

Juridical Analysis Of The Commissioners Of Limited Liability Companies Who Exercise The Authority Of The Executive Board Of Directors In Terms Of Good Corporate Governance Aspects

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ABSTRACT

Keywords: Executive Authority; Juridical Analysis; Commissioner of Limited Liability Company (PT). This study aims to explain the legal basis and functions of organs in a Limited Liability Company (PT) and identify the legal impact on PT organs that carry out the duties and authorities of other organs. In the global context, Good Corporate Governance (GCG) is the key to the company's success for long-term growth and business continuity. The economic crisis in Asia and Latin America in 1999 was attributed to the failure of GCG implementation. The research method used is normative juridical with an analytical descriptive approach. The two main approaches used are the statutory approach and the conceptual approach. The results showed that the executive actions of Commissioners in PT require approval from the Board of Directors with a power of attorney, maintaining legality and implementing the principles of Good Corporate Governance. The Bank, as a third party, also requests a power of attorney to ensure the legality of the applicant who is a Commissioner. Research reveals the legal basis for the establishment of a PT stipulated in Articles 36-56 of the Criminal Code and Articles 1233-1652 of the Civil Code. This research contributes to understanding the importance of GCG implementation and the legality of the Commissioners' executive actions in maintaining the integrity of the company. The results of the research are expected to be the basis for companies and regulators to improve good corporate governance.



Introduction

Nowadays, the term Good Corporate Governance (GCG) is increasingly popular. Not only is the term popular but it is also placed in an honourable position (Kusmiarti, 2020). First, GCG is one of the keys to the company's success in growing and being profitable in the long run while winning global business competition (Sudjateruna & Swardhana, 2021). Second, the economic crisis in Asia and Latin America is believed to

have arisen due to the failure of GCG implementation. In 1999, we saw countries in East Asia that were equally affected by the crisis begin to recover, except Indonesia. It must be understood that global competition is not a competition between countries but between corporations in those countries (Agustina, 2020). So winning or losing, winning or falling, recovering or staying in the slump of one country's economy depends on each other's corporations. This understanding opens the insight that our corporation has not been managed properly. In special language, our corporation has not exercised governance. A survey from Booz-Allen in East Asia in 1998 showed that Indonesia had the lowest corporate governance index with a score of 2.88, far below Singapore (8.93), Malaysia (7.72) and Thailand (4.89). The low quality of GCG corporations in Indonesia is suspected to be the downfall of these companies (Dewi, 2017).

Good Corporate Governance is a concept that concerns the structure of the company, the division of duties, the division of authority, and the division of responsibility of each element that makes up the company's elements, and the mechanisms that must be taken by each of these elements (Fabiola, 2015). Good Corporate Governance serves to foster customer trust. The implementation of good corporate governance will prevent mistakes in decision-making and self-beneficial actions, and it will automatically increase the value reflected in financial performance (Rahman, 2017).

The main objective of Good Corporate Governance is to create a system of checks and balances to prevent misuse of resources and still encourage company growth (Syofyan, 2021). Good corporate governance should provide appropriate incentives for the board and management to pursue goals for the benefit of the company and its shareholders and facilitate effective oversight (Ardianto, 2023).

In Indonesia, we have started to create conducive conditions for implementing Good Corporate Governance (GCG) by issuing regulatory tools that meet international standards. However, more needs to be done to change perceptions and corporate motivations and improve our justice system to support enforcing those rules (Ningtyas, 2020). One of the causes of the vulnerability of companies in Indonesia to economic turmoil is the weak implementation of GCG, which includes fairness, openness, accountability, and responsibility (Ardani, 2017). These four principles must work simultaneously to obtain optimal results in the company's management. Efficient and effective management of the company is important because it can have an impact, among others, The size of the profits that the company will obtain, Whether or not the risk will be experienced by the company that can cause losses, Guaranteed or not effective production in the company; and To maintain business continuity and continuity. For the company's business transactions to be efficient, it must do and fulfil several things, one of which is the basic principles of GCG. The principles of good corporate governance are transparency, accountability, responsibility, independence, equality, and fairness. Therefore, every company should ensure that GCG principles are applied to every aspect of business at all levels so that the company's main objectives can be achieved (Hakim, 2021).

Facts on the ground show that implementing Good Corporate Governance (GCG) in Indonesia is still voluntary, and there are no sanctions if companies do not implement GCG. Furthermore, Gallus added that GCG is a concept that regulates and controls companies to create added value for all stakeholders (Awwalya, 2019). Therefore, the implementation of GCG will succeed if the principles of transparency, accountability, responsibility, independence and equality are implemented in accordance with the provisions of Bappepam 2003. One way to create GCG is by running the functions of the internal organs of PT.

As an "artificial person", the company cannot act alone. The Company has no will to run itself. Therefore, people who have the will are needed to run the company according to the aims and objectives of the company's establishment. In the Limited Liability Company Law, the people who will run, manage, and manage this company are referred to as "company organs". Each organ in the company has different duties and authorities in managing and managing the company. The organs in the PT consist of three elements: First, the General Meeting of Shareholders (GMS); Second, the Board of Directors; and third, the Commissioners. All of them have their duties and functions.

Then, with the establishment of organs in the PT that have their respective duties and functions, each organ has its work obligations. These differences in functions also impact the differences in the responsibilities of each organ in the PT. However, it becomes a problem if one of the PT organs cannot carry out its duties due to an obstacle. Can other organs represent it? This would be interesting for us to discuss in this article.

The objectives of the research set by the author, in line with the problem formulation, include:

1. To find out the legal basis and functions of the organs in a Limited Liability Company (PT)
2. To know the legal impact on PT organs carrying out other organs' duties and authorities.

Research Methods

This study adopts normative juridical research methods. The research approach used in this study is an analytical descriptive approach to provide a thorough and systematic view of the situation under study. Two main approaches are used: the statutory approach (statute approach) and the conceptual approach (conceptual approach). This approach is used to review all relevant laws and regulations. Researchers will identify consistency and compatibility between various applicable laws through this approach. A conceptual approach will be used when no legal rules directly govern the issue under study. This approach is based on existing views and doctrines in legal science to develop an understanding of law and legal principles relevant to the problem.

Results and Discussion

Legal Basis and Internal Organs of PT

A limited Liability Company is an artificial person, a legal entity that is deliberately created and has the same rights and obligations as humans. If humans have limbs, the company has organs such as commissioners, directors, and the General Meeting of Shareholders. The rights and obligations of these corporate organs are regulated not only by law but also by the Articles of Association and doctrine. Changes to the company's Articles of Association can only be made by the provisions in the Articles of Association.

In the Limited Liability Company Law, what is masked as a Limited Liability Company is a legal entity established under an agreement, which carries out business activities with a certain capital, which is entirely divided into shares, and meets the requirements stipulated in this Law and its implementing regulations. Based on the limitations given by Article 1 point 1 of the Limited Liability Company Law mentioned above, five (5) main things can be stated here:

Limited Liability Company as a Legal Entity

Legal science recognises two kinds of Legal Subjects: personal legal subjects (natural persons) and legal subjects in the form of legal entities. Each of these legal subjects applies different legal provisions from one another, although in certain cases, a generally accepted rule can be applied. One of the distinctive features that distinguishes personal legal subjects from legal subjects of legal entities is the time of birth of the legal subject, which will ultimately determine the moment of birth of the rights and obligations of each legal subject.

According to Article 1, paragraph (2) of the Indonesian Civil Code, on the subject of personal law, the status of a legal subject is considered to have existed even when the individual was in the womb. In legal entities, the existence of legal entity status is only obtained after it obtains approval from authorised officials, who provide their rights, obligations and assets for the legal entity, regardless of the rights, obligations and assets of the founders, shareholders, and management. Article 7 Paragraph (4) of the Law states that "the company obtains the status of a legal entity after the deed of establishment is ratified by the Minister." In the Commercial Law Code, only a few articles state the company as a legal entity. Still, in the UUPT, Article 1 point 1 states that the company is a legal entity. This means that the company meets scientific requirements as a supporter of rights and obligations, including owning its founder's or management's assets. As a legal entity, the company fulfils the elements of a legal entity as specified in the Limited Liability Company Law. These elements are:

1. Organized organisation

In Article 1 Point 2 of the Limited Liability Company Law, we can see corporate organs consisting of the General Meeting of Shareholders (GMS), Board of Directors, and Commissioners.

2. Own wealth property.

According to Articles 31 and 32 of the Law, this own asset is authorised capital consisting of the entire nominal value of cash shares and other assets.

3. Conduct legal relations yourself.

As a legal entity, the company conducts its legal relations with third parties represented by management, the Board of Directors, and Commissioners. The Board of Directors is fully responsible for the interests and objectives of the company and represents the company, both in and out of court. In carrying out its activities, the Board of Directors is under the supervision of the Board of Commissioners, which sometimes assists the directors in carrying out their duties.

4. Has its purpose. This objective is determined in the company's Articles of Association because the company runs the company, and the company's primary goal is to make a profit.

PT was first regulated in Article 36 to Article 56 of the KUHD, which has been in force in Indonesia since 1848. This regulation also proves that the form of limited liability company has long been known in Indonesia. Other arrangements are also contained in Articles 1233 to Article 1356 and Articles 1618 to Article 1652 of the Civil Code. During the New Order period, Law Number 1 of 1995 concerning Limited Liability Companies was issued, which became the *lex specialis* of company arrangements in the KUHD and Civil Code. Consequently, Articles 36 to 56 of the Criminal Code, which is the legal basis of NV, are no longer the legal basis of PT (actually, NV is not always the same as PT). However, LLCs that have been legalised before the enactment of this law, as long as they do not conflict with their articles of association, may remain in effect. In the reform era, Law Number 40 of 2007 concerning Limited Liability Companies (now referred to as the Limited Liability Company Law) was passed. New things regulated in this Law include Social and Environmental Responsibility (TJSL), which is the application of the concept.

The organs of a PT are the GMS, the Board of Directors, and the Board of Commissioners, which are organs of the company that have their respective authorities for running the company. The GMS holds the highest power as a consortium of representatives of all shareholders with the issuance of GMS Resolutions. Meanwhile, the Board of Directors and Commissioners are organs appointed by the GMS to run the company, which has equal powers between the two, each of which is not mutually responsible except to the GMS. In the PT Law, it is expressly stated that the company's organs consist of:

- a. General Meeting of Shareholders (GMS),
- b. Board of Directors, and
- c. Commissioner.

Legal Impact of Exercise of Authority by Other Organs in PT

As a legal entity, in principle, a Limited Liability Company can have all rights and obligations owned by each individual, except personal matters, which can only be carried out by natural persons, as stipulated in the First Book of the Civil Code, and part of the Second Book of the Civil Code concerning inheritance. To carry out all its rights and obligations, legal science has formulated the functions and duties of each organ of the Company, which differ from one another. We know these organs as the General Meeting

of Shareholders, Management, and the Board of Commissioners. The following will describe these organs.

a. General Meeting of Shareholders (GMS)

Article 1 point 2 of Law No. 40 of 2007 promulgated on August 16, 2007 (State Gazette of the Republic of Indonesia, Year 2007 No. 06, Supplement to the State Gazette of the Republic of Indonesia No. 4756) places the General Meeting of Shareholders from now on referred to as GMS in the first order of 3 (three) organs of the Company. The other two organs of the Company are the Board of Directors and the Board of Commissioners. Indonesia, as countries that adopted civil law (Civil law system), adheres to a two-tier management system in which there is a Board of Directors institution that runs the management of the company and a Board of Commissioners in charge of supervising the management (management) of the company by the Board of Directors.

This is different from common law countries that recognise a Single-tier Management structure where the management of the Company is under the complete control of the Board of Directors, while supervision on behalf of management carried out by the Board of Directors is in the hands of shareholders, law forming bodies, creditors of the Company, and other parties who have interests. The Common Law system does not recognise the institution of the Board of Commissioners.

Looking back at the enactment of the old Limited Liability Company law still in force, namely Law No. 1 of 1995 concerning Limited Liability Companies, Article 1 Point 3 states that the GMS is the highest organ of the Company and has the power to determine the direction and objectives of the Company.⁶⁹ This is because the GMS is placed in the first order of 3 (three) organs of the Company; besides that, the GMS also has authority that is not given to the Board of Directors and the Board of Commissioners of the Company. Until Law No. 40 of 2007 was enacted concerning Limited Liability Companies, GMS was still placed first in the Company's organs. Still, the Article stating that GMS is the highest organ of the Company is no longer listed.

b. Management

Management in a Limited Liability Company is carried out by individuals assigned by the Limited Liability Company in an organ called the Board of Directors (under the supervision of the Board of Commissioners). The Board of Directors, according to Article 1 point 5 of Law No. 40 of 2007 concerning Limited Liability Companies, is an organ of the Company that is authorised and entirely responsible for the management of the Company for the benefit of the Company, by the aims and objectives of the Company and represents the Company, both inside and outside the court by the provisions of the articles of association.

Although there is no clear and definite formulation regarding the position of the Board of Directors in a Limited Liability Company, it is clear that the Board of Directors is the highest management body of the Company. This is because the Board of Directors is entitled and authorised to run the company, act for and on behalf of the Company (both in and out of court), and is responsible for the management and running of the Company

for the interests and objectives of the Company. This is as inferred from Article 1, number 5 Jo. Article 82 Jo. Article 92 and Article 98 of the Law.

The Limited Liability Company Law requires that members of the Board of Directors be natural persons. That means the legal system of the Indonesian Company is not known to the management of the Company by other legal entities or other business entities *ex officio* (both legal entities and non-legal entities). Individuals (who are appointed as members of the Board of Directors) are those who are capable of acting in law, have never been declared bankrupt by the court or members of the Board of Directors or Board of Commissioners (other companies) who have been found guilty of causing the bankruptcy of the Company and have never been sentenced to prison for committing criminal acts that harm state finances within five years (last), As of the date of his appointment.

The duties, obligations, and authorities of the Board of Directors of a Limited Liability Company according to Law No. 40 of 2007 concerning Limited Liability Companies have been affirmed in Article 92 paragraph (1), which states, "The Board of Directors carries out the management of the Company for the benefit of the Company and by the aims and objectives of the Company," further in Article 97 paragraph (1) states: The Board of Directors is responsible for the management as referred to in Article 92 paragraph (1)". From Article 92 paragraph (1) and Article 97 paragraph (1), it can be seen that the Board of Directors, in carrying out their positions, must be oriented to the interests and objectives of the Company. This means that the activities carried out and decisions taken must be carried out in the interests and objectives of the Company. Article 92 and Article 97 provide a fence for the duties to be carried out by the Board of Directors to be their responsibility. The fence is the "interest of the Company." In other words, the Board of Directors is not allowed to do things on behalf of the Company or use the Company that is not in the interest of the Company or contrary to the interests of the Company.

c. Board of Commissioners

The third organ in the Company is the Board of Commissioners. The Board of Commissioners, according to Article 1 point 6 of the Law, is an organ of the Company in charge of conducting general and special supervision by the articles of association and providing advice to the Board of Directors. This provision is continued by Article 108 paragraph (1) of the Law, which states that the board of the Board of Commissioners supervises management policies regarding the Company and the Company's business and advises the Board of Directors.

In carrying out, the Board of Commissioners in a Limited Liability Company is subject to several juridical principles according to the provisions of the Law. These principles are as follows:

1. The Board of Commissioners is a supervisory body (supervising body). In addition to supervising the actions of the Board of Directors, the Board of Commissioners also supervises the Company in general.

2. The Board of Commissioners, Directors, and GMS are independent. In principle, the Board of Commissioners is an independent body, not subject to anyone's power, and carries out its duties solely for the benefit of the Company.
3. The Board of Commissioners does not have management authority (non-executive) even though the Board of Commissioners is a decision-maker. In principle, the Board of Commissioners does not have management authority. The board of directors is the only party with management or executive duties.
4. The Board of Commissioners cannot give binding instructions to the Board of Directors even though the primary duty of the Board of Commissioners is to supervise the implementation of the duties of the Board of Directors. Still, the Board of Commissioners is not authorised to give direct instructions to the Board of Directors. This is because if this authority is given to the Board of Commissioners, then the position will change from a supervisory body to an executive body.

Each organ in PT has its functions and duties, such as only the role of the Board of Directors in making executive decisions. The commissioner does not own this executive decision-making. However, in practice, some commissioners take actions that the Board of Directors should take in the case of a PT that still needs to be more prominent in scope. For example, in the case of creating a development account where the creation of an account is executive, because of a sure thing, the Commissioner of PT acts. However, this cannot be justified as stipulated in the UUPT. Exceptional authority belongs only to the Board of Directors, not Commissioners.

The Commissioner's action to carry out executive PT activities may occur on condition of approval from the Board of Directors in the form of a power of attorney given to the Commissioner by the Board of Directors. This is to obtain legality from the Board of Directors for actions taken by the Commissioners. Upon the existence of a power of attorney, it can be said that the action taken by the Commissioner violates authority, which results in the non-implementation of good corporate governance in the PT.

In the case of account creation by PT, of course, the Bank will ask the applicant's legality in advance. If the applicant is a Commissioner, of course, the Bank will ask for a power of attorney from the Board of Directors to ensure that the actions taken by the Commissioners have received approval from the Board of Directors. This is important in the event that if the Commissioners take executive action, of course, the Board of Directors will be responsible for these actions. So, in this case, there needs to be a power of attorney from the Board of Directors to the Commissioners as a sign that the Board of Directors approves the Commissioners' actions and knows the consequences arising from these actions.

Conclusion

The legal basis for establishing a PT is regulated in Article 36 to Article 56 of the KUHD, which has been in force in Indonesia since 1848. This rule also proves that the limited liability company form has long been known in Indonesia. Other arrangements are also contained in Articles 1233 to Article 1356 and Articles 1618 to Article 1652 of

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the Civil Code. During the New Order period, Law Number 1 of 1995 concerning Limited Liability Companies was issued, which became the *lex specialis* of company arrangements in the KUHD and Civil Code. Furthermore, the government issued Law Number 40 of 2007 concerning Limited Liability Companies (starting now referred to as the Limited Liability Company Law). The internal organs of the PT consist of three elements: First, the General Meeting of Shareholders (GMS); Second, the Board of Directors; and third, the Commissioners. Each organ in PT has its duties and functions. If the Commissioner commits an executive action, which is an act under the authority of the Board of Directors, it cannot be done as stipulated in the law. Commissioners can take action according to the duties and functions of the Board of Directors with the mechanism of approval from the Board of Directors for actions taken by Commissioners. Such approval can be done by giving power of attorney to the Commissioner.

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