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Juridical Analysis of the Responsibilities of Directors in the Perspective of Creating Good Corporate Governance: A Research Study in Pt Putra Raflesia, Batam- Indonesia

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ABSTRACT

Good corporate governance (GCG) has not been a solution to good governance so far. The principles of Good Corporate Governance (GCG) need to be firmly established in legislation to provide legal assurance to the public and business people, so good management in a company can be done using two approaches, namely ethics and regulation ethical driven approach or, in other words, managing the company, then it needs to put forward the Principles of Transparency, the Principles of Accountability, the Principles of Responsibility, the Principles of Independence and the Principles of Fairness to the survival of the company and as well as the interests of stakeholders, as well as the community through social control, will also determine the success of good governance practices.

Keywords: Director, Limited Company, Good Corporate Governance.

INTRODUCTION

The company (corporation) is the subject of lawlessness and existence as it is created by humans (*artificial person*). The position of society as the subject of law provides the same position as human beings in the legal field. The company can take legal action, sue, or be sued in court (Harahap, M.Y, 2011).The company does not have a soul; it has to form company management to becomea subject of the whole law. The company's management shall be the organ of the company responsible for assisting the company to acquire and carry out the duties of the company (Isfardiyana, S. H, 2015).

The company's organs consist of a General Meeting of Shareholders (GMS), directors, and commissioners. A legal entity is said to be a legal entity if it meets the following conditions: first, the existence of separate assets (rights) with specific objectives separate from personal assets between members or allies or shareholders and the legal entity concerned. Strictly speaking, there is a separation of assets between corporate or company assets and the personal assets of members or allies or shareholders; second, there are interests which are the objectives of the body concerned; and thirdly, there are several people who are administrators of the agency (Purwosutjipto, H. M. N, 1978).

The company's organ that holds the position is very important to the board of directors. In Article 1 Law Number 40 of 2007(Law on PT), it is stated that the directors of a corporation are authorized and fully responsible for the management of the corporation for the benefit of the corporation, in accordance with the authorized of the corporation and to represent the corporation, both within and outside the court in accordance with the provisions of the articles of association. The growth and development of the company are

determined by the board of directors. Directors make a living, without the directors of the company unable to carry out their duties. All matters relating to the activities of the company are conducted by the directors.

The duties of the board of directors are based on the doctrine of fiduciary duty. The doctrinal fiduciary of duty derives from the Common Law legal system which teaches that between directors and companies there is a fiduciary relationship. The Board of Directors only acts like a trustee or agent solely, who has the obligation to serve fully and properly to the company (Marwan,2009). The Board of Directors is expected to be able to have the duty of care and skill, good faith, loyalty, and honesty towards the company with a high degree (Fuady, M, 2010).

In Article 1 number 1 of the PT Law, it is stated that the company is a legal entity. This means that the company may have the rights and obligations to perform a human-like act, owningtheir wealth, being sued, and suing before the court (Khairandy, R, 2009). The company has a *persoonlijkheid* (Chidir Ali, C, 1987) which is an ability to be a legal subject of legal relations, but the ability of the company is limited to property. Article 1655 of the Civil Code states that the management of a legal entity, if not otherwise in the deed of establishment, in an agreement, or in a regulation, has the power to act for and on behalf of that legal entity, to bind the legal entity to a third party or otherwise, and to acted in a court hearing both as a plaintiff and as a defendant. Each of the duties and responsibilities of directors in carrying out the company must comply with the provisions or regulations governing the company in accordance with the aims and objectives of the establishment of the company.

The Board of Directors in the management of the Company is solely for the benefit of the Company and in accordance with the aims and objectives of the company as regulated in Article 92 of Law Number 40 the Year 2007, (PT Law). In Article 2 of Law Number 40 the Year 2007, it is emphasized that the company's activities should be in accordance with the aims and objectives and not in conflict with the laws and regulations, public order, and or morality (Khairandy, R, 2009).

Further, in Article 18 of Law Number 40 of 2007, it was determined that these purposes and objectives should be included in the Company's Articles of Association in accordance with the provisions of the law. The explanation in Article 18 of Law Number 40 the Year 2007 states that the purpose and objectives are the main business of the company, while the business activities are carried out by the company in order to achieve the aims and objectives which must be clearly detailed in the articles of association, and may not conflict with it.

The Company is not permitted to carry out activities that are not in line with the aims and objectives of the company. The relationship between the directors and the company is not merely a working relationship but also a human relationship (fiducia position)(Khairandy, R, 2009).The Company cannot act alone and is very dependent on its management. This dependence requires the company to trust the management which then gives birth to human relations and is better known as a physical duty. Management must carry out its management and authority solely for the benefit of the company. A fiduciary duty is a task carried out by the directors with full responsibility for the benefit of a person or other party (company) (Khairandy, R, 2009).If there is a problem when a company is operating improperly, causing losses to third parties or shareholders, in this case, the directors are responsible as executives based on the doctrine of *fiduciary duty* (Fuady, M, 2010).

The term fiduciary duty is derived from the word duty which means task and fiduciary are derived from Latin *fiduciarus* with the word root *fiducia* which means trust or *fidere* which means to trust.Thus,

the term fiduciary is defined as holding something in trust or someone holding something in trust for the benefit of someone else. English says that people who hold the trust of others are called trustees and those whose interests are called *beneficiary* (Fuady, M, 2010).

The directors' responsibility is not only limited to deliberate dishonesty but also responsibility in mismanagement, negligence, failure or not doing something important for the company. The goodwill of directors can be seen when the directors truly prioritize the interests of the company, shareholders, and stakeholders. A proper purpose is carried out by adhering to the Limited Liability Company ADRT and the laws and regulations (Wijaya, G, 2004).

According to Harahap (2011), there are several aspects of management that must be carried out in good faith, namely: first, mandatory trust (*fiduciaryduty*), ie as long as it is trustworthy (must always be bonafide), and must always be honest; second, the obligation to carry out arrangements for reasonable or proper purposes (duty to act for proper purpose); third, must obey statutory duty or duty obedience; fourth, the obligation to be loyal to the company (loyalty duty), do not use the funds and assets of the company for personal gain, must keep all of the company's confidential information; and fifth, must avoid personal interests with the company's interests (must avoid conflict of interest). If the board of directors is proven to have made a personal mistake that caused a loss to the company, then the directors' responsibilities turn into an unlimited liability, so that the directors are fully responsible personally to compensate for any losses caused to the company. This makes there is no longer a place for directors as managers of the company to do actions that can cause harm to the company.

LITERATURE REVIEW

The authors use positive legal theory, literally and constructively where this concept explains that the law is a sovereign ruling, assuming that the law contains orders, obligations, sovereignty, and sanctions. In the theory (analytical jurisprudence), that there are two forms of law, namely positive law and positive morality (customary law). Then the logic of the law is the Law, customary law will be recognized if it is confirmed as an Act by an authorized official, and applies to everyone and gives authority to the authorized official. Therefore, the law must be able to achieve sufficient material livelihood for each individual, promote equality, maintain security, and achieve property rights. Jhon Austin's theory is in line with the concept that law is the command of a sovereign ruler, assuming that the law contains orders, obligations, sovereignty, and sanctions. Law according to Austin must be understood in the sense of command because the law should not give room to choose (whether to obey or not obey).

Thus, compliance with the law is a non-negotiable obligation. According to John Austin in his book the province of jurisprudence determined, the law must be understood as a command, because all laws are nothing but a collection of commands that are command (laws are commands). The law is always in command (Ujan, A. A, 2009). There are four basic functions of law in society (Arifin, S, 1992). First, establish a pattern of relationships between members of the community by showing which types of behaviors are allowed and which are prohibited. Second, determining the allocation of authority determines who can execute, who should obey, who chooses appropriate and effective sanctions. Third, resolve disputes or disputes. Fourth, preserving the ability of the community to adapt to changing living conditions is to re-formulate the essential relationships between members of society (Arifin, S, 1992).

In connection with the principle of legal certainty, the Board of Directors as the organ in charge and responsible for carrying out the management of the company has the potential to violate or deviate the duties and

obligations charged to the directors. Directors who intentionally in bad faith do acts against the law by using company assets for their personal interests, causing losses to the company, then the principle of piercing the corporate veil is applied, which is a full personal responsibility to compensate for any losses incurred to the company if the directors prove to make a personal mistake that causes harm to the company. The company's shareholders are not personally responsible for the agreements made on behalf of the company and are not responsible for the company's losses that exceed the value of the shares that have been taken (Widjaya, G, 2004).

The company as a legal entity has consequences for the limited liability of shareholders, commissioners, and directors. Incorporate law, the term piercing the corporate law is a doctrine or theory that is interpreted as a process to impose responsibilities on the shoulders of other people or companies, for legal actions carried out by a corporate actor (legal entity), without regard to the fact that the act was actually carried out by the perpetrators of the company. The limited responsibility does not only apply to shareholders but also applies to other corporate organs, both directors and commissioners (Aspan, H, 2017).In certain cases, limited liability can be written off and it is possible to penetrate the shareholders' personal assets. This is what is referred to as piercing the corporate veil(Aspan, H, 2017).In its development, the principle of limited liability does not apply absolutely, since the doctrine of piercing the corporate veil is known, which in some cases is closed the possibility of eliminating the limited liability of shareholders, commissioners, and directors of the company.

The term piercing the corporate veil is sometimes also referred to as "liƒing the corporate veil" or "going behind the corporate veil". By heart, the term "piercing the corporate veil" means tearing the corporate curtain. Regarding directors 'responsibility in the perspective of creating a good corporate governance system (good corporate governance) must aim to protect the interests of shareholders or injured third parties from arbitrary or improper directors' actions carried out on behalf of the company. Acts made appearing from a transaction with a third party or arising from misleading or illegal actions, for this matter. If the board of directors is proven to be wrong or negligent in carrying out its management (having bad intentions) resulting in the company's loss, the shareholders representing at least 1/10 of the total number of shares with valid voting rights.

RESEARCH METHODOLOGY

Researchers in conducting research on the object of this study have established research specifications for Normative Law. The specifications and/or types of thesis research are normative legal research while combining with sociological (empirical) legal research using secondary data obtained directly from the first source through field research through interviews and primary data as sources/information material in the form of legal material primary, secondary legal materials, and tertiary legal materials. This normative legal research is also called a legal review study, also referred to as library research or document study. Called doctrinal legal research because research is carried out or is aimed only at written regulations or other legal materials. Library research or document study is due to the fact that this research is mostly conducted on secondary data in the library.

DISCUSSION

Directors have a duty to run the company and in order to do that they need authority. With these duties and authority, the entire management of the company is done by the Board of Directors. Therefore, in order for the Board of Directors not to exercise their authority in carrying out their duties, this authority is exercised with supervision; which is the duty of the Commissioner, and limited by the General

Meeting of Shareholders, as the owner of the company through the provisions set forth in the PT Law and the Company's Articles of Association concerned. In-Law No. 40 of 2007 on PT, it was determined that the management of the company was conducted by the Board of Directors appointed by the General Meeting of Shareholders (Article 79 paragraph (1) and Article 80 of the Company Law).

According to Law No. 40 of 2007, it can be argued that there are no governing provisions regarding the application of these principles of Good Corporate Governance, simply by stating that the company is obliged to abide by all good principles of corporate governance, but not regulated by how the forms of the principles of Good Corporate Governance itself, the procedure for the implementation of Good Corporate Governance, how the responsibilities of a Board of Directors are when they are violated and what sanctions should be enforced for such violators, resulting in a vacancy in the Board of Directors' duties in managing companies, the absence of these norms can cause legal uncertainty.

In the common law system, the principle of limited liability in a company is known as corporate veil, which means separation of rights and liabilities from its shareholders, and in particular, the corporate shareholder is generally not responsible for corporate debt and obligations. However, the principle of limited liability of such a founder or shareholder is not absolute. It is still possible for the founders or shareholders of the company to be released from limited liability and have to take responsibility for their personal wealth.

Good corporate management will be disrupted by the provision that obliges the founders of a company of at least two people, as they are incompatible with the tendency of the development of a law firm that allows one person to establish a company and is likely to result in the lending of another person's name as a co-founder. Fundamentally, a shareholder's responsibility for corporate debt is solely on the share capital assigned by the shareholder to the company, unless he or she complies with the principles of separate corporate personality and doctrine of piercing the corporate veil(Budiarto, A, 2002; Aspan, H, 2017).

When speaking of Directors' theory of accountability, we first need to know the theory of legal responsibility presented by Kranenburg and Vegtig. There are two theories that underlie it. The fautes de personalles theory, namely the theory which states that losses to third parties are charged to officials who because of his actions have caused losses. In this theory, the burden of responsibility is directed at humans as individuals. The fautes de services theory, states that the loss concerned according to this theory is the responsibility borne by the position. In its application, the losses incurred are also adjusted whether the mistake made is a serious mistake or a minor error in which the severity of the error implies the responsibility that must be borne.

Legal responsibility theory is needed to be able to explain between the responsibilities of the Directors of the Company based on the duties and authority given by the Law of PT, Number 40 of 2007. Then to find out why the Board of Directors as a corporate organ violates the principles of good corporate governance, and result in losses for the company itself, then the Directors who have committed the violations must be held responsible. Furthermore, regarding the theoretical responsibility according to Roscoe Pound, the liability is related to an obligation to claim compensation from someone for whom an act of loss or injury has been committed, both by the first person itself and by something under their control (Pound, R, 1996).

In the realm of civil law, Roscoe Pound states that the law sees three liabilities for offense, namely: a) Liability for intentional loss; b) Liability for losses due to negligence and accidental; c) Liability in certain cases for losses that have

been carried out due to negligence and accidental (Ridwan H. R., 2006).Legal responsibility theory is needed to be able to explain the responsibilities of the Company's Directors based on their authority.

In good investment or corporate management, good governance will also be needed, in the governance system commonly known as the concept of GG (Good Governance), GCG (Good Corporate Governance), GIG (Good Investment Governance). Which aims to realize good governance, the need for renewal of bureaucratic attitudes and behavior in serving the public interest (Purwaningsih, E, 2010). Corporate governance is a major topic that has been widely discussed by the general public in recent years. In general, a country's ability to attract foreign capital is highly dependent on the corporate governance system that they adhere to and to what extent the management of a company respects and complies with the legal rights of shareholders, lenders, bondholders, and non-controlling shareowners. Good Corporate Governance (GCG) is not a new term, but an old concept that has become popular again because of social developments and the progress of business practices (Lukviarman, N, 2001).

The principles of good company management are the duties of directors who must continue to be developed by him in the management of the company. The most relevant thing with the company's system development and management is the accountability of the company itself. Based on these principles, each component of the company, shareholders through the GMS, commissioners, and directors are required to understand well their rights and obligations, authorities, and responsibilities. It is important to always be reminded and continuously developed so that each component is able to carry out tasks in a professional manner, high commitment and adequate professional integrity, which is also supported by the establishment of a monitoring and control system, including using the best means by using an external auditor to verify information that will be given to stakeholders.

Good corporate governance (GCG) has not been a solution to good governance. The application that can be done by using two approaches, namely ethics and ethical approach regulations comes from the awareness of individual business people to carry out business practices that prioritize the survival of the company's interests of stakeholders and avoid ways to create profits for a moment.Meanwhile, this approach has its strengths and weaknesses and each should complement each other to create a healthy business environment. The implementation of corporate governance in Indonesia is still very low, this is mainly due to the fact that companies in Indonesia do not yet fully have corporate culture as the core of corporate governance. This understanding opens up insights that the corporation has not been properly managed and has not yet carried out governance (Kaihatu, T. S, 2006). Then ethics becomes important in corporate governance. Through the internalization of ethics in corporate governance practices, it is expected to create an organizational culture that promotes transparency, accountability, responsibility, independence, and fairness. If ethics is not implemented then what happens is unfair competition, injustice, the emergence of moral hazard, bribery, and other deviant behavior (Hamdani, 2016).The application of GCG principles in the business world today is a means for these companies to continue to exist in global competition. Corporate governance can also be interpreted as a matter relating to effective decision making sourced from corporate culture, ethics, value systems, business processes, policies, and organizational structures that aim to encourage (Alijoyo, A., & Zaini, S, 2004): First, growth in company performance; secondly, management of resources and risks more efficiently and effectively and thirdly, the corporate responsibility to shareholders and other stakeholders.

The company's leadership, managerial and governance are not functioning as it should be due to the lack of quality and knowledge capacity of a director in managing a company properly because the business activities carried out are basically aimed at increasing economic development. Economic development involving the private sector, both originating from foreign investment and domestic capital, has an important role in economic activity because after all economic growth is closely related to the level of investment, so to achieve high economic growth also requires a high level of investment high (Uwiyuno, A, 2018).

Basically, the provisions of Law No. 40/2007 do not clearly regulate whether a company organ may delegate authority with a power of attorney to other company organs in the management of a limited liability company, but in certain circumstances under Article 118 UUPT it is mentioned that the commissioner has the company's management functions in an emergency situation, this aims to anticipate if a certain situation occurs, (an emergency) where the organs of the Board of Directors or all members of the board of directors have a conflict of interest with the Company or are unable to manage the company. In accordance with Article 118 of the Law of PT No. 40 of 2007, the Board of Commissioners has an option that is to take care of the company temporarily or refuse to take care of the company, if the Board of Commissioners chooses the option to take care of the company then all, rights and obligations previously attached to the directors transferred to the Board of Commissioners. In addition, if reviewed from the principles of good corporate governance (GCG) directors who delegate authority with power of attorney to commissioners in the management of limited liability companies is not possible because it will violate one of the principles in good corporate governance (GCG), namely the principle of accountability (accountability), where the principle This is related to the ability to carry out the duties and authorities of each organ of the company.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

Once the author has explained in detail the basics of this thesis, the author can draw conclusions. That the regulation of the principles of Good Corporate Governance (GCG) in the Law of PT, Number 40 of 2007 is implicit in that the principles of gcg are contained in the provisions of the law, but are not explicitly stated but can be inferred and implied. Good Corporate Governance (GCG). In the event of a breach of the principles of Good Corporate Governance (GCG) in the management of PT, it may be criminal responsibility for civil liability to be personal and cross-liable, so that which party is considered most responsible for any unlawful act committed or related to corporate business activities, or attributable to corporate burden as a legal entity that has recognized its existence as natural human beings (naturiljk persoon).

That to be able to measure Relating to the responsibility for the management and supervision responsibilities carried out by the directors and the board of commissioners, it is necessary to put forward the Principles of Transparency, the Principles of Accountability, the Principles of Responsibility, the Principles of Independence, the Principles of Fairness does not only mean that when the annual report is approved by the GMS, but it also does not mean that there has been a release of criminal responsibility because it is not the authority of the General Meeting of Shareholders (GMS). In addition, the granting of aquit et de charge only means that the General Meeting of Shareholders has given waivers of responsibility to the directors and the board of commissioners for matters reflected in the annual report.

That is the case of the principle of justice this can be realized, among others, by making corporate regulations that protect

the interests of corporate conduct and/or policies that protect corporations against insider misconduct, self-dealing and conflicts of interest, establishing roles and responsibilities directors and committees, building good management and also able to create leadership and leadership in accordance with the principles of Good Corporate Governance (GCG) so that with this Principle recognizes that shareholders have the right to obtain true, accurate and timely information about, regarding the performance of a company, financial results and operations, and information about the company's goals.

Suggestion

The suggestions that can be taken are as follows. Whereas the principles of Good Corporate Governance (GCG) need to be strictly regulated in legislation so that they can provide legal certainty for the community and business actors. The responsibility of the Board of Directors in managing a company can be based on criminal law provisions in accordance with the principles of criminal law. It is recommended that as long as the Company's management actions are carried out by the Directors as limited to daden van beheeren, the Directors may or are authorized to carry out these actions without prior approval from other organs.

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