

Directors' Personal Liability in Corporate Bankruptcy: An Analytical Study on the Application of the Business Judgment Rule and the Doctrine of Gross Negligence

Donny Ferdiansyah¹

¹Islamic University of Syekh-Yusuf, Tangerang – Banten, Indonesia

Agustine Susi Mulyati²

²Islamic University of Syekh-Yusuf, Tangerang – Banten, Indonesia

Majuri³,

³Islamic University of Syekh-Yusuf, Tangerang – Banten, Indonesia

Toyib Zainal⁴

⁴Islamic University of Syekh-Yusuf, Tangerang – Banten, Indonesia

Edi Mulyadi^{5*}

⁵Islamic University of Syekh-Yusuf, Tangerang – Banten, Indonesia

Corresponding author: emulyadi@unis.ac.id

Abstract

This study aims to examine in depth the concept of directors' personal liability in the bankruptcy of Limited Liability Companies (PT), focusing on the application of the Business Judgment Rule principle and the doctrine of gross negligence within the framework of Indonesian corporate law. The issue of directors' liability in bankruptcy situations is crucial, as the boundary between managerial error and acceptable business risk is often difficult to define. This research employs a normative juridical method using statutory, conceptual, and case approaches by analyzing relevant legislation, commercial court decisions, and corporate law literature. The results of this study indicate that the Business Judgment Rule serves as a legal safeguard for directors who act in good faith, with due care, and in the best interests of the company. However, this principle cannot be used as a defense when gross negligence is proven — that is, the failure of directors to perform their managerial duties reasonably, resulting in losses or the company's bankruptcy. In such circumstances, directors may be held personally liable under Article 97 paragraphs (3) and (5) of Law Number 40 of 2007 concerning Limited Liability Companies.

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Therefore, this study emphasizes the importance of prudence, professional conduct, and accountability among directors in business decision-making to prevent abuse of authority and minimize the risk of personal liability in bankruptcy situations.

Keywords: Directors' liability, bankruptcy, *Business Judgment Rule*, gross negligence, Limited Liability Company, corporate law.

INTRODUCTION

Limited Liability Companies (PTs) are a prevalent corporate structure in Indonesia, characterized by the separation between shareholders' personal assets and corporate assets under the principle of limited liability. While this principle protects shareholders from losses exceeding their capital contributions, the Board of Directors is entrusted with day-to-day management and is expected to act in good faith and with due diligence in achieving corporate objectives.

Directors are generally shielded by the Business Judgment Rule (BJR), which protects decisions made prudently, based on sufficient information, and without conflicts of interest—even if those decisions result in losses. However, this protection is not absolute. Under Law No. 40 of 2007 on Limited Liability Companies (UUPT), directors may be held personally liable if corporate losses result from misconduct or gross negligence, particularly in cases of insolvency. This study examines the scope of directors' accountability, the criteria distinguishing ordinary negligence from gross negligence, and the legal mechanisms for imposing sanctions when directors' actions contribute to corporate insolvency. The research addresses three key questions:

1. How does the BJR define the scope of directors' personal liability in cases of corporate losses or insolvency?
2. What constitutes director misconduct or negligence that triggers personal liability?
3. How do Indonesian bankruptcy law, PKPU regulations, and the UUPT regulate accountability and sanctions for directors?

The objectives of the study are to clarify the limits of legal protection for directors under the BJR, identify the threshold of gross negligence or bad faith that pierces limited liability, and explain the legal mechanisms and sanctions applicable to directors in cases of insolvency.

RESEARCH METHODOLOGY

This study employs normative legal research (doctrinal research), focusing on the



identification and analysis of statutory provisions, legal doctrines, and principles relevant to director accountability. Two main approaches were applied:

1. **Statutory Approach:** A review of legislation and regulations relevant to the research questions, including UUPT, Bankruptcy and PKPU Law, and the Indonesian Civil Code (KUHPerdata).
2. **Conceptual Approach:** Analysis of legal doctrines such as limited liability, piercing the corporate veil, and the Business Judgment Rule (BJR) to provide a conceptual framework for interpreting statutory provisions.

Legal materials were collected from three categories: primary (laws and regulations), secondary (textbooks, journals, articles), and tertiary (legal dictionaries, encyclopedias). Data collection relied on library research, involving review and documentation of relevant legal sources from physical and digital repositories.

Analysis was conducted qualitatively using a descriptive-analytical method, with three stages:

1. **Data Reduction:** Selecting materials relevant to the research focus.
2. **Data Organization:** Structuring the materials to develop coherent legal arguments.
3. **Conclusion Drawing:** Applying deductive reasoning, moving from general legal norms to specific conclusions regarding director accountability.

RESULTS AND DISCUSSION

Limits of BJR Protection

The BJR serves as a shield for directors, protecting them from personal liability for business losses arising from reasonable decisions. Article 97 paragraph (5) of the UUPT provides that directors are not liable if losses are not caused by fault or negligence, decisions were made in good faith, no conflict of interest existed, and actions were taken to prevent or mitigate losses.

However, this protection is disqualified in cases of bad faith, gross negligence, or conflicts of interest. Insolvency itself does not automatically indicate director fault, as it may reflect ordinary business risk. BJR protection fails when trustees or creditors can demonstrate that decisions leading to insolvency were made without proper research, violated the company's articles of association, or contravened the law.

Criteria for Director Misconduct and Gross Negligence

Directors are personally liable under Article 97 paragraph (3) of the UUPT if they are



negligent or act in bad faith. Distinguishing between ordinary negligence (protected by BJR) and gross negligence (piercing limited liability) is crucial.

Examples of gross negligence include:

1. **Breach of fiduciary duties:** prioritizing personal interests over corporate interests.
2. **Legal non-compliance:** actions prohibited by UUPT, Bankruptcy Law, or PKPU regulations, such as failing to file for bankruptcy when legally required.
3. **Unreasonable risk-taking:** speculative or irrational business decisions made without sufficient information.

Suspicious pre-bankruptcy transactions, such as detrimental asset transfers, may serve as evidence of bad faith or gross negligence.

Legal Implications and Enforcement Mechanisms

Upon bankruptcy, management and asset liquidation transfer to the bankruptcy trustee under judicial supervision. Legal consequences for directors found at fault include:

1. **Civil Claims:** Trustees may file *actio pauliana* or ordinary compensation claims under Articles 97 and 104 UUPT.
2. **Personal Liability:** Directors may be required to compensate the company fully with personal assets, piercing limited liability.
3. **Criminal Sanctions (if applicable):** Misconduct involving embezzlement, fraud, or corruption may lead to criminal prosecution.

These mechanisms allow creditors to recover losses while reinforcing **fiduciary duties** and accountability in PTs.

CONCLUSION AND RECOMMENDATIONS

Conclusion

Based on the analysis, the key conclusions are:

1. Limited liability for directors is not absolute; it may be pierced under Articles 97 and 104 UUPT or the doctrine of piercing the corporate veil.
2. The BJR protects directors as long as decisions are made in good faith, with due care, no conflict of interest, and based on sufficient information. Protection is lost in cases of gross negligence or bad faith that directly result in insolvency.



3. Gross negligence includes breaches of fiduciary duties, non-compliance with legal obligations, and unreasonable or speculative risk-taking.
4. Directors found liable may face full personal liability, civil claims by trustees, and potential criminal sanctions.

Recommendations

1. **For Directors:** Document decision-making processes transparently, base decisions on sufficient data, and comply with SOPs and applicable laws to secure protection under the BJR.
2. **For Creditors and Stakeholders:** Understand the legal limits of director liability; claims must be based on evidence of gross negligence or bad faith, not ordinary business losses.
3. **For Regulators and Legal Practitioners:** Promote consistent jurisprudence and guidance on the application of the BJR and criteria for gross negligence to enhance legal certainty for businesses.

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