



The Legal Responsibility of the Board of Commissioners for Their Actions Based on The Power of Attorney of the Board of Directors of a Limited Liability Company

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Abstract

Limited Liability Company is a legal entity which is a capital alliance, established based on an agreement, conducts business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this Law and its implementing regulations. As stated in Article 1 number 1 of Law Number 40 of 2007, the establishment of which must be established by 2 (two) people, with a deed of incorporation made with a notarial deed which is then submitted to the legal entity status process to the Ministry of Human Rights Law of the Republic of Indonesia, which is done by registering online which is also known as the Legal Entity Administration System (SABH). Limited Liability Companies that have been approved by the Ministry of Human Rights Law of the Republic of Indonesia will receive legal entity status. Then the Board of Directors and the Board of Commissioners have the respective duties and responsibilities, the Board of Directors is the management authorized to take care of a Limited Liability Company while the Board of Commissioners has the authority to supervise the Board of Directors, and if the Board of Directors is unable to have the Board of Directors authorized to appoint another person with a power of attorney to carry out his duties as the Board of Directors, if the power of attorney is given by the Board of Directors to the Board of Commissioners, this may lead to an internal conflict with the Board of Commissioners whose duties and authorities include oversight of the duties, authorities and responsibilities of the Board of Directors. For this reason, the writer is interested in discussing the legal consequences of the power of attorney given by the director to the commissioner on behalf of the company in limited liability companies. What is the legal liability of the board of commissioners if there is a problem in the future with a limited liability company? This research is a normative legal research using a normative approach by looking at the principles of a limited liability company contained in a limited liability company law. Sources and types of data used are primary data and secondary data, which will then be analyzed using qualitative analysis. Based on the results of the study note that directors can not give power to the commissioner, because the commissioner does not meet the criteria as a company employee. Therefore, the granting of directors' powers to the commissioners does not cause legal consequences because the commissioners are not authorized as recipients of the directors' powers. It can be concluded that the legal consequences of granting power of attorney are null and void.

Keywords: *Limited Liability Company; Power of Attorney; Responsibility*

Introduction

The Limited Liability Company was originally regulated by Law Number 1 of 1995 concerning Limited Liability Companies which replaced the statutory regulations originating from the colonial era as stipulated in the Commercial Law Code. In the development of the provisions in Law Number 1 Year 1995, the Limited Liability Company is no longer fulfilling the development of law and the needs of the community because of economic conditions, advances in science, technology, and information have developed so rapidly, especially in the era of globalisation, in addition to the increasing demands of society for faster service, legal certainty and guidance on the development of the business world in accordance with the principles of good corporate governance demanding the completion of Law Number 1 of 1995 concerning Limited Liability Companies.¹

Based on Article 1 Paragraph 1 of Law Number 40 Year 2007 concerning Limited Liability Companies, Limited Liability Companies are defined as legal entities which are capital alliances, established based on agreements, conducting business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in the law. the law and its implementing regulations, or business entities that carry out activities in the economic field on an ongoing, permanent, and explicit basis with the aim of obtaining profits and / or profits as evidenced by records (bookkeeping).²

A legal entity in Indonesia is a legal entity that has the ability to carry out legal actions as other legal subjects. The legal act includes signing a contractual agreement with a third party where the company is represented by the directors. The Board of Directors is an organ of the company appointed based on the company's articles of association, for and on behalf of the company. The Board of Directors has no authority other than to carry out what has been formulated, both in the company's articles of association and what has been determined by the Law.³ One form of corporate business entity established by business people as a forum for business or business is a limited liability company. Limited liability companies are widely used by business people in general because the form of regulation is quite adequate and also because the limited liability company legal entity is the safest form of entity because it is a legal entity whose existence is recognized and given complete regulation and protection by Law Number 40 Year 2007 regarding Limited Liability Companies, there are 3 organs, namely the General Meeting of Shareholders, Directors and Commissioners.

General Meeting of Shareholders is an institution that accommodates the shareholders (stockholders, aandeelhouder) and is the organ of the company that holds the highest authority and holds authority that is not handed over to the Directors and Commissioners. The Board of Directors (BoD) is the organ of the company whose company is fully responsible for managing the company (fiduciary duty), representing the company, both inside and outside the court based on the articles of association (intra vires). Based on the division of duties and authorities of each organ of the company as stated above, if the company suffers a loss or palit that causes the company cannot bear the burden of obligations that must be fulfilled, the principle responsible is the Directors. If the member of the Board of Directors concerned is guilty or negligent in carrying out his duties (ultra vires), each member of the Board of Directors concerned is personally responsible for the losses suffered by the company (up to personal assets), unless proven otherwise. Directors are personifications rather than limited liability companies.

In the official explanation of Article 79 Paragraph (1) of Law Number 40 Year 2007 concerning Limited Liability Companies hereinafter referred to as the Limited Liability Company Law it is said that the duties of the Board of Directors in managing the company include the day-to-day management of the company. Meant by further daily maintenance there is no official explanation. Must be seen in the

¹ Pipip Tapipah Surtini, Limited Liability Company, Graphic House, Sumedang, 2018, p. 1

² Abdulkadir Muhammad, Legal Aspect of Financial and Financial Institutions, PT. Grafindo Persada, 2010, p. 103

³ Adrian Sutedi, Smart Book of Limited Liability Company, Achieved Asa Success, Jakarta, 2015, pp.6-7

Articles of Association about what is included in the day-to-day management, although it is not possible to mention in detail in the articles of association. Managing the company is solely the duty of the Board of Directors that cannot be interfered directly by others. This is expressly stated in Article 82 of the Limited Liability Company Law which provides the following provisions, the Board of Directors has the right and authority to run the company, act for and on behalf of the company (both inside and outside the court) and is responsible for the management and running of the company for the interests and purposes of the company. As concluded from Article 1 number 5 jo. Article 82 jo. Article 92 and Article 98 of Limited Liability Company Law.⁴

In a company, usually the authority and responsibilities of a Director must have the same level. Thus, the authority of a Board of Directors gives him the power to make and carry out decisions related to his assigned field of duty and responsibilities in his area of duty create an obligation for him to carry out these tasks by using existing authority to reach the company. Responsibility is the obligation of an individual person (Directors) to carry out the activities assigned to him as best as possible, in accordance with his abilities. Responsibilities can continue or can stop if certain tasks assigned to him have been completed. The responsibility of the Board of Directors of the Company is closely related to the collegiality of the Company's Directors. According to Article 98 Paragraph 1 of the Limited Liability Company Law, directors represent Limited Liability Companies, both in and out of court. Article 98 Paragraph (2) states that if a member of the Board of Directors consists of more than one person, the person authorized to represent a Limited Liability Company is each member of the Board of Directors, unless otherwise stipulated in the articles of association. Article 98 Paragraph (3) states that the authority of the Board of Directors to represent a Limited Liability Company is unlimited and unconditional, unless otherwise stipulated in the Law, the Articles of Association, or the resolution of the GMS. The provisions of Article 98 Paragraph (2) above give us instructions that the Board of Directors of a Limited Liability Company in the system is collegial.

Based on the information the writer got for the Board of Directors of a Company, authorizes the Board of Directors to the Commissioner to act for and on behalf of the Board of Directors to take legal action to buy a piece of land / land owned by individuals or groups made before a notary public, in the form of a notarial deed. According to Article 108 Paragraph (1) of Law Number 40 Year 2007 concerning Limited Liability Companies, it is explained that the duty of a Commissioner is to supervise and provide advice to the Directors, in this case the author believes the actions taken by the Commissioners who carry out their duties based on the power of the Directors will cause exceeding its authority (*ultra vires*) and even if an internal problem occurs will cause conflict of interest. However, sometimes the directors of the company can not attend themselves in carrying out certain legal actions such as in the signing of the sale and purchase agreement with the parties and Article 103 of the Limited Liability Company Law has provided a solution to the problem wherein in the article it is stated that the Directors can give written authorization to 1 (one) or more employees of the Company or to other people for and on behalf of the Company to carry out certain legal actions as described in the power of attorney.

The Special Power of Attorney deals only with one or more specific interests; therefore a power of attorney is required which states explicitly which actions can be carried out by the recipient of the power of attorney. This means that in carrying out certain legal actions the directors can authorize some of their duties and responsibilities to the company's employees or others to represent the company. However, in that article there is no stated that the directors can give power to someone who also serves as a commissioner in the same company. As it is known that in a limited liability company, each organ of the company has the authority and responsibility that are intertwined but may not be united or be in one hand. This has made researchers wonder whether such actions are contrary to the Company Law. What are the legal consequences that can arise in connection with the granting of power of attorney if it is not contrary to the Company Law and what if the authorization is contrary to the Company Law.

⁴ Agus Budiarto, Legal Position and Responsibility of Founder of a Limited Liability Company, Ghalia Indonesia, Jakarta, p. 61.

Theoretically it can be distinguished between the duties of commissioners and directors in a PT, but the practice in distinguishing the duties and authority of the two organs often overlaps. As a result, if in the case of a problem concerning PT, often the two organs are mutually responsible. Based on this, the author sees a problem that has the potential to cause disputes in making decisions that will exceed his authority as an organ of the Company that provides supervision and advice to the Directors, this is what makes the writer interested in making a scientific work in the form of a thesis and the author will use to do research with the title: "RESPONSIBILITIES OF THE BOARD OF COMMISSIONERS FOR THE DONE IT IS DOING ON THE BASIS OF THE POWER OF THE BOARD OF DIRECTORS AT THE LIMITED COMPANY". Based on the background description above, it can be formulated several Formulation of Problems that will be discussed in writing this Thesis, What are the legal consequences of the power of attorney given by the director to the Commissioner on behalf of the company in a Limited Liability Company, How legal liability is carried out by the board of commissioners if it occurs problems later on a Limited Liability Company?

Research Method

The problem approach used in this research is Normative Juridical. The choice of this type of thesis is that the study of this problem is based on the laws and regulations, theories, and concepts related to the aspects of corporate law. Moving on from this type of research, it is hoped that a clear principle can be obtained by providing legal certainty for the Directors, so that a balanced relationship occurs in the directors' responsibility for the ultra vires action. The nature of this research is descriptive analysis. Descriptive means that from this research it is expected to obtain a detailed and systematic description of the problem under study. This research generally aims to describe systematically, factually, and accurately about a particular population or area, regarding certain characteristics, characteristics, or factors. The analysis is intended based on the description of the facts obtained, it is done a careful analysis of how to answer the problem.

Legal Consequences of The Power of Attorney Given by The Director To The Commissioner on Behalf of the Company in a Limited Liability Company

1. Authorization by the Directors to the Commissioners on behalf of a Limited Liability Company

The issue of power is closely related to the granting of power, the granting of power is an agreement whereby a person gives power (authority) to someone else who receives it, to carry out an affair in his name. Power of attorney is an authority granted by a power of attorney to the authorized party to take legal actions on behalf of the authority.⁵Based on the above understanding it can be seen that the power is as a representative of the power of attorney to do any work assigned, meaning that there must be another party authorized. The recipient of the power of attorney must be fully capable of carrying out his obligations as a power of attorney and must not neglect it. Power of attorney can be given for the benefit of the authorizer or for the benefit of others. When the power is given solely to the authority is a logical and reasonable thing, that power can be revoked at any time according to the wishes of the authority.

According to Article 1792 of the Civil Code, a number of things can be taken into account, namely:

1. The granting of power of attorney is an agreement.
2. There is the surrender of power or authority from the authority to the recipient of the power of attorney.
3. The existence of a representative, namely someone representing others in managing an interest.

⁵ Rachmad Setiawan, Legal Representation and Power of Attorney, Tatanusa, Jakarta, 2005, p. 21

From the definition of Article 1792 of the Civil Code, three words are obtained which are elements of the granting of power and are related to one another. The three elements of the power of attorney, namely:

a. Elements of Agreement

The element of approval in the granting of power implies an event where someone or more promises and commit himself to someone else to carry out a legal act. Agreement law adheres to an open system that gives people freedom to enter into agreements, as long as it does not violate public order and decency. This is bound by the sound of Article 1338 paragraph (1) of the Civil Code that all treaties made legally apply as a law for those who make them.

b. Elements on Behalf of a Name

The words in his name mean that what is done by the recipient of the act acts on behalf of the authorizer. This means that what is done by the recipient of the power of attorney is at the responsibility of the authorizer and all rights and obligations arising from the act carried out in the form of making or closing the agreement, the authority is the party to the agreement.

c. Elements of Organizing a Business

What is meant by "carrying out an affair" is to do an "act of law" that is an act that has "legal consequences". It must be in accordance with what is given by the attorney if there is a problem if it exceeds the authority given by the power provider then it is the responsibility of the power of attorney.

There are 2 (two) types of granting power of attorney, namely:

a. General Power of Attorney

Public power of attorney reviewed under Article 1796 of the Civil Code is stated as a power of attorney formulated in general words, only covering management actions, so that the general power of attorney may only apply to acts of administration. Meanwhile, to transfer objects, or something other actions that can only be done by the owner, authorization is not allowed with a general power of attorney, but must be with a special power of attorney.

b. Special Power of Attorney

Special power of attorney is a power of attorney that is carried out only for a certain or more interests (Article 1795 of the Civil Code). In the special power of attorney, the actions described in the power of attorney are explained, then the power of attorney becomes a special power of attorney.

In general, power of attorney is not bound by the requirements of the form, except by law for a certain power of attorney stated explicitly related to the requirements of the form, for example, must be with an authentic deed. Indeed there are no provisions that explicitly regulate it, but in practice the power to buy in the form of a power of attorney made under the hand is difficult to accept (it cannot even be used because it bears the risk of its truth). The power of attorney to purchase is a form of special power of attorney and must be given in the form of special power of attorney not to use public power

of attorney. Special power of attorney related to legal actions in the field of land must be in the form of a notary deed or a power of attorney under the hand which is legalized by a notary.

2. Legal consequences of Power of Attorney from Directors to Commissioners

Legal consequences are the consequences given by law for a legal event or act of a legal subject.⁶ From this understanding, it is known that when a legal subject commits an act regulated in law, the legal subject cannot be separated from what has been regulated by law which is the result or impact of doing the legal act. There are 3 (three) types of legal consequences namely:

- a. Legal consequences in the form of the birth, change, disappearance of a certain legal situation, for example: the age of 21 years gave birth to a new legal condition from not capable of acting to capable of acting, or adults who are under the ability, eliminating the ability to act in law.
- b. Legal consequences in the form of birth, change or disappearance of a certain legal relationship, for example: since the creditor and the debtor enter into a credit agreement, then give birth to a new legal relationship, namely debts, or since the buyer repays the price of an item and the seller surrenders the item, it changes or the legal relationship between the sale and purchase between them.
- c. Legal consequences in the form of sanctions, which are not desired by legal subjects.

There are two forms of human actions or actions, namely actions that result in law and those that do not result in law. The legal consequences arise because of the statement of the will of the people intended for the occurrence or legal consequences. The emergence of these legal consequences is the goal of people's will. Such actions are called legal actions or legal actions. The emergence of a legal effect, whether it is or is not the goal, the action is known as material action. A material act, but not a legal action, for example, an act against the law (Article 1365 of the Civil Code) and finding treasure (Article 587 of the Civil Code).⁷

In the Limited Liability Company Law, it is possible for the board of commissioners to manage the company as specified in Article 118 of the Limited Liability Company Law. Article 118 of the Limited Liability Company Law states that:

1. Based on the articles of association or the decision of the General Meeting of Shareholders, the Board of Commissioners can take management actions of the Company in certain circumstances for a certain period of time.
2. The Board of Commissioners who under certain conditions for a certain period of time carries out the management measures referred to in Paragraph (1), all provisions concerning the rights, authorities and obligations of the Board of Directors to the Company and third parties apply.

Furthermore, in the elucidation of Article 118 Paragraph (1) of the Limited Liability Company Law it is explained that the authority is given to the Board of Commissioners to conduct the management of

⁶Fully Handayani R, Introduction to Legal Studies, <http://repository.ui.ac.id/contents/koleksi/11/46905aeb07908ddd40dd1fbfe4f7a1f9ac87e18.pdf>, last accessed on Friday November 7 2019, p. 19.00 WIB.

⁷ Herlien Budiono. Collection of Civil Law Writing in the Notary Field, Citra Aditya p. 1-2

the Company in the event that the Directors do not exist or due to the circumstances referred to in Article 99 Paragraph (2) letter b and Article 107 letter c Limited Liability Company Law.

The contents of Article 99 Paragraph (2) letter b of the Limited Liability Company Law, which is entitled to represent the Company are:

- a. Other members of the Board of Directors who do not have a conflict of interest with the company;
- b. The Board of Commissioners in the event that all members of the Board of Directors have a conflict of interest with the Company; or
- c. Other parties appointed by the General Meeting of Shareholders in the event that all members of the board of directors or board of commissioners have a conflict of interest with the company.

The contents of Article 107 letter c of the Limited Liability Companies Law in the articles of association governs the provisions concerning:

- a. Procedure for resignation of members of the board of directors;
- b. The procedure for filling vacant directors' positions; and
- c. The authorized party carries out management and represents the Company in the event that all members of the Board of Directors are absent or temporarily dismissed.

From these articles it can be seen that the board of commissioners is only authorized to carry out the management of the company in the event that there is no directors at all or all members have a conflict of interest with the Company. Such authority does not necessarily arise with the aforementioned circumstances, but such authority arises because of the articles of association or based on the decision of the General Meeting of Shareholders. In other words, the Board of Commissioners has the authority to conduct company management when the board of directors is absent or has a conflict of interest with the company if it is already regulated in the articles of association or decided by the General Meeting of Shareholders. The Limited Liability Company Law does not clearly define what is meant by a conflict of interest.

The scope of the obligations of members of the directors to avoid conflict of interest in carrying out the management of the Company, includes: Obligation not to use the money and property (money and property) of the Company for personal interests. If this obligation is violated and causes the company to suffer losses, the members of the board of directors:

- 1) Qualified to commit acts against the law (onrechtmatigedaad, unlawful act) based on Article 1365 of the Civil Code
- 2) For this action, the member of the board of directors concerned is threatened with civil liability and may even be prosecuted for criminal liability, embezzling company money.
 - a. Use company information for personal gain. This act is in the category of violating the obligation that must be trusted (breach of fiduciary duty).
 - b. Not in a position for personal gain, such as receiving a bribe, the act is considered a breach of fiduciary duty.

- c. Not withholding or taking part of company profits for personal gain breach of his fiduciary duty.
- d. Transactions with companies are prohibited. That action is categorized as an action of the party at interest.
- e. Prohibition of competing with the company. Violations of this prohibition are categorized as conflicting or conflicting obligations and are qualified.

From the explanation above, the effect of breach of fiduciary duty is categorized as an "ultra vires" act. Another thing that needs to be examined in Article 118 and Article 99 Paragraph (2) letter b of the Limited Liability Company Law is that what is used in these articles is the Board of Commissioners and not a member of the Board of Commissioners. This means that in exercising management authority as referred to in these articles, all members of the Board of Commissioners must act together. In the event that the Directors are unable to attend, Article 103 of the Law on Limited Liability Companies has regulated that the Directors can provide written authorization to the Company's employees or to others to represent the company in carrying out certain legal actions. This means that the Board of Directors has the right to authorize subordinates or other parties that have nothing to do with the Company to represent the company in managing and running the Company.

Therefore, the position of commissioner who is a company organ cannot be categorized as a company employee or another person, and therefore may not be given that power of attorney. If the Board of Directors authorizes the Commissioner to take care of the Company, which is to represent the company in carrying out certain legal actions, then the power of attorney is not fulfilling the legal requirements for an agreement, namely not meeting the subjective conditions in the form of authority to act as commissioners as recipients of power of attorney. Therefore, the directors' power of attorney to the commissioner that has been made has no legal power because the authority granted based on the power of attorney does not transfer to the power of attorney. So in the event that the commissioner carries out the power of attorney referred to, the commissioner cannot be considered acting as the recipient of the attorney and carrying out legal actions for and on behalf of the company.

Legal Liability is Carried out By The Board of Commissioners if it Occurs Problems Later on a Limited Liability Company

In Law Number 40 of 2007 concerning Limited Liability Companies, there is a provision that the board of commissioners has two authorities, namely a preventive authority to anticipate mistakes in corporate decision making and a repressive authority to take action after the company makes a mistake. Article which is the preventive authority of the board of commissioners is contained in article 117 paragraph 1 which states that in the articles of association of the company the authority of the board of commissioners can be determined to give approval or assistance to directors in carrying out certain legal actions. However, the board of directors still has the right to carry out the decisions to be taken without approval or even if the decision to be taken is rejected by the board of commissioners. If the decision is not approved or rejected by the board of commissioners, all consequences arising from the decision are made entirely the responsibility of the board of directors (Article 97 paragraph 3 and paragraph 4 of Law Number 40 of 2007). The repressive authority of the board of commissioners is contained in Article 106 of the Limited Liability Company Law. In paragraph 1 of Article 106 it is stated that members of the board of directors may be temporarily dismissed by the board of commissioners by stating the reasons. Because of this authority, it is necessary to have direct supervision from the board of commissioners on all actions and decisions taken by the directors of the company. The Board of Commissioners is the organ in charge of conducting supervision and providing advice to directors in carrying out the management of the company. In carrying out their duties, the board of commissioners is authorized to enter the company's

office, obtain reports from directors, examine company documents, approve or disapprove certain actions from directors as stipulated in the articles of association, and temporarily lay off directors and take care of the company if the company does not have directors.⁸

Unlike the members of the board of directors, the Board of Commissioners cannot act individually on behalf of the board of directors. Commissioners must act in good faith and full responsibility for carrying out their duties for the interests and business of the company. On behalf of the company, shareholders who represent at least 1/10 of the total number of shares with valid voting rights can file a lawsuit against the commissioners who due to their mistakes and negligence have caused the company losses. The expansion of the board of commissioners' responsibilities in the Limited Liability Company Law has severe legal consequences. Article 114 Paragraph 2 of Law Number 40 Year 2007 states that each member of the board of commissioners must be in good faith and responsible for supervision and giving advice to directors for the benefit of the company. Each member of the board of commissioners is personally responsible for the company's losses if he fails to carry out his supervisory duties and provides advice to the directors. The definition of "negligent" here is not doing what should, properly, properly, or properly done by members of the board of commissioners in carrying out supervisory duties and providing advice to directors. A member of the board of commissioners must be active in carrying out the oversight function and giving advice to directors.⁹

- a. The board of commissioners can not be held responsible for the company's losses if it can be proven in accordance with Article 114 Paragraph 5, members of the board of commissioners cannot be held responsible for the losses above if they can prove:
- b. Has supervised in good faith and prudence for the benefit of the company and in accordance with the aims and objectives of the company;
- c. Does not have a personal interest either directly or indirectly over the management's actions that result in losses; and
- d. Has given advice to the directors to prevent such losses arising or continuing.¹⁰

Departing from the clarity that the concept of the power of attorney stems from the existence of an agreement between the relationship between the power of attorney and the power of attorney, the red thread can be drawn regarding these responsibilities. First, the responsibility remains with the power of attorney (board of directors) in the case that the recipient of the power of attorney carries out his duties and arrangements in accordance with the provisions written in the power of attorney. Secondly, for that reason, the recipient of an attorney must not exceed the authority stipulated by the grantor. Third, the recipient of the power of attorney cannot be blamed if he has and continues to carry out the obligations as written in the power of attorney and for that matter the responsibility remains with the authorizer, in this case the directors of the company. These three things can be a joint lesson in undergoing the relationship pattern of directors and employees in the corridor of applicable law and to continue to protect the interests of employees who in this context only carry out orders and work delegated authority by the directors. For this reason, understand that the power of attorney can no longer be underestimated only by ordinary sheet documents, but behind it is a lot of legal content of cause and effect that he often forgets. The actions of organs which constitute acts against the law within the limits of their authority, but there are personal mistakes of organs, here the legal entity remains bound and responsible. However, besides the legal

⁸Frans Satrio Wicaksono, SH, Responsibilities of Shareholders, Directors and Commissioners of a Limited Liability Company, Visimedia, Jakarta, 2009, p. 135-136.

⁹*Ibid.* hlm. 139

¹⁰Dr. Kurniawan, SH., M.Hum., Corporate Law, Genta publishing, Yogyakarta, 2014, p. 77

entity's liability, the organ can be held individually liable by the legal entity. A legal entity that has paid compensation to a third party has the right to sue back the organ that committed negligence in private. In addition to the threat of compensation, directors and the board of commissioners may also be subject to criminal threats. The criminal threat is contained in the Criminal Code Article 397 and Article 398.

The board of commissioners gets exemption (disculpation) if it can prove that he has good faith, has no personal interest in actions that cause bankruptcy and has given advice to directors to prevent actions that cause the company to become bankrupt. Therefore, dissenting opinion plays a very important role because it can be evidence to free members of the board of commissioners who have different opinions when the decision is taken.¹¹ If it is reviewed with organ theory as regulated in Article 119 of Law Number 40 of 2007 concerning Limited Liability Companies, the appointment of directors and commissioners is done through the mechanism of the General Meeting of Shareholders, then if the commissioner makes a negligence or error in making a decision entitled to dismiss the board of commissioners is a Meeting General Shareholders. Each decision on the dismissal of a commissioner must be stated or explained the reason for the dismissal and in accordance with the procedure for dismissal of the commissioners regulated in the Act. If the procedure is not appropriate or not followed, then dismissal is null and void. If the reason for the dismissal is not accepted by the dismissal commissioner it remains valid.

Conclusion

1. The Company is a legal entity that has organs, namely the GMS, the Board of Directors, and the Board of Commissioners where each organ has its respective duties and authorities. Article 103 of Limited Liability Company Law is one of the legal rules that underlies the validity of a board of directors in carrying out legal actions to grant power to another party. The Board of Directors may grant written authorization to company employees or other people to carry out certain legal actions as written in the power of attorney. Judging from the elements regarding employee devention, it can be said that the commissioners do not meet the criteria of the company's employees. Therefore, the commissioner cannot accept the power of attorney from the directors or the directors cannot authorize the commissioner to take legal actions related to a Limited Liability Company. It can be concluded that the legal consequences of granting power of attorney to the commissioner are null and void. That is because the commissioner is an unauthorized party to act as the proxy for the directors of the Limited Liability Company.
2. The Limited Liability Company Law regulates the duties, authorities and responsibilities of directors and commissioners in carrying out legal actions by using a power of attorney granted by directors to the commissioner, the commissioner is also personally responsible for the loss of the company, including if the members of the commissioner comprise out of 2 (two) or more people, then the responsibilities referred to above apply jointly and severally to each member of the board of commissioners as stipulated in Article 114 paragraph 3 and paragraph 4 of the Limited Liability Company Law. Under the Limited Liability Company Law, the board of commissioners should not receive power of attorney from the board of directors.

Suggestion

1. It is recommended that the notary public not produce a power of attorney. If there is a notary who makes a power of attorney for directors to the commissioner, the notary must provide advice to the directors so that the directors do not authorize limited organs of the company.

¹¹ Frans Satrio Wicaksono, *Op. Cit.*, hlm. 141

2. Commissioner is overseeing the directors in carrying out their duties and authorities in running a limited liability company. The power of attorney granted to the commissioner in his position must be rejected, if he does so he has violated the Limited Company Law. If a problem occurs, the commissioner will be personally responsible if the commissioner acts on behalf of the board of commissioners. The power of attorney given by the directors should not be in the position (the commissioner) but in the person himself.

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