JE Journal of International Law
E-ISSN: 0123-3210 || P-ISSN: 0123-3210

LEGAL EFFECT OF THE ABSENCE (AFWEZIGHEID) OF COMMISSIONERS N DECISIONS TAKEN IN THE GMS OF LIMITED LIABILITY COMPANIES

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Received: August 25, 2025 Published: September 9, 2025

Abstract: Commissioners have a strategic role in supervising and providing advice to the board of directors in accordance with the principles of good corporate governance. The absence of commissioners in strategic decision-making can affect the validity of company decisions, as regulated in Law Number 40 of 2007 concerning Limited Liability Companies. This study aims to analyze the legal implications of the absence of commissioners, which indicate a failure to achieve a quorum and hinder the company's strategic decision-making process, such as extending the term of office of the mangent unnil the lignidatice The ree res of the study emphasize the importance of the active presence of commissioners in maintaining the effectiveness of supervision, managerial accountability, and company stability. In addition, legal mechanisms can serve as a solution to overcome deadlocks in decision-making that arise from the absence of commissioners. This study found that the absence of commissioners can result in a lack of control for the board of directors, increased risk of conflicts of interest, decreased quality of strategic decisions, and loss of investors' confidence. Therefore, the company needs to ensure that the commissioners carry out their supervisory duties effectively and actively participate in strategic decision-making.

Keywords: Limited Liability Company; Absence; Commissioners

INTRODUCTION

A Limited Liability Company is a legal entity that is a partnership of capital, established based on an agreement, conducting business with a share capital that is entirely divided into shares, and meets the requirements stipulated in this law and its implementing regulations.[1] A Limited Liability Company must have a clear purpose that does not conflict with the law, public order, or decency. The company's core organs consist of the General Meeting of Shareholders, the board of

[1] Article 1 of Law Number 40 of 2007.

directors, and the board of commissioners. The board of commissioners is responsible for general and/or specific supervision based on the articles of association and for advising the directors.

In the modern corporate era, the Limited Liability Company is the dominant legal form used in business activities. The Board of Commissioners, as one of the company's core organs, plays a crucial role in realizing Good Corporate Governance (GCG). The Board of Commissioners not only functions as a supervisor over the directors' actions but also as a provider of advice and strategic direction for the company's progress.[2] GCG is a set of principles and practices aimed at ensuring that the company is managed in a transparent, accountable, and responsible manner, while also considering the interests of all stakeholders.[3] GCG is a critical framework in corporate management, aiming to improve performance, accountability, and transparency, and to protect the interests of all stakeholders. In this context, the role and function of commissioners are crucial. The presence of commissioners in meetings and other company activities has significant implications for the quality of supervision and decision-making for the company. [4] The presence of commissioners enables them to gain a comprehensive understanding of the company's condition, interact effectively with directors and other stakeholders, and make informed and responsible decisions.[5] However, in business practice, the phenomenon of a commissioner's absence from important company meetings or activities is often found. This absence can be caused by various factors, such as personal busyness, conflicts of interest, or a lack of understanding regarding the commissioner's role and responsibilities.[6]

A commissioner's absence can also lead to various legal and operational problems, which can ultimately affect the company's performance and sustainability. One of the main problems arising from a commissioner's absence is related to the validity of decisions made by the Limited Liability Company. In Law Number 40 of 2007 concerning Limited Liability Companies, it is stipulated that decision-making in meetings of the directors or the General Meeting of Shareholders must

[2] Ariyanti, M. & Yulianto, J, Tata Kelola Perusahaan yang Baik. Jakarta: PT Grasindo, 2021.

[3] Prabowo, A. Good Corporate Governance: Proceedings of the International Conference on Management, Accounting, and Economy (ICMAE 2020), Atlantis Press, 2020. https://doi.org/10.2991/aebmr.k.200915.071.

[4] Nasih, M, Sudaryono, B. Implementasi Good Corporate Governance (GCG) pada Perusahaan di Indonesia. Yogyakarta: Deepublish, 2019.

[5] Rizal, Muhammad, Manajemen Risiko Berbasis ISO 31000: Panduan untuk Implementasi. Jakarta: PT Elex Media Komputindo, 2017.

[6] Hamzah, A. Good Corporate Governance: Teori dan Praktik. Jakarta: PT Bumi Aksara, Penerbit adab, cv adanu abimata, 2018.

meet a quorum of attendance and a quorum for decision-making. If a commissioner is absent from a meeting and the attendance quorum is not met, the decision made can be considered invalid and null and void by law. This can lead to legal uncertainty and hinder the company's operations. Shareholders, either in person or represented by a power of attorney, have the right to attend the General Meeting of Shareholders and use their voting rights according to the number of their shares. Shareholders who do not have voting rights cannot use these provisions in voting. In addition, shareholders are not entitled to grant greater authority for most of their shares with a different vote. Decisions of the General Meeting of Shareholders are made with a quorum, a majority of votes, and a meeting summons for changes to the articles of association. A General Meeting of Shareholders can be held if more than 1/2 of the total number of shares with voting rights are present or represented, unless law and the articles of association stipulate a larger quorum.[7]

In addition to the issue of decision validity, the absence of a commissioner can also raise questions about the legal accountability of the commissioner who fails to perform their supervisory duties. As a supervisory organ, a commissioner also has the responsibility to ensure that the directors run the company in accordance with legal provisions and GCG principles. If a commissioner is absent from a company meeting or activity, and this results in a loss for the company, then the commissioner can be held legally accountable for that loss. The presence of the Board of Commissioners positively and significantly influences a company's performance. This shows that the presence of commissioners plays a massive role in the company's success.

Nevertheless, the regulation of a commissioner's absence in Indonesia's positive law does not yet comprehensively address the legal consequences of the commissioner's absence on the validity of decisions made by the Limited Liability Company, as well as the legal accountability of the commissioner who is absent from performing their supervisory duties. The Law on Limited Liability Companies and other related regulations only regulate the duties and responsibilities of commissioners in general, but do not clearly regulate the legal consequences of a commissioner's absence from meetings or company activities. This creates legal uncertainty and can lead to different interpretations of the legal consequences. Some judicial rulings that will be analyzed regarding the absence of commissioners at a General

[7] Article 1 of Law Number 40 of 2007.

Meeting of Shareholders are Decision No. 448/Pdt.P/2015/PN-Btm, Decision No. 343/Pdt.P/2023/PN.Tjk, and Decision No. 366/Pdt.P/2020/PN Jkt.Pst.

Therefore, this research aims to further analyze the legal consequences of a commissioner's absence on the validity of decisions made by the Limited Liability Company, as well as the legal accountability for a commissioner who is absent from performing their supervisory duties. This research will examine the legal regulations related to a commissioner's absence and analyze the legal consequences of a commissioner's absence on the validity of company decisions. This research is expected to provide a significant contribution to the development of corporate law in Indonesia, particularly concerning the regulation of a commissioner's absence. The results of this research are expected to serve as input or a reference for policymakers, legal practitioners, and business actors in formulating better corporate governance regulations and practices. More straightforward and more comprehensive rules and regulations.

RESULT AND DISCUSSION

Legal Consequences of Commissioner Absence on the Validity of Limited Liability Company Decisions

In a limited liability company, commissioners are key organs responsible for ensuring directors follow sound corporate governance principles. Based on Article 108 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies, commissioners supervise and advise directors on company operations. A limited liability company has three main organs: the General Meeting of Shareholders as the highest authority setting strategic policies, the Board of Directors managing daily operations, and the Board of Commissioners helping directors protect shareholder and company interests. The board of commissioners supervises and has legal and moral duties in maintaining company continuity. Commissioners protect shareholder interests and ensure directors' policies align with the company's vision and mission.[8] Based on Article 114 of the Limited Liability Company Law, commissioners supervise directors' policies and provide strategic advice. They supervise operational, financial, and regulatory compliance aspects.

[8] Sudjateruna, Y., & Swardhana, G. Pengaturan Organ Komisaris Dalam Perseroan Terbatas Perseorangan Menurut Perspektif Undang-Undang Cipta Kerja. Acta Comitas : Jurnal Hukum Kenotariatan, Acta Comitas, Vol 06 (3), 2021. https://doi.org/10.24843/AC.2021.v06.i03.p2.

Commissioners can supervise by[9] attending directors' meetings to monitor decisions, auditing and evaluating company financial reports, proposing strategic policy changes to directors, and investigating alleged violations in company management.

In practice, commissioners supervise directly or through committees such as audit, nomination, remuneration, and risk committees. Commissioners are responsible not only for supervision but also for ensuring company accountability. The fiduciary duty concept means commissioners act as trustees for shareholders and other stakeholders. If commissioners fail in their supervisory duties, they can be held legally responsible. For example, if commissioners know directors' actions could harm the company but do not take preventive action, they can be considered negligent and legally responsible. The commissioner's absence disrupts this principle by eliminating the check and balance element that should exist in the General Meeting of Shareholders (GMS). Therefore, decisions made without commissioners present can be viewed as formally defective and potentially challenged in court. Commissioners also advise directors strategically. They provide advice on long-term business strategies, product innovation and market expansion, financial policies and risk management, sustainability, and corporate social responsibility. Companies with active commissioners giving strategic advice tend to have more stable financial performance and higher competitiveness. Although commissioners have advisory authority, they cannot directly interfere with company operations.[10] Article 108, paragraph (2) states that commissioners do not have the authority to make management decisions.

Commissioners face several challenges in providing strategic advice, including limited access to internal information due to directors' reluctance to provide complete data, conflicts of interest arising from business relationships that may compromise objectivity, and a lack of specific expertise among some commissioners, who may not have adequate industry backgrounds. To overcome these challenges, many companies now require commissioners to have a corporate governance expertise certification and attend regular training on

[9] Sariwati, R., Keikutsertaan Dewan Komisaris dalam Pengurusan Operasional Perseroan Terbatas, Universitas Merdeka, Jurnal Cakrawala Hukum, Vol 3 (1), 2022. https://doi.org/10.26905/idjch.v13i1.7693.

[10] Muhayatsyah, Ali. "Keputusan Bisnis dan Tanggungjawab Direksi dalam Prinsip Fiduciary Duties pada Perseroan Terbatas." At-Tijarah, vol. 1, no. 2, 27 Dec. 2019, pp. 37-56. https://www.neliti.com/id/publications/338704/keputusan-bisnis-dan-tanggungjawab-direksi-dalam-prinsip-fiduciary-duties-pada-p.

industry developments.[11] To ensure directors act according to shareholders' interests and good corporate governance principles, the board of commissioners functions as internal control. Commissioners supervise directors' performance and provide advice to prevent decisions that harm the company. Suppose they find abuse of authority or harmful decisions. In that case, commissioners can warn, request clarification, or recommend company strategy changes.[12] Commissioner supervision includes: periodic supervision of directors through financial and operational report evaluation, approving or rejecting strategic business decisions with significant company impact, and ensuring company transparency and accountability through internal and external audits. Commissioner responsibility in agency theory has profound legal implications - commissioners can be held accountable if proven negligent in supervisory duties.

There are three primary forms of commissioner responsibility: legal liability, where commissioners are legally responsible if they allow directors to harm the company without prevention, are involved in legal violations or fraud, or don't actively supervise, causing significant financial losses; and moral and ethical responsibility. Besides legal responsibility, commissioners have moral and ethical responsibility to ensure directors' decisions consider business ethics, sustainability, and social interests. High-moral commissioners can increase investor and shareholder confidence and strengthen the company's reputation.[13] If commissioners are proven negligent, they can face financial sanctions, including compensation for company losses due to their negligence, administrative fines from financial or government authorities, and asset freezing or prohibition from holding commissioner positions elsewhere. Commissioners are responsible for preventing and managing conflicts of interest by: enforcing transparency rules in business transactions involving directors and related parties, requiring personal interest disclosure in strategic company decisions, and conducting independent verification of business policies potentially creating conflicts of interest.[14] Commissioner's absence in decision-making can

[11] Yanuarsi, S., Kepailitan Perseroan Terbatas Sudut Pandang Tanggung Jawab Direksi. Jurnal Solusi, Vol 18 (2), 2020. http://dx.doi.org/10.36546/solusi.v18i2.289.

[12] Article 114 paragraph (1) Law Number 40 of 2007 concerning Limited Liability Companies.

[13] Muhayatsyah, A., Keputusan Bisnis dan Tanggung Jawab Direksi dalam Perseroan Terbatas, AT-TIJARAH, Jurnal Penelitian Keuangan dan Ekonomi, Vol 1(2), 37-56, 2019.

[14] Lubis, M.F.R., & Rahendra, F., Pertanggungjawaban Direksi Disuatu Perseroan Terbatas Ketika Terjadi Kepailitan Pada Umumnya Dan Menurut Doktrin Hukum Perusahaan & UndangUndang No. 40 Tahun 200, Jurnal Hukum Kaidah, 2018.

seriously impact the company's management effectiveness. The commissioner’s absence often causes a lack of control over directors. Directors have broad authority in company operations and can make decisions contrary to the company's long-term interests, like high-risk investments or asset misuse, without commissioner supervision. Lack of direct company supervisor presence directly impacts weak decision-making supervision and reduces managerial integrity and accountability.[15]

Increased Risk of Conflicts of Interest: The Commissioner's absence weakens supervision mechanisms, thereby increasing the risk of conflicts of interest. Structural leadership absence creates gaps for non-transparent and unaccountable decisions, especially involving personal interests. Declining Strategic Decision Quality Commissioners often have broader business strategy experience and insights than directors. Companies with active commissioners in decision-making tend to have more stable growth than companies with passive or absent commissioners. Declining Investor Confidence: Companies failing to show active supervisory structures tend to lose market confidence, reflected in adverse share value fluctuations.[16] Without commissioners as independent supervisors, directors tend to make subjective decisions. This can cause decision-making bias, especially if directors have personal interests in projects or investments. The commissioner’s absence provides minimal alternative perspectives since commissioners usually provide various business strategy viewpoints, weakening company accountability principles.

Commissioners supervise and advise directors.[17] Without strict supervision, directors might ignore transparency principles in reporting the company's financial and operational conditions. Hans Kelsen's legal responsibility theory states that every individual or organ with legal obligations must be responsible for their actions or negligence. In the absence of a commissioner, this responsibility becomes crucial because a lack of supervision can lead to company or shareholder losses.

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https://scholar.google.com/citations?view_op=view_citation&hl=id&user=d2oP9JkAAAAJ&citation_for_view=d2oP9JkAAAAJ:d1gkVwhDpl0C.

[15] Hasan, S., Fattah, A., Nulia, Revolusi Perilaku Organisasi di Era Digital, Eureka Media Aksara, Jawa Tengah, 2024. https://www.researchgate.net/publication/382596666_REVOLUSI_PERILAKU_ORGANISASI_DI_ERA_DIGITAL.

[16] Anggraeni D, Ruwanti G, Pengaruh Corporate Social Responsibility, Good Corporate Governance, dan Intellectual Capital Terhadap Kinerja Keuangan. (2022). Jurnal Manajemen Dan Akuntansi,23(2),114-134. https://journal-stieibjm.com/index.php/juma/article/view/29.

[17] Article 108 Limited Liability Company Law.

Negligent commissioners can be held civilly liable based on negligence (culpa) in carrying out fiduciary duties to the company. Many companies experience financial scandals due to inadequate regulatory oversight., Company fund misuse cases often occur when commissioners don't actively review financial reports regularly. This is why commissioners play important roles in maintaining investor confidence. Companies with active and reliable boards of commissioners are more trusted by investors. When commissioners rarely attend decision-making, investors may doubt management transparency and stability. Decreased commissioner involvement often causes company stock prices to decline due to lost investor confidence in corporate governance.[18]

Case Analysis Decision Number 448/Pdt.P/2015/PN-Btm. The respondent, as Commissioner and shareholder, is not attending without a valid reason.[19] In an Extraordinary General Meeting of Shareholders, this can significantly impact company continuity, especially in strategic decision-making requiring a certain quorum. In decision Number 448/Pdt.P/2015/PN-Btm, there was a dispute between Koh Hock Liang, as a minority shareholder and Director of Perseroan Terbatas EMR Indonesia, with Teng Leng Chuan as Commissioner and majority shareholder. This dispute arose from differing views on company financial management, prompting the Extraordinary General Meeting of Shareholders to discuss key decisions, including management tenure extension, accountability of Directors and Commissioners, company loan settlement, and liquidation plans. On March 17, 2015, the Petitioner sent the first invitation for the Extraordinary General Meeting of Shareholders. However, the Respondent, as the majority shareholder, and the Commissioner did not attend for valid reasons. The Extraordinary General Meeting of Shareholders lacked the quorum specified in Law Number 40 of 2007 concerning Limited Liability Companies and the company articles of association due to this absence.

Article 86 of the Limited Liability Company Law requires a certain attendance quorum for valid General Meeting of Shareholders decisions. When the first meeting failed to achieve quorum, the Petitioner held a second Extraordinary General Meeting of Shareholders on April 7, 2015, but again failed due to the absence of a commissioner.

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[18] Lubis, M.F.R., & Rahendra, F., Pertanggungjawaban Direksi Disuatu Perseroan Terbatas Ketika Terjadi Kepailitan Pada Umumnya Dan Menurut Doktrin Hukum Perusahaan & UndangUndang No. 40 Tahun 200, Jurnal Hukum Kaidah, 2018. https://review-unes.com/index.php/law/article/view/1630/.

[19] Decision number 448/Pdt.P/2015/PN-Bt, page 15.

This failure worsened company conditions due to the absence of an official forum for discussing and resolving internal problems. Suppose the first and second General Meetings of Shareholders don't achieve a quorum. In that case, the company can request the District Court Chief to establish a third General Meeting of Shareholders quorum.[20] Therefore, the Petitioner requested Batam District Court to establish a quorum for the third General Meeting of Shareholders, in order to continue decision-making related to the company's interests. After considering evidence from both parties, Batam District Court accepted the Petitioner's request because the Petitioner had twice attempted to hold a legal Extraordinary General Meeting of Shareholders but failed to achieve a quorum due to the Respondent's absence. Consequently, the Court granted the Petitioner's request to establish a third Extraordinary General Meeting of Shareholders quorum based on Article 86 paragraph (5) authority, allowing the company to continue strategic decision-making.[21] This shows how the Commissioner's absence in the General Meeting of Shareholders can hinder important company decision-making, especially when commissioners are also majority shareholders whose votes are decisive.[22] The corporate legal system has mechanisms in place to prevent company stagnation due to decision-making deadlocks. Therefore, when the majority shareholders deliberately fail to attend, companies can still operate by requesting court intervention.

The legal validity of decisions made without the presence of a commissioner is regulated by Law Number 40 of 2007, which defines a Limited Liability Company as a legal entity established by agreement, conducting business with capital divided into shares, and meeting the law's requirements.[23] The existence of the Board of Commissioners has a strong legal basis. Commissioners supervise directors' policies and provide advice. Commissioners supervise directors' policies and provide advice.[24] Therefore, in strategic decision-making, commissioner presence is important to ensure adequate supervision. However, in some conditions, limited liability company decisions can remain valid without

[20] Article 86 paragraph (5) Limited Liability Company Law.
[21] Article 89 paragraph (1) Limited Liability Company Law.
[22] Article 86 paragraph (5) Limited Liability Company Law.
[23] Article 1, number 2, Limited Liability Company Law.
[24] Article 108 paragraph (1) Limited Liability Company.

commissioners if they meet applicable legal requirements. Decision validity without commissioners can be determined by:[25]

1. General Meeting of Shareholders Quorum: Decisions remain valid if meetings meet attendance requirements according to the Limited Liability Company Law and the company articles of association.
2. Circular Resolution Application: Decisions made through circular resolutions (without physical meetings) require written approval from all shareholders, as per the articles of association provisions.
3. Board of Directors Approval: In certain circumstances, directors can make decisions directly, especially regarding operational management under their authority.

However, if shareholders object or there are good corporate governance principle violations, such decisions can be legally questioned. Unless articles of association establish a higher quorum, General Meeting of Shareholders decisions are valid if attended by more than 50% of shareholders with voting rights. If commissioners don't attend, decisions still have legal force.[26] The unanimous Resolution mechanism allows decision-making without a General Meeting of Shareholders. These decisions need written approval from all shareholders and have equal force as meeting decisions.[27]79 Supreme Court Decision No. 123 PK/Pdt/2018 explains that General Meeting of Shareholders decisions without commissioners remain valid if meeting quorum provisions are met and do not conflict with articles of association or violate information disclosure principles. However, if commissioners have the authority to approve certain decisions (like articles of association changes or other strategic decisions), decisions without commissioners can become legally defective. Decisions not involving commissioners are more vulnerable to challenges if there are transparency violations or shareholders feel harmed.[28]

Legal Protection for Shareholders. In the legal protection theory context, shareholders can challenge the validity of decisions made without the commissioners if they are considered harmful to their interests. Legal protection includes Preventive Protection, which allows shareholders to request decision clarification through audit mechanisms

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[25] Yusanti, E. V., Azwar, T. K. D., & Siregar, M. (2022). Keabsahan Rapat Umum Pemegang Saham Yang Tidak Sesuai Anggaran Dasar. Locus Journal of Academic Literature Review, 153-160. https://doi.org/10.56128/ljoalr.v1i3.63.

[26] Article 86 Limited Liability Company Law.

[27] Article 91 Limited Liability Company Law.

[28] Iqbal Fauzan, M., Ikhwansyah, I., & A. Lubis, N. Keabsahan Berita Acara Rapat Umum Pemegang Saham Yang Dibuat Oleh Notaris Dalam Kaitannya Dengan Pewarisan Saham Perseroan Terbatas. Acta Diurnal Jurnal Ilmu Hukum Kenotariatan, 3(2), 305-320, 2020, Retrieved from https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/229.

and reject harmful decisions, with the option to request testing in subsequent meetings. Repressive Protection allows lawsuits if decisions without commissioners potentially violate the law or harm shareholders.[29] Courts can cancel decisions considered invalid or contrary to company law. Impact on Corporate Governance and Shareholder Interests. According to the Good Corporate Governance perspective, the absence of commissioners can lead to a lack of transparency in company management. If financial and operational information is not independently audited, investor and stakeholder confidence can decrease. Companies must have systems that clearly show decision responsibility. When commissioners are absent, directors' decisions may lack adequate supervision, increasing abuse risk. Companies must comply with regulations and business ethics standards. The commissioner's absence can cause corporate social responsibility negligence. Active commissioners ensure company decisions avoid conflicts of interest; if absent, decisions may benefit a few people without considering all shareholders' interests. Commissioners ensure fair treatment for all stakeholders. The commissioner's absence can cause a company's profit distribution imbalance. Case Study: Decision No. 343/Pdt.P/2023/PN.Tjk. In the corporate world, company organizational changes are crucial for adapting leadership and organizational structure to meet business needs. In Decision No. 343/Pdt.P/2023/PN.Tjk, the commissioner's absence became a hindering factor in the change process, creating a deadlock in strategic decision-making regarding director and commissioner appointment or dismissal. When appointed as commissioner, someone implicitly or explicitly agrees and binds themselves to legal obligations, including supervisory functions. The commissioner is not just a symbolic position but is bound to legal and moral agreements for active supervision. Absence from the General Meeting of Shareholders and allowing deadlock violates this engagement.[30]

Therefore, absence without a valid reason is an engagement violation that can be legally challenged. Commissioners have important roles in approving and supervising directors' policies according to Law No. 40 of 2007. If commissioners don't attend important meetings, the company's organizational changes cannot be made, causing leadership structure stagnation.[31] This case's legal

[29] Article 97 paragraph (6) Limited Liability Company Law concerning directors' responsibility in company management.

[30] Article 1313 Civil Code.

[31] Article 108 Limited Liability Company Law.

implications are significant. Many companies' Articles of Association require commissioner approval for organ changes. Therefore, a commissioner's absence can hinder administrative and legal processes, potentially causing legal uncertainty in company management. This deadlock can negatively impact operations, especially if director or commissioner changes are needed to resolve managerial problems. If this continues, shareholders or directors can request a court resolution. Courts can establish solutions like giving direct authority to shareholders or directors for organ changes without waiting for commissioners. Companies need more flexible strategic decision-making mechanisms to avoid obstacles from absent parties who should be active.

One solution is revising the Company Articles of Association to include provisions allowing decisions under certain conditions even without commissioners. Additionally, shareholders and directors need improved communication with the commissioner to ensure active participation in corporate governance. Decision No. 343/Pdt.P/2023/PN.Tjk confirms commissioner's absence is not just an administrative problem but has legal consequences hindering overall company continuity.

Legal Liability of Commissioners Who Are Absent in Performing Supervisory Duties

In the Indonesian legal system, commissioners serve as essential supervisory organs in limited liability companies, responsible for overseeing policies and management conducted by the board of directors while providing necessary advice when required.[32] Law Number 40 of 2007 concerning Limited Liability Companies establishes the primary legal foundation governing commissioners' responsibilities, mandating that they supervise the board of directors' policies and provide management advice.[33] Commissioners must execute their duties with good faith, full prudence, and responsibility, and can be held legally accountable for errors in supervisory duties, including failure to attend important meetings or conduct adequate supervision.[34]

The legal framework establishes that each board of commissioners member bears joint and several liability for company losses caused by

[32] Emirzon J, Paradigma Hukum Bisnis: Penerapan Prinsip Good Corporate Governance dalam Pengaturan Hukum Jasa Penilai di Indonesia, Genta Publishing, Yogyakarta, page 36, 2021.

[33] Article 108 paragraph (1) Law Number 40 of 2007 concerning Limited Liability Companies.

[34] Article 108 paragraph (2) Law Number 40 of 2007 concerning Limited Liability Companies.

their negligence.[35] When commissioners' absence leads the board of directors to make incorrect decisions harming the company, such absence in general meetings and supervisory processes constitutes unlawful acts under Article 1365 of the Civil Code. However, commissioners may be exempted from liability if they prove the loss was not due to their fault or negligence, that they conducted supervision in good faith and with full prudence, and that they provided advice to prevent such losses.[36] The absence of commissioners in meetings or important decision-making constitutes negligence in performing duties, potentially enabling legal accountability regardless of direct involvement in harmful actions.[37]

Legal liability for commissioners manifests in three primary forms. Civil liability arises when commissioners' negligence causes losses to the company or shareholders, enabling affected parties to file lawsuits demanding compensation under Article 1365 of the Civil Code.[38] Criminal liability may apply when commissioners' absence contributes to criminal acts within the company, with relevant provisions including Article 398 of the Criminal Code governing corporate executives who intentionally cause company bankruptcy, and Article 55 enabling commissioners to be considered participants in corporate crimes if proven negligent in supervising directors' actions.[39] Administrative liability involves sanctions for commissioners failing to fulfill supervisory obligations, with Financial Services Authority Regulation No. 33/POJK.04/2014, providing for written warnings, administrative fines, and license suspension or revocation for companies in the financial sector.

Case law demonstrates the practical application of these principles. In Decision No. 366/Pdt.P/2020/PN Jkt.Pst, the court emphasized the commissioners' role in performing supervisory duties, particularly regarding attendance at General Meetings of Shareholders, noting that absence can constitute negligence in supervisory functions.[40] However, commissioners cannot be held liable for losses if

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[35] Article 114 paragraph (1) Law Number 40 of 2007 concerning Limited Liability Companies.

[36] Article 114 paragraph (2) Law Number 40 of 2007 concerning Limited Liability Companies.

[37] Article 1366 of the Civil Code

[38] Suyanto, N., Tanggung Jawab Komisaris dalam Mengelola Perusahaan Sesuai Undang-Undang Perseroan Terbatas, Journal of Law and Policy Transformation, Vol 2(2), 45-62, 2017. https://journal.uib.ac.id/index.php/jlpt/issue/view/23.

[39] Lubis, M.F.R., & Rahendra, F., Pertanggungjawaban Direksi dan Komisaris dalam Kasus Kejahatan Korporasi, Jurnal Hukum Kaidah, 5(2), 99-115, 2018.

[40] Article 114 paragraph (5) of Law No. 40 of 2007 concerning Limited Liability Companies.

they prove that they conducted supervision in good faith and with care for the company's interests, in accordance with the company's objectives, without personal interests in management actions that caused losses, and that they offered advice to directors to prevent such occurrences.

Good Corporate Governance principles significantly influence commissioners' liability, requiring transparent, accountable, responsible, independent, and fair company management. Under the transparency principle, commissioners must ensure the accuracy of financial and operational information, as their supervisory absence can lead to financial report manipulation, which may harm shareholders and creditors. The responsibility principle requires commissioners to oversee company compliance with laws and regulations, protecting shareholders' and stakeholders' interests. Judicial consideration in determining commissioners' liability employs multiple theoretical approaches. Normative legal theory guides judges to consider applicable legal rules, including Law No. 40 of 2007 concerning Limited Liability Companies, the Civil Code, and Financial Services Authority regulations establishing joint and several liability for negligent commissioners. Judicial discretion theory allows contextual assessment of commissioners' absence, as demonstrated in Decision No. 366/Pdt.P/2020/PN Jkt.Pst, where judges evaluated whether absence automatically constituted negligence by considering valid reasons and real impacts. Corporate liability theory helps judges determine whether commissioners' actions constitute company policy or personal, unlawful decisions, potentially transferring liability personally rather than to the company.

The comprehensive legal framework governing commissioners' liability in Indonesia serves multiple purposes in maintaining corporate governance standards. Through civil, criminal, and administrative liability mechanisms, the law ensures commissioners fulfill supervisory obligations effectively while protecting shareholders' interests and maintaining corporate integrity. The integration of Good Corporate Governance principles strengthens accountability mechanisms, while judicial discretion enables contextual assessment of individual cases. This multifaceted approach recognizes that the commissioners' supervisory role is fundamental to corporate governance, requiring active participation and diligent oversight to prevent corporate misconduct and protect stakeholder interests. The legal system thus provides both deterrent measures against commissioner negligence and protective mechanisms for companies and shareholders when supervisory duties are properly executed.

CONCLUSSION

The legal consequences of decisions made by a Limited Liability Company are invalid if the absence of commissioners causes the General Meeting of Shareholders quorum not to be fulfilled in accordance with the provisions of the Limited Liability Company Law. However, such decisions can become valid if the court declares commissioners as absent and establishes a new quorum that allows meetings and decisions to proceed legally.

Commissioners declared as absent still retain personal responsibility for losses arising from negligence in carrying out corporate supervisory duties. When commissioners are declared absent, the court may appoint the Estate Management Office to manage the assets and interests of commissioners during their absence. However, the Estate Management Office does not assume the legal responsibility of commissioners, particularly regarding substantive supervision, and does not represent commissioners in General Meetings of Shareholders. Suppose losses occur during the period of the commissioner's absence. In that case, the Estate Management Office is responsible for managing the administration related to such losses, but legal liability for the losses remains attached to the commissioners. Therefore, despite the absence of commissioners, they can still be held accountable civilly, and even criminally or administratively if proven to have committed other legal violations that harm the company.

REFERENCES

Anggraeni D, Ruwanti G, Pengaruh Corporate Social Responsibility, Good Corporate Governance, dan Intellectual Capital Terhadap Kinerja Keuangan. (2022). Jurnal Manajemen Dan Akuntansi,23(2),114-134. https://journal-stieibjm.com/index.php/juma/article/view/29

Ariyanti, M. & Yulianto, J, Tata Kelola Perusahaan yang Baik (Good Corporate Governance). Jakarta: PT Grasindo, 2021.

Civil Code (Indonesian Civil Code)

Criminal Code (KUHP), in the State Gazette of the Republic of Indonesia year 1958 number 127.

Emirzon, J. Paradigma Hukum Bisnis: Penerapan Prinsip Good Corporate Governance dalam Pengaturan Hukum Jasa Penilai di Indonesia,

Genta Publishing, Yogyakarta, 2021.
Financial Services Authority, Financial Services Authority Regulation (POJK) No. 33/POJK.04/2014 concerning directors and board of commissioners of issuers or public companies, Jakarta: Financial Services Authority, 2014.
Hamzah, A. Good Corporate Governance: Teori dan Praktik. Jakarta: PT Bumi Aksara, Penerbit adab, cv adanu abimata, 2018
Hasan, S., Fattah, A., Nulia, Revolusi Perilaku Organisasi di Era Digital, Eureka Media Aksara, Jawa Tengah, 2024.
Iqbal Fauzan, M., Ikhwansyah, I., & A. Lubis, N. Keabsahan Berita Acara Rapat Umum Pemegang Saham yang Dibuat oleh Notaris dalam Kaitannya dengan Pewarisan Saham Perseroan Terbatas. Acta Diurnal Jurnal Ilmu Hukum Kenotariatan, 3(2), 305-320, 2020, Retrieved from https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/229
Law Number 40 of 2007 concerning Limited Liability Companies, State Gazette of the Republic of Indonesia Year 2007 Number 106, Supplement to the State Gazette of the Republic of Indonesia Number 4756.
Lubis, M.F.R., & Rahendra, F., Pertanggungjawaban Direksi Disuatu Perseroan Terbatas Ketika Terjadi Kepailitan Pada Umumnya Dan Menurut Doktrin Hukum Perusahaan & UndangUndang No. 40 Tahun 2007, Jurnal Hukum Kaidah, 2018. https://review-unes.com/index.php/law/article/view/1630/
Muhaimin, Metode Penelitian Hukum, Mataram University Press, Mataram 2020
Muhayatsyah, Ali. "Keputusan Bisnis dan Tanggungjawab Direksi dalam Prinsip Fiduciary Duties pada Perseroan Terbatas." At-Tijarah, vol. 1, no. 2, 27 Dec. 2019,pp.37-56.https://www.neliti.com/id/publications/338704/keputusan-bisnis-dan-tanggungjawab-direksi-dalam-prinsip-fiduciary-duties-pada-p
Nasih, M, Sudaryono, B. Implementasi Good Corporate Governance (GCG) pada Perusahaan di Indonesia. Yogyakarta: Deepublish, 2019
Prabowo, A. Good Corporate Governance: Teori dan Praktik di Indonesia, 2020.
Rizal, Muhammad, Manajemen Risiko Berbasis ISO 31000: Panduan untuk Implementasi. Jakarta: PT Elex Media Komputindo, 2017
Sariwati, R., Keikutsertaan Dewan Komisaris dalam Pengurusan Operasional Perseroan Terbatas, Universitas Merdeka, Jurnal

Cakrawala Hukum, Vol 3 (1), 2022. https://doi.org/10.26905/idjch.v13i1.7693

Suyanto, N., Tanggung Jawab Komisaris dalam Mengelola Perusahaan Sesuai Undang-Undang Perseroan Terbatas, Journal of Law and Policy Transformation, Vol2(2),45-62,2017. https://journal.uib.ac.id/index.php/jlpt/issue/view/23

Yanuarsi, S., Kepailitan Perseroan Terbatas Sudut Pandang Tanggung Jawab Direksi. Jurnal Solusi, Vol 18 (2), 2020. http://dx.doi.org/10.36546/solusi.v18i2.289

Yusanti, E. V., Azwar, T. K. D., & Siregar, M. (2022). Keabsahan Rapat Umum Pemegang Saham Yang Tidak Sesuai Anggaran Dasar. Locus Journal of Academic Literature Review, 153-160. https://doi.org/10.56128/ljoalr.v1i3.63