

## Tanggung jawab direksi atas kesalahan atau kelalaian dalam tindakan pengurusan yang mengakibatkan Perseroan Terbatas pailit: Sebagai perlindungan hukum bagi kreditor

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### Abstrak

Perseroan Terbatas (perseroan) sebagai badan hukum memiliki pertanggungjawaban yang bersifat terbatas. Sebagai subyek hukum, dia dianggap cakap untuk bertanggungjawab atas segala kegiatannya termasuk bila terjadi kerugian. Pertanggungjawaban demikian seringkali dimanfaatkan pelaku usaha perseroan, dalam hal ini direksi dengan menggunakan perseroan untuk kepentingan pribadi dan bukan untuk kelangsungan perseroan. Menurut Undang-undang nomor 1 Tahun 1995 tentang Perseroan Terbatas, direksi diwajibkan beritikad baik dalam mengurus perseroan, sehingga pelanggaran terhadapnya merupakan kelalaian dan kesalahan yang harus dipertanggungjawabkan secara pribadi. Namun tentang itikad baik oleh direksi tersebut lebih lanjut tidak ditemui penjelasannya.

Penafsiran yang keliru tentang itikad baik berakibat lolosnya direksi dari pertanggungjawaban atas kerugian perseroan yang disebabkan (pailit). Padahal pertanggungjawaban direksi penting bagi kreditor ketika budel pailit perseroan tidak mencukupi untuk membayar piutang mereka pada perseroan. Bagaimana sebenarnya tindakan pengurusan direksi dapat dikatakan salah atau lalai mengakibatkan perseroan pailit? Serta bagaimana pertanggungjawaban direksi atas kerugian yang tidak mampu dibayar oleh perseroan akibat kepailitan yang disebabkan tersebut? Untuk itu penulis melakukan penelitian dengan metode yuridis normatif dengan wawancara: sebagai data penunjang.

Penulis mendapatkan bahan-bahan hukum melalui perundang-undangan, yurisprudensi serta literatur-literatur terkait. Sehingga diketahui bahwa direksi tidak dikatakan lalai atau salah mengakibatkan kepailitan sepanjang direksi beritikad baik dengan acuan *duty of care*, *duty of loyalty* dan melaksanakan pengurusan sesuai kewenangan yang diberikan kepadanya (*intra vices*) yang dapat ditemui pada corporate law system. Namun bila terbukti sebaliknya mengakibatkan perseroan pailit, direksi dapat dimintai pertanggungjawaban secara tanggung renteng melalui proses kepailitan di Pengadilan Niaga. Hal demikian dilakukan agar pemenuhan pembayaran piutang kreditor dapat dilaksanakan secara adil dan seimbang.

.....The limited liability company as a legal entity enjoys the benefits of limited responsibility. As a subject of Law, it is deemed to have the capacity to bear responsibilities upon its activities including should there rise any deficiency. Such limited responsibility is often miss used by businessmen or entrepreneurs for their own self benefits and not for the company's best interest. Pursuant to Law number I of the year of 1995 regarding The Limited Liability company, the board of directors are obliged by law to have good intentions in managing the company, thus the breach of such shall be deemed as an act of misconduct and negligence which amounts to personal responsibility. However, the regulation of which remains unclear.

The board of directors responsibility is crucial for creditors especially when the assets of the company is not enough to compensate the creditors, event so the miss-interpretation of good intention still exist and such leads to the unfair acquital of the Board of directors for their misconduct which contributes to the loss of the company (the default of the company). Then, how to determine the faults of the board of directors which leads to the default of the company? Furthermore, how is the mechanism to held the responsibility of the

board of directors in the case if the company goes default because of their fault? To answer that problem the writer has conducted researches with the normative juridical method with interviews as supporting data. The writer obtains her law materials through the regulations, jurisprudence, and also other literatures in connection with this issue. Such is completed so to know that as long as the board of directors exercise its good intention pursuant to the principles of duty of care, duty of loyalty, and exercise its discretion according to the measurements it is given (intra vices) which can be found in the corporate law system, then it will be acquitted. However, if the conduct of which can be proven otherwise that leads to the default of the company, then the board of directors can be personally held liable proportionally by the verdict of the Commercial Court. Such is done to ensure the fair and balanced return of payment from the debtors to the creditors.