ responsible for managing the company is the board of directors, which is the body authorized to manage the company. They are responsible for the company's day-to-day activities and represent the company in various transactions and strategic decisions. The board of directors' authority includes making decisions regarding operational and financial policies with the aim of maximizing the company's growth and sustainability in accordance with applicable legal regulations. If the board of directors carries out its duties without good faith, this Services Authority Regulation No. 33/POJK.04/2014 is addressed in Article 97 paragraph (3) of the UUPT. It is also mentioned in Article 14 of the

Financial concerning the Board of Directors and Board of Commissioners of Issuers or Public Companies that the board of directors has the authority to manage the company in accordance with policies deemed appropriate for achieving the objectives set forth in the articles of association.

Fraud refers to behavior that involves manipulation, abuse of trust, and deception to gain illegal benefits or harm others. In the business or financial world, fraud often includes actions such as document forgery, embezzlement of funds, and the presentation of false information to alter financial results. Besides causing financial losses for companies, such actions damage reputation and trust. Preventing and identifying fraud is crucial to maintaining the integrity and operational continuity of an organization. An example of this can be seen in a case brought to the Sidoarjo District Court in 2022 by Chen Jiale as the petitioner and Wu Jian Hua, the President Director, as the respondent of PT. RUI XUE INTERNATIONAL. The petition for the establishment of an Extraordinary General Meeting of Shareholders (EGMS) reveals that PT. RUI XUE INTERNATIONAL continued its operations in marketing Aice brand ice cream in the Sidoarjo district area, even after the petition was filed with the Sidoarjo District Court. However, since PT. RUI XUE

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INTERNATIONAL was founded in 2016 until now, the petitioner, who holds 51% of the total paid-up shares, has never received an annual business activity report, a financial report, or any profit distribution (dividends) from the business activities of PT. RUI XUE INTERNATIONAL.

Article 78 paragraph 2 of the Limited Liability Company Law (UUPT) states that "The annual GMS must be held within a maximum period of 6 (six) months after the end of the fiscal year." This provision obliges the company to conduct an annual GMS. However, operational circumstances may arise that necessitate the holding of a GMS. In such cases, the company has the option to conduct an Extraordinary General Meeting of Shareholders (EGMS) as an alternative. The annual GMS provides shareholders with the opportunity to be directly involved in the company's decision-making process. They have the right to approve the company's annual report, including financial statements and the board of directors' report. This is crucial to ensure transparency and accountability to the shareholders, allowing them to adequately assess the company's performance. Beyond merely fulfilling legal obligations, the annual GMS is a mechanism to ensure that shareholders' interests are respected and provides them with an opportunity to participate in the company's financial decisions. Based on the background previously outlined, the author is interested in discussing the urgency of regulating sanctions for the board of directors of a limited liability company that fails to conduct the GMS. The purpose of this study is to determine the urgency of regulating sanctions for the board of directors of a limited liability company that does not hold a General Meeting of Shareholders (GMS).

II. MATERIALS AND METHODS

This research, the author employs a normative juridical legal research method. This method involves conducting legal research through a literature study by analyzing formal legal materials and correlating them with theories related to the main topic of discussion, such as legislation and other theoretical references concerning the legal issues being addressed. These materials are processed and then correlated with the legal issues that are the focus of this research (A'an Effendi & Dyah Ochtorina Susanti, 2014). In analyzing the legal problems in this study, the author uses three types of legal materials: primary legal materials, secondary legal materials, and non-legal materials. These materials are then summarized and utilized to support the discovery of answers to the legal questions posed.

III. RESULTS AND DISCUSSION

The legal responsibility of the Board of Directors (BOD) of a Limited Liability Company (PT) according to the Indonesian Company Law (UUPT) No. 40 of 2007 plays a crucial role in corporate governance regulation in Indonesia. The UUPT stipulates that the BOD, as part of the highest

management of the company, is fully responsible for managing the company in accordance with the law and the established vision and mission. One of their primary obligations is to prepare an annual report that must be clear, transparent, and accurate, reflecting both the financial condition and operational performance of the company. Additionally, the BOD is also required to comply with all applicable laws and regulations, including environmental protection provisions, labor regulations, and capital market rules for companies listed on the stock exchange.

Hans Kelsen, in his theory regarding legal responsibility, asserts that when someone is "legally responsible" for an act, it means that the person is obligated to bear the legal consequences or sanctions resulting from their actions. Responsibility, or "responsibility" in English and "aansprakelijkheid" in Dutch, refers to the legal obligation to bear the consequences of an error or the impact of an action. In his book, Soehardi states that authority is closely related to duties and is the power inherent in a duty or job (responsibility duty), while rights are associated with individuals personally. Everyone requires the appropriate capability or ability to perform their duties. The relationship between responsibility and capability results in accountability for the actions taken.

The Indonesian Company Law (UUPT) stipulates that ultra vires authority is fully governed by the provisions set forth in the articles of association, as explained in Article 92 paragraph (2) of the UUPT. Any negligence committed by a member of the board of directors that causes losses to the company results in the personal responsibility of that director, as regulated in Article 97 paragraph (3) of the UUPT. This article emphasizes that directors must perform their duties with good faith and full responsibility. In fulfilling this obligation, directors have limited liability, which is a key characteristic of a limited liability company. However, if directors violate their duties, then Article 97 paragraph (3) of the UUPT applies. Acting in good faith means gathering sufficient and reliable information and making the best decisions in the interest of the company.

Syarif Bastaman explains that the principle of the Business Judgment Rule is essentially divided into two aspects. First, the Business Judgment Rule is a concept where the board of directors must act in good faith, based on sufficient information, and process it using their knowledge and capabilities. Second, the Business Judgment Doctrine is the concept where the actions of the board of directors are considered valid and binding, provided that the actions are within the scope of the company's authority or are not Ultra Vires (beyond the company's authority).

Article 97, paragraph (5) of the Indonesian Company Law (UUPT) states that members of the board of directors cannot be held liable for any losses as referred to in paragraph (3) if it can be proven that:

1. The loss was not due to their fault or negligence;

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2. They managed the company in accordance with the UUPT and the company's articles of association in good faith and in pursuit of the company's objectives;
3. They had no direct or indirect interest in the management actions that resulted in the loss; and
4. They have taken actions to prevent the continuation of the loss.

The duties and responsibilities of the board of directors toward the company and shareholders begin when the company becomes a legal entity. According to the UUPT, as long as the registration process and the announcement of the deed of establishment, which has been ratified by the Minister of Law and Human Rights, have not been completed, the board of directors is jointly responsible for all legal actions taken by the company.

In its application, joint liability has three possibilities:

1. If there are more than two directors, each is jointly responsible with the others.
2. The board of directors is jointly responsible with the company's founders and the company itself. Joint liability with the company's founders can be reviewed under the provisions of Article 3, paragraphs (2.b), (2.c), (2.d) of the UUPT.
3. If the company has already obtained legal status, the board of directors is jointly responsible with the company as stated in the provisions of Article 90, paragraph (2) of the UUPT.

In Decision No. 195/Pdt.P/2022/PN Sda, the respondent failed to fulfill their obligation to the petitioner, one of the shareholders, by deliberately not preparing the Annual Report. Preparing the annual report is part of the responsibilities that must be fulfilled by the board of directors. This action is considered a violation of the Company's Articles of Association, as stipulated in Article 17 paragraph (4) and Article 66 paragraph (1) of the Indonesian Company Law. Article 17 paragraph (4) mandates that the board of directors must prepare the annual report and place it at the Company's Office for inspection by shareholders from the date of the notice for the Annual General Meeting of Shareholders. Furthermore, Article 66 paragraph (1) of the Company Law emphasizes that the board of directors must submit the annual report to the General Meeting of Shareholders after it has been reviewed by the Board of Commissioners, no later than 6 months after the company's fiscal year ends.

The lack of transparency, accountability, and trust between the company and its shareholders can lead to losses and legal consequences for the shareholders, according to Regulation No. 195/Pdt.P/2022/PN Sda. **Shareholder Distrust:** The failure of the board of directors to submit the annual report may cause shareholders to distrust and feel dissatisfied. Shareholders may believe that the board of directors is not fulfilling its responsibilities or is trying to conceal information that could harm them. This could lead to

shareholders opposing changes in the company's management.

As explained above, since PT. RUI XUE INTERNATIONAL's board of directors failed to provide an annual business activity report or business development report, legal consequences arise according to the applicable regulations in Indonesia. If a company does not hold a General Meeting of Shareholders (GMS) as required, the company may be subject to administrative sanctions, which include a company that does not hold a GMS being subjected to administrative penalties by the Financial Services Authority (OJK), as regulated in Article 61 paragraphs (1) and (4) of OJK Regulation 15/2020 on the Financial Services Authority. These sanctions may include fines, the obligation to pay a specific amount of money, revocation of permits, and even suspension of activities.

Legal consequences may occur where shareholders can take legal action against the board of directors who fail to submit the annual report. This may include the dismissal of the board of directors through the GMS or even legal action if it is deemed to have harmed the company and shareholders. **Credit Rating and Reputation Impact:** Failing to submit the annual report can damage the company's reputation and affect its credit rating. This can make it difficult for the company to obtain financing from banks or investors. The legal regulations governing the obligation of the board of directors to submit the annual report to shareholders are crucial to maintaining the company's transparency and accountability. If the board of directors fails to fulfill this obligation, shareholders have the right to take legal action. This action is not only to protect the financial interests of shareholders but also to encourage responsible and professional managerial practices in the management of the company. Thus, the legal system plays an important role as an effective supervisory tool in maintaining the integrity of the company and building public trust in the business entity.

IV. CONCLUSION

Based on the authors's previous discussion, regarding the main issues discussed, the following conclusions can be drawn:

The board of directors, as part of the company's management, holds full authority and responsibility in managing the company in accordance with its vision and mission. Article 97 Paragraph (3) addresses the issue of personal liability for company losses if the board of directors neglects their duties, and Article 97 Paragraph (4) outlines the principle of collegial responsibility, which applies collectively to each member of the board. The legal consequences of not holding the General Meeting of Shareholders (GMS) according to applicable regulations may include administrative sanctions. A company that fails to hold a GMS may be subject to administrative penalties by the Financial Services Authority (OJK), as regulated in Article 61 Paragraphs (1) and (4) of OJK

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Regulation 15/2020 concerning the Planning and Implementation of General Meetings of Shareholders for Public Companies. These sanctions can take the form of fines, warnings meaning the company must pay a certain amount of money revocation of licenses, or even suspension of activities. legal consequences may arise where shareholders can take legal action against the board of directors for failing to submit the annual report. This may include the dismissal of the board of directors through the GMS or even legal action if it is deemed that the company's and shareholders' interests have been harmed. Credit Rating and Reputation Impact: Failing to submit the annual report can damage the company's reputation and affect its credit rating, potentially making it difficult for the company to obtain financing from banks or investors.

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