








LEX JOURNAL: KAJIAN HUKUM DAN KEADILAN

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**REVIEW OF LEGAL PROTECTION TO DIRECTORS BASED ON THE
PRINCIPLE OF BUSINESS JUDGMENT RULE AGAINST LIMITED
LIABILITY COMPANIES THAT ARE DECLARED DISSOLVED (STUDY OF
PT. ISTANA CEMPAKA RAYA)**

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ABSTRACT

This research aims to investigate the review of legal protection for directors based on the Business Judgment Rule principle in cases involving limited liability companies that have been declared dissolved. This type of research is normative and empirical, with the approach method used being the statutory approach, conceptual approach, and analytical approach to the legal relationship between PT and its directors. The Business Judgment Rule principle in the Indonesian legal system is recognized as a doctrine that provides legal protection to directors of limited liability companies from liability for business decisions that are detrimental to the company, as long as the decision is taken in good faith, prudence, without conflict of interest, and within the limits of their authority. This principle is reflected in the provisions of Article 97 paragraph (5) of Law No. 40/2007 on Limited Liability Companies, which states that the board of directors cannot be held liable for the company's losses if it can be proven that the action has been carried out by these principles. Based on the principle of Business Judgment Rule, the limitation of the liability of the board of directors in the case of dissolution of a limited liability company lies in the extent to which the decisions taken about the dissolution are made in good faith, prudently, without any conflict of interest, and within the limits of authority granted by law and the company's articles of association. The Board of Directors cannot be held liable for losses arising from the dissolution decision if it can be proven that the

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action was the result of rational business judgment and was in the best interests of the company at the time the decision was made.

Keywords: Legal Protection, Board of Directors, Business Judgment Rule, Dissolution of Limited Liability Company, Directors' Liability

1. INTRODUCTION

The Indonesian state is a state of law, the Indonesian state is currently obliged to increase national economic growth evenly, along with that, the development of Limited Liability Companies in the business world continues to grow rapidly in this country, thus the Indonesian state needs very valuable lessons from developed countries that are far more developed in the business world, on how to organize a good and correct economy to achieve overall national prosperity.

According to Article 1 number 1 of Law Number 40 of 2007 concerning Limited Liability Companies, a company is *"A legal entity that is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares, and fulfills the requirements outlined in this law and its implementing regulations"*.

A Limited Liability Company is an ideal form of business economic activity and is widely chosen at this time, because of its limited liability. Limited Liability Companies also make it easy for the owner (shareholder) to transfer their company (to any person) by selling all the shares they own in the company. Modern legal doctrines originating from the *Anglo-Saxon* (British and American) and *continental* (European) legal systems have greatly influenced the existing corporate law system in Indonesia. This influence can be seen in various laws and regulations relating to corporations, since the enactment of Law Number 1 Year 1995 concerning Companies. Legal doctrines such as *piercing the corporate veil*, *fiduciary duty*, the principle of *prudence* (*corporate prudential*), *business judgment rule*, *intravires*, *ultravires*, *public document rule*, *doctrine of separate legal personality of company*, and others, are now contributing

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thoughts to various laws and regulations in the field of limited liability company law, including being used in arguments in the litigation process.

In the company structure, the board of directors is the main part because the board of directors is the organ of the company that is fully responsible for the management of the company for the benefit of the company and the company's objectives both inside and outside the court by the provisions of the Articles of Association. By accommodating the doctrine of the *Business Judgment Rule* principle in Law Number 40 Year 2007 concerning Limited Liability Companies, it is expected to provide legal protection for the Board of Directors in managing the company according to its duties and functions. The principle of *business judgment rule* is a legal principle derived from the *common law system* and is a derivative of the United States corporate law to protect the board of directors in every decision-making that is done carefully, in good faith, and with full of responsibility not to be held legally liable either criminally or civilly.

The Board of Directors as the management and manager of the company is obliged to manage the company well (*good corporate governance*) in good faith and full responsibility as mandated by article 97 paragraph of Law number 40 of 2007 concerning Limited Liability Companies that management as in paragraph 1 must be carried out by each member of the board of directors in good faith and full responsibility.

Basically, the Board of Directors is the organ that manages the activities of the Company. Therefore, every Limited Liability Company must have a minimum of 1 Board of Directors. However, for some types of companies, it is mandatory to have a minimum of 2 (two) Directors, namely a Company that collects and/or manages public funds, a Company that issues debt acknowledgment letters to the public, and a Company that is publicly listed. If the Company has more than one Director or Board of Directors, one of the Directors shall be appointed as the President Director. In carrying

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out its duties, a director must be able to make quick, precise, and accurate business decisions that can minimize losses to the company.

Basically, *the business judgment rule* principle provides legal protection to directors from personal liability for business decisions taken in good faith, based on adequate information, and without conflicts of interest. This principle aims to provide space for directors to take risky decisions without fear and doubt of legal consequences as long as the decision is taken professionally and does not violate the law.

However, in practice, the application of the *business judgment rule* principle is often tested when a limited liability company is dissolved. In this condition, problems arise regarding the limit of responsibility of the board of directors in making a decision considered a violation of responsibility. The dissolution of a limited liability company is often a critical point that raises potential problems for directors, this is due to the inconsistency of thought between members of the board of directors of the company's shareholders, the company's financial problems, or the revocation of a *business* license, Therefore, it is important to analyze the extent to which the principle of *business judgment rule* can provide legal protection to directors.

As in the case of **PT Istana Cempaka Raya**, the dissolution of the company often leads to **legal disputes** involving the Board of Directors. Directors can face claims from shareholders or creditors who feel aggrieved, even though business decisions have been taken based on rational considerations and without bad intentions. Therefore, the study of legal protection for the Board of Directors in the context of the dissolution of a PT based on the *Business Judgment Rule* principle is important to ensure legal certainty and protection of legitimate business decision-making.

2. RESEARCH METHODS

This research is normative legal research. Normative legal research is legal research that examines the law as a rule or norm. Using a normative legal approach,

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namely a statutory approach, a conceptual approach, case approach. Using primary, secondary, and tertiary legal materials, which support the analysis of this research on the concept of Legal Protection to Directors Based on the Principles of *Business Judgement Rule* Against Limited Liability Companies that are declared dissolved.

3. DISCUSSION

The principle of the Business Judgment Rule is regulated in the Indonesian system, especially regarding legal protection to the Board of Directors of the Company.

In the management of the company, the position of a member of the Board of Directors is an important position, in whose hands all operational activities of a company are located. Article 1 Paragraph (4) UUPT 2007 explains that the Board of Directors is "The organ of the company which is fully responsible for the management of the company for the interests and purposes of the company and represents the company both inside and outside the court by the provisions of the Articles of Association". In carrying out its management, the Board of Directors has a Business Judgement Rule. The Business Judgement Rule arises as a result of the implementation of the fiduciary duty of a Board of Directors, namely the principle of duty of skill and care, so that all errors arising after the implementation of this principle, have the consequence of the Board of Directors being personally liable if there is an error in their decision.

Fiduciary Duty in Indonesia can be seen in Article 97 paragraph (2) of the Company Law 2007, which stipulates that in carrying out their duties, directors must carry them out in the interests of the Company and by the aims and objectives of the Company in good faith and with full responsibility. Duty of Care is elaborated in Article 92 paragraph (2), the Board of Directors is authorized to carry out management by policies deemed appropriate, within the limits specified in this Law and/or the articles of association.

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Duty of Loyalty, elaborated in Article 92 paragraph (1), where the board of directors carries out the management of the Company for the benefit of the Company and the purposes and objectives of the Company. Duty of Skill, elaborated in the explanation of Article 92 paragraph (2), explains that what is meant by "policies that are deemed appropriate" are policies that, among others, are based on expertise, available opportunities, and prevalence in similar businesses. Duty of diligence is described in Article 97 paragraph (2), which explains that management must be carried out by each member of the Board of Directors in good faith and full responsibility. Explained in more detail what is meant by "full responsibility," which means paying attention to the Company carefully and diligently.

Duty to Act Lawfully in the law is elaborated in Article 92 paragraph (2), namely the Board of Directors is authorized to carry out management by policies that are deemed appropriate, within the limits set out in the Law and/or the articles of association. The Business Judgement Rule in the 2007 Company Law is outlined in Article 97 paragraph (5), which stipulates that members of the Board of Directors cannot be held personally liable for the Company's losses if they are guilty or negligent in carrying out their duties, if they can prove it.

The principle of BJR is regulated in Article 97 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies, hereinafter referred to as UUPT. Article 97 paragraph (5) stipulates several conditions that must be complied with by directors to be declared eligible for legal protection through the principle of BJR. To find out the mechanism for violating the principle of Business Judgment Rule (BJR) by company directors, the author analyzes the conditions contained in Article 97, Paragraph 5 of the Company Law on the performance of directors in carrying out their functions as company management, in this case, leading the company.

The Delaware Supreme Court made a case as a consideration of BJR that BJR involves two things, namely, process and substance. The operational management of

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limited liability companies, both private and state-owned, is carried out by the board of directors. In their duties in running the company, the directors must carry out two functions, namely the management function and the representation function. It is said that the management function is when the board of directors performs the task of leading the company. The representation function is when the directors represent the company in and out of court.

In their function of leading the company, the directors are expected to achieve the company's goals to reap business profits. The profit of the company is, of course, directly proportional to the decisions taken by the directors; the greater the risk taken by the directors, the greater the potential profit. The conditions for a director not to be held liable are contained in Article 97, paragraph (5) of the Company Law.

Limitation of Directors' Liability Based on the Principle of Business Judgement Rule in the Case of Dissolution of a Limited Liability Company

PT Istana Cempaka Raya is a limited liability company established under Indonesian law and is engaged in property and development. PT Istana Cempaka Raya (ICR) is a company founded by two individuals, namely Mahesh Narayan, an Indian citizen, and Tjo Mien Sasminto, an Indonesian citizen of Chinese descent. The company is engaged in property and tourism development, focusing on the construction of star hotels in the Gili Nanggu and Gili Tangkong areas, West Lombok Regency, West Nusa Tenggara.

This company had experienced a heyday, but in recent years experienced a decline in performance, the planned projects did not progress significantly, and there was no development progress on the land that had been provided by the local government, and there was no business activity running, this caused indirect losses to the region, especially because the land was not utilized properly, in addition to internal conflicts

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among shareholders and the emergence of legal disputes between foreign investors and liquidators, which complicated the company's legal position.

As a result of this operational stagnation, PT Istana Cempaka Raya began to lose credibility in the eyes of investors and business partners. The absence of real activity on the ground also resulted in the company's inability to fulfill its financial obligations, both to creditors and to the local government that had provided land facilities for project development. Differences in vision, misalignment in management, and allegations of abuse of power have worsened relations between internal parties. Legal disputes arising between foreign investors and liquidators caused prolonged legal uncertainty, hampering the process of restructuring or rescuing the company.

Because it was deemed no longer able to carry out business activities as the purpose of establishing the company and potentially harming third parties and the public interest, various related parties finally filed a request for the dissolution of PT Istana Cempaka Raya to the Mataram District Court. The request was granted based on the Mataram District Court Decision Number 115/Pdt.P/2022/PN Mtr, dated June 20, 2022, which stated the dissolution of the company and appointed a liquidator to carry out the process of settling the company's assets.

The Board of Directors of PT Istana Cempaka Raya has the main responsibility to carry out the management of the company by Article 92 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), namely managing the company in good faith and full responsibility. In carrying out these responsibilities, the board of directors is also obliged to pay attention to the principles of prudence (*duty of care*) and *loyalty (duty of loyalty)*, as has developed in the practice of corporate law. The Board of Directors must ensure that every decision taken about the management of the company is made on the basis of adequate information, rational consideration, and in the interests of the company, not the interests of certain individuals or groups.

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In the context of PT Istana Cempaka Raya, the board of directors must safeguard that the promised investment plans and development projects can be realized for the purpose of establishing the company. The failure of the board of directors to realize the promised property projects, including the absence of significant business activities over a long period of time, raises questions about their compliance with the principles of good corporate management.

In the context of corporate law, good management refers to managerial practices carried out by the principles of corporate law, *good corporate governance*, and the best interests of the company. The indicators that the management of the company has been carried out properly can be seen from the following aspects: 1. compliance with legal and budgetary provisions; 2. application of the precautionary principle; 3. loyalty principle; 4. transparency and accountability; 5. Risk management and strategic decision-making; 6. Collective decision-making and good documentation.

When the company faces serious financial or operational difficulties, the board of directors also has the responsibility to immediately take strategic steps to prevent greater losses for the company, such as restructuring the business, finding strategic partners, or in certain cases, proposing dissolution to the General Meeting of Shareholders (GMS) as stipulated in Article 142 paragraph (1) of the Company Law.

If these steps are not taken, or if the directors allow the company to remain in an inactive condition without legal certainty, then they can be considered negligent in exercising their authority. Therefore, in the case of the dissolution of PT Istana Cempaka Raya, it is necessary to conduct a legal evaluation of whether the actions or omissions of the board of directors during the management period have exceeded the limits of their authority or are contrary to the prudential principles stipulated in Law Number 40 of 2007 concerning Limited Liability Companies.

In the context of the dissolution of PT Istana Cempaka Raya through the Mataram District Court Decision Number 115/Pdt.P/2022/PN Mtr, the role and responsibility of

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the board of directors is in the spotlight because the company was declared dissolved due to inactivity and inability to fulfill financial obligations, including claims from creditors. The responsibility of the directors in the dissolution of PT Istana Cempaka Raya does not necessarily lead to personal legal liability, as long as it can be proven that their decisions and actions were carried out within the confines of the *Business Judgement Rule* principle. This principle provides room for fair protection, provided that the directors acted in good faith, did not exceed their authority, and were not involved in a conflict of interest. Therefore, the application of this principle becomes important to ensure that the liability of directors is measured proportionally and professionally.

The Board of Directors is not liable for the loss of the company if it can prove that:

- a. The loss is not due to its fault or negligence;
- b. It has managed the company in good faith and prudence;
- c. It has no conflict of interest and has taken measures to prevent the loss from arising or continuing.

The *Business Judgement Rule* also requires the board of directors to conduct an in-depth evaluation of the company's financial condition before making important decisions, such as dissolution. In this case, although PT Istana Cempaka Raya faced serious financial difficulties and was unable to meet its financial obligations, the decision to propose dissolution was taken with rational consideration, based on an analysis of the company's financial situation, which was no longer recoverable. This action was in line with the directors' obligation to avoid further losses to the company and its shareholders.

The *duty of care* contained in the *Business Judgement Rule* also requires directors to act with full rigor in carrying out their duties. In this context, the board of directors of PT Istana Cempaka Raya must ensure that the dissolution decision is made with due consideration and adequate information, and based on a careful evaluation of the potential for greater losses if the company continues to operate in a financially unsound

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condition. This includes, for example, restructuring efforts that may have been undertaken previously, or if necessary, filing for dissolution of the company as a last resort to avoid further losses to creditors and shareholders.

Thus, it can be concluded that the responsibility of the board of directors in the case of the dissolution of PT Istana Cempaka Raya remains within the corridor of the protection of the *Business Judgement Rule*, because there is no real violation of the law. The Board of Directors is still considered to have acted within the limits of its authority, and the failure of the company is seen as part of the business risks that cannot always be avoided. This principle is important to maintain a balance between legal protection for directors and their accountability in carrying out the functions of managing the company.

The issue of responsibility itself is inseparable from the issue of consciousness and freedom. The existence of responsibility here stems from the existence of consciousness and freedom in humans, which then gives rise to responsibility. In the view of existentialism, humans are understood to exist with awareness as themselves. Human consciousness is always accompanied by freedom, because without freedom, human consciousness and even existence become absurd. In this case, humans in forming themselves have the opportunity to choose what is good and what is not good for themselves every time. Therefore, every choice taken there is an inherent responsibility as a consequence.

Liability of Liquidator in the event of dissolution of PT Istana Cempaka Raya through court order

The liquidator's liability in the event of dissolution of a Limited Liability Company (PT), such as PT Istana Cempaka Raya, through a court order is generally regulated in Law Number 40 Year 2007 on Limited Liability Companies (UUPT), specifically Articles 142 to 152. Personal Liability of the Liquidator. If, in the process, there is negligence, error, or an unlawful act, the liquidator can be held personally liable,

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including compensation to the injured party. The role of the liquidator in the dissolution of PT Istana Cempaka Raya is an important element that determines whether or not the company's assets are in order. The liquidator not only acts as the technical executor of the dissolution, but also as the legal person responsible for the entire process.

With a strong legal basis and supervision from shareholders or the courts, liquidators are required to act professionally, transparently, and accountably. Any act of negligence or deviation in the liquidation process can have serious legal consequences, both civil and criminal. Therefore, the selection of liquidators should not be done carelessly. Shareholders or authorized parties need to ensure that the individual or entity appointed as liquidator has integrity, experience, and adequate legal and financial understanding. Transparency in the reporting process and openness to independent audits are also important steps to prevent potential abuse of power during the liquidation process.

In the context of PT Istana Cempaka Raya, a complete and legally valid dissolution process is not only a reflection of compliance with regulations but also shows respect for the principles of justice and corporate social responsibility. If the liquidator performs his duties professionally, then all interested parties, both internal and external to the company, can obtain clarity, legal protection, and a balanced settlement. Conversely, if the liquidator fails to carry out his/her duties by the provisions, this can open up space for lawsuits, criminal investigations, and even defamation of the parties concerned. Therefore, continuous supervision, orderly documentation, and accurate reporting during the liquidation process are non-negotiable. As such, the liquidator is the last line of defense to maintain the integrity of the company dissolution process. This role demands more than just administrative skills; it requires a high degree of legal morality, decisiveness, and ethical responsibility to ensure that every winding-up process is conducted within a fair, transparent, and accountable legal framework.

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Overall, the role of the liquidator in the dissolution of a PT is crucial in maintaining the legal and business integrity of the company, as well as ensuring that the entire process proceeds fairly and by applicable regulations. Therefore, the selection of a competent liquidator with integrity is a decisive factor in achieving a successful resolution and avoiding future legal issues.

4. CLOSING

The *Business Judgment Rule* principle in Indonesian law provides legal protection to the company's board of directors from being sued for adverse business decisions, provided that the decision is taken in good faith, prudence, without conflict of interest, and within the limits of authority. This principle is stated in Article 97, paragraph (5) of Law No. 40 of 2007 and serves as preventive and repressive legal protection to encourage bold and innovative decision-making within the corridors of corporate law and ethics. In the context of the dissolution of a limited liability company, this principle is the basis for an objective evaluation of the board of directors' decisions. Directors cannot be held personally liable as long as their decisions are rational and in the interests of the company, and there are no elements of negligence or abuse of authority. As for the dissolution of PT Istana Cempaka Raya through a court order, the liquidator is responsible for settling the company's obligations fairly and by the law. If there is negligence or abuse of authority, the liquidator can be held personally liable. Therefore, the liquidator's duties are strategic and must be carried out professionally, independently, and accountably.

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