

***Violations Of The Board Of Directors Of Pt. Sunwa Akuratama Engineering Batam According To Limited Liability Liability Law (Analysis Of Decision Number: 6/Pdt.G/2021/PN Btm)***

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**ABSTRACT**

*The Board of Directors in a limited liability company can be likened to the lifeblood because the Directors are tasked with managing the company well for the sake of the company's sustainability. Directors are obliged to carry out their duties in good faith as regulated in Law Number 40 of 2007 concerning Limited Liability Companies. The main problem in this research is how the forms of Directors' violations are reviewed according to Law Number 40 of 2007 concerning Limited Liability Companies in the case of PT. Sunwa Akuratama Engineering Batam and how the Board of Directors is responsible for violations committed in the PT case. Sunwa Akuratama Engineering Batam. Company Directors should run the Company in good faith based on Article 97 of Law Number 40 of 2007 concerning Limited Liability Companies. As in the case in Decision Number 6/Pdt.G/2021/PN Btm, it was stated that the Board of Directors ran the Company without ignoring good intentions. The method used in this research is normative juridical with a case approach and a statutory approach. So the aim of our research is to find out the responsibilities and legal consequences of directors for bad faith in running a company. So the results of this research based on the PT UUPT state that the Directors of PT. Sunwa Akuratama Engineering Batam does not use good faith in running the Company.*

**Key words:** *Bad faith, unlawful acts*

**ABSTRAK**

Direksi dalam sebuah perseroan terbatas dapat diibaratkan sebagai nyawa karena Direksi bertugas mengurus perseroan dengan baik demi keberlangsungan perseroan. Direksi wajib melaksanakan tugasnya dengan itikad baik sebagaimana diatur dalam Undang-undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas. Pokok permasalahan dalam penelitian ini adalah bagaimana bentuk pelanggaran Direksi ditinjau menurut Undang-undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas dalam kasus PT. Sunwa Akuratama Engineering Batam dan bagaimana tanggung jawab Direksi terhadap pelanggaran yang dilakukannya dalam kasus PT. Sunwa Akuratama Engineering Batam. Direktur Perseroan seharusnya menjalankan Perseroan dengan itikad

baik (*good faith*) berdasarkan Pasal 97 UU Nomor 40 Tahun 2007 tentang Perseroan Terbatas. Seperti pada kasus yang terdapat pada Putusan Nomor 6/Pdt.G/2021/PN Btm menyatakan Direksi menjalankan Perseroan dengan mengabaikan itikad baik. Metode yang digunakan dalam penelitian ini, yaitu yuridis normatif dengan pendekatan kasus dan pendekatan perundangundangan. Sehingga tujuan penelitian kami adalah untuk mengetahui bagaimana tanggung jawab serta akibat hukum direksi terhadap itikad tidak baik dalam menjalankan sebuah Perseroan. Sehingga hasil dari penelitian ini berdasarkan UUPT menyatakan bahwa Direksi PT. Sunwa Akuratama Engineering Batam tidak menggunakan itikad baik dalam menjalankan Perseroan.

**Kata kunci: Itikad tidak baik, perbuatan melawan hukum**

## **BACKGROUND**

*Article 1 paragraph (1) of the Company Law states "A limited liability company, hereinafter referred to as a company, is a legal entity which is a partnership of capital, established based on an agreement, carrying out business activities with authorized capital which is wholly divided into shares and meets the requirements stipulated in this law as well as implementing regulations."<sup>1</sup>*

*A limited liability company is a legal entity. As a legal entity, a limited liability company is a legal subject and as a legal subject a limited liability company supports rights and obligations. A legal entity is a legal subject. Legal subjects consist of:*

- a. Private person (natuurlijk personon).*
- b. Legal entity (rechtspersoon).*

*A Limited Liability Company is a partnership for running a business that has capital consisting of shares, the owner of which has as many shares as the shares he owns. Because the capital consists of shares that can be bought and sold, changes in ownership of the Company can be carried out without the need to dissolve the Company. Another definition of a limited liability company is a partnership that is a legal entity. This legal entity is called a 'company', because the capital of this legal entity consists of holdings or shares. Therefore, some say that a limited liability company is a capital association or association.<sup>2</sup>The term "limited" refers to the shareholder's liability, which is limited to the nominal value of the shares they own<sup>3</sup>.*

*PT has one organ, namely the Board of Directors. The meaning of Directors is regulated in Article 1 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies (UU PT), namely*

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<sup>1</sup> Article 1 number 1 of Law Number 40 of 2007 concerning Limited Liability Companies

<sup>2</sup> Rudhi Prasetya, *Position of Independent Limited Liability Company. Accompanied by the reasons according to Law Number 1 of 1995, (Bandung: PT. Citra Aditya Bakti, 1995), p. 313*

<sup>3</sup>Article 3 of Law Number 40 of 2007 concerning Limited Liability Companies.

*that one of the company organs has full authority and responsibility for managing the Company for the interests of the Company, in accordance with the aims and objectives of the Company and representing The Company, both inside and outside the court, complies with the provisions of the articles of association. Based on this authority and responsibility, the Directors are charged with a fiduciary duty to provide protection for shareholders in carrying out the management of the Company, because only the Directors act on behalf of the company and shareholders. Apart from that, fiduciary duty aims to avoid misuse of company assets and authority by the Board of Directors.<sup>4</sup>*

*Fiduciary duty comes from the Latin word fiduciaries which means trust. Fiduciary is a term described as someone who holds something in trust for the benefit of another person. A person has a fiduciary duty, he has fiduciary capacity if he carries out business and controls property or wealth for the benefit of other people, not for his own benefit. Fiduciary Duty occurs when one party does something in the interests of another party by ignoring their own personal interests.<sup>5</sup>*

*Fiduciary Duty is generally divided into two main components, namely:*

- 1) Duty of Care , namely that directors must act with caution in making all decisions and policies of a company while still considering all available information properly and fairly.*
- 2) Duty of Loyalty , namely that directors must be responsible for always siding with the interests of the company they lead, must act in the interests of shareholders, act for the interests and objectives of the company, and act by prioritizing the interests of the company above personal interests.<sup>6</sup>*

*Directors in carrying out their fiduciary duties must pay attention to the elements of good faith , fulfill the elements of a proper purpose ( proper purpose ), freedom full of responsibility, and have no conflict of interest ( conflict of duty and interest ). This good faith takes the form of complying with applicable laws and regulations.*

*However, in reality, there are still Directors who do not carry out their obligations in good faith. One of the cases regarding the issue of the responsibility of directors of limited liability companies can be found in several places, including at the Batam District Court as quoted from the Directory of Decisions of the Supreme Court of the Republic of Indonesia (Decision Number 6/Pdt.G/2021/PN Btm). What is known to the Director of PT. Sunwa Akuratama Engineering Batam, namely Ratna*

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<sup>4</sup> Shinta Ikayani Kusumawardani, "Regulation of the Authority and Responsibilities of Directors in Limited Liability Companies (Comparative Study of Indonesia and Australia)", *Udayana Law Masters Journal*, (2013), p. 13,

<sup>5</sup> Munir Fuady, *Modern Doctrines in Corporate Law and Their Existence in Indonesian Law*, (Bandung: PT Citra Aditya Bakti, 2002), p. 33

<sup>6</sup> Ridwan Khairandy, *Principles of Indonesian Commercial Law*, 1st Printing, (Yogyakarta: FH UII Press, 2013), p. 108

*Mustika Wati, is carrying out her position in bad faith, namely trying to dissolve the company unlawfully, summoning a GMS unlawfully, and not paying the company's obligations which are due.*

*Based on the introduction presented, the main problems in this research are :*

*A. What are the regulations regarding directors based on Law Number 40 of 2007 concerning Limited Liability Companies?*

*B. How to implement Decision Number: 6/Pdt.G/2021/PN Btm against the Directors of PT. Sunwa Akuratama Engineering Batam?*

## **RESEARCH METHODOLOGY**

*The research method used in this research is a normative juridical research method, using secondary data sources or library materials which include primary and secondary legal materials. The data collection tool in this research uses document study by searching secondary legal materials in libraries and searching via the internet. Data analysis in this research uses qualitative analysis methods, because the form of research used is normative research, so the data obtained will be analyzed using library data and not in the form of numbers.<sup>7</sup>*

## **FINDING & DISCUSSION**

### **A. Definition of Directors Based on Law Number 40 of 2007 concerning Limited Liability Companies**

*The directors of a limited liability company according to the provisions of Article 1 point 5 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT) are the company organ responsible for managing the company for the interests and objectives of the company as well as representing the company, both inside and outside the court. As with the limited liability of shareholders of limited liability companies, this limited liability also applies to members of the board of directors even though it is not expressly stated in the articles of the Company Law.*

*This can be seen from Article 97 paragraph (3) of the Company Law which states that "Each member of the Board of Directors is fully personally responsible for losses to the Company if the person concerned is guilty or neglects to carry out their duties in accordance with the provisions referred to in paragraph (2)". From this provision, it can be interpreted acontario that if a member*

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<sup>7</sup> Bachtiar, *Legal Research Methods*, (South Tangerang: Unpam Press, 2019), p. 66

*of the board of directors is not guilty and is not negligent in carrying out his duties, it means that the board of directors is not fully personally responsible.*

*As long as the directors carry out their duties with full responsibility, members of the board of directors still have limited liability which is the main characteristic of a limited liability company. On the other hand, because being a member of the board of directors means occupying a position, the person holding that position must bear responsibility if their duties and obligations are neglected or if their authority is misused.*

*Thanks to this, UUPT has regulated the form of responsibility of directors for negligence or mistakes in carrying out the management of Limited Liability Companies, namely:*

*a. Article 14 paragraph (1) UUPT, which states "Legal actions on behalf of a Company that has not yet obtained legal entity status, may only be carried out by all members of the Board of Directors together with all founders and all members of the Board of Commissioners of the Company and they are all jointly and severally responsible for legal action."*

*b. Article 97 paragraph (3) UUPT, which states that "Every member of the Board of Directors is fully personally responsible for losses to the Company if the person concerned is guilty or neglects to carry out their duties in accordance with the provisions as intended in paragraph (2)". According to Article 97 paragraph (6) of the Company Law, directors whose mistakes or negligence cause losses to the company can even be sued in the District Court by shareholders representing at least 1/10 (one tenth) of all shares with valid voting rights. In detail, Article 97 paragraph (6) states "On behalf of the Company, shareholders representing at least 1/10 (one tenth) of the total number of shares with voting rights may file a lawsuit through the district court against members of the Board of Directors whose fault or negligence cause losses to the Company". In the event that the actions of the Directors are detrimental to the company, shareholders who fulfill the requirements as stipulated in this paragraph can represent the Company to make demands or lawsuits against the Directors through court.*

*c. Article 104 paragraph (2) UUPT, which stipulates that "In the event that bankruptcy as referred to in paragraph (1) occurs due to an error or negligence of the Board of Directors and the bankruptcy assets are insufficient to pay all of the Company's obligations in said bankruptcy, each member of the Board of Directors is jointly and severally responsible for all outstanding obligations from the bankruptcy estate.*

**B. Analysis of Decision Number 6/Pdt.G/2021/PN Btm. Regarding unlawful acts committed by the Director of PT. Sunwa Akuratama Engineering Batam**

Observing decision number 6/Pdt.G/2021/PN Btm, it is clear that the Defendant, who is the Director of PT. Sunwa Akuratama Engineering Batam can be said to have carried out its obligations as a Director of the Company in bad faith. In this decision it is clear that the defendant committed an unlawful act. That the actions of the defendant who did not have good intentions in running the Company violated Article 97 of the Company Law and caused losses within the Company which is an unlawful act as stated in Article 1365 of the Civil Code " Every unlawful act, which brings loss to another person, obligates the person who, due to his or her fault, causes the loss that, compensate for the loss"

Regarding the defendant holding a summons for the GMS which was only 4 days from the date of the GMS and without including the agenda of the meeting, it is contrary to Article 82 of the Limited Liability Company Law:

" (1) The summons for the GMS was made no later than 14 (fourteen) days before the date The GMS is held, without taking into account the date of the summons and the date of the GMS.

(2) The summons for the GMS shall be made by registered letter and/or by advertisement in the newspaper.

(3) The GMS summons includes the date, time, place and agenda of the meeting accompanied by notification that the materials to be discussed at the GMS are available at the Company's office from the date the GMS summons is made until the date the GMS is held."

Based on the description above, the defendant's actions are contrary to Article 97 of the Company Law, so it is clear and undeniable that the element " the existence of an act and the act must violate the law." has been fulfilled. In the event that the defendant does not pay the Company's obligations to the Rambe Lathe Workshop even though the company is able to pay these obligations, this results in a loss for the company because it still has the responsibility to pay these obligations.

Due to the bad faith of the Defendant, it is stated that he has violated Article 97 paragraph (2) of the Company Law which states " The management as referred to in paragraph (1), must be carried out by every member of the Board of Directors in good faith and full responsibility ." So in accordance with Article 97 paragraph (3) of the Company Law " Each member of the Board of Directors is fully personally responsible for losses to the Company if the person concerned is guilty or neglects to carry

out their duties in accordance with the provisions referred to in paragraph (2)." The defendant should be charged with covering the Company's obligations up to his personal assets.

Based on the details above, the Panel of Judges decided that the defendant was guilty of being negligent and not having good faith in running the company according to the Company Law and the Articles of Association as well as related laws and regulations.

### **CONCLUSIONS AND RECOMMENDATIONS**

The Board of Directors is one of the organs in a Company. The meaning of Directors is regulated in Article 1 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies (UU PT), namely that one of the company organs has full authority and responsibility for managing the Company for the interests of the Company, in accordance with the aims and objectives of the Company and representing The Company, both inside and outside the court, complies with the provisions of the articles of association. Directors are charged with a fiduciary duty to provide protection for shareholders in carrying out the management of the Company. Fiduciary duty aims to prevent misuse of company assets and authority by the Board of Directors.

Actions of the Directors of PT. Sunwa Akuratama Engineering Batam is running the company in bad faith as proven by trying to dissolve the company unlawfully, summoning a GMS unlawfully, and not paying the company's obligations which are due. So because his actions caused losses to the company. Thus, the Directors of PT. Sunwa Akuratama Engineering Batam has violated Article 97 of Law Number 40 of 2007 concerning Limited Liability Companies and must be held responsible for its actions.

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