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Legal Liability of Ex-Directors for the Management of the Company During the term of Office Period Has Ended

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Abstract: This research aims to analyze the legal responsibility of former Directors for the management of the Company which was carried out when the term of office of the Directors and Board of Commissioners had ended before the re-appointment GMS was held. In this case, the Board of Directors is the organ of the Company which is fully responsible for the management of the Company and represents the Company both inside and outside the Court. Directors whose term of office ends do not automatically continue their position as before, except by re-appointment based on a GMS decision. So that the management carried out after the term of office ends may conflict with the law and the Company's articles of association. The approaches used are the statutory approach and the case approach. The results of legal actions carried out by former Directors while continuing to manage and represent the Company are illegal actions and can be held personally responsible. However, if it can be proven that the management actions are carried out in good faith for the sake of the law and provide good benefits for the Company and all of the Company's stakeholders, then based on the authority possessed by UUPT and the Company's articles of association, the GMS can decide to make all legal actions in the form of management. What is done by the former Director becomes a legal act and the Company's responsibility, so that the former Director is free from personal responsibility.

Keyword: Legal Responsibility, Directors, Limited Liability.

INTRODUCTION

The development of the business world in this modern era, a legal entity becomes very strategic and has an important role for economic progress to run a business. To continue to increase economic growth in Indonesia, business actors must be able to take advantage of existing opportunities. In this condition, one of the things that can be done by business actors who will establish a business entity is to form a Limited Liability Company (hereinafter referred to as the Company). The Company is the most widely chosen form of business entity because it has convenience for its owners (shareholders) and has a special characteristic, namely having a liability nature, namely the Company's assets are separated from the assets of its shareholders.

Shareholders will also find it easy when they want to transfer their ownership of the company, namely by selling the shares they own in the company, because their ownership of the Company is divided into shares. The Company as a legal entity is basically a legal creation concept which means that the Company is the bearer of its rights and obligations.

The presence of a Limited Liability Company as a business entity in the development of law and the needs of society cannot be ignored, Limited Liability Companies have been regulated in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT) Jo Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (hereinafter referred to as UUCK). The definition of a Company according to Article 1 point 1 of the Company Law jo UUCK is "a legal entity that is a capital alliance, established based on an agreement, conducting business activities with authorized capital that is entirely divided into shares or an individual legal entity that meets the criteria of micro and small enterprises as stipulated in laws and regulations concerning micro and small enterprises".

As the Company is established based on an agreement, the establishment of the Company as a capital partnership between the founders or shareholders must comply with the provisions of the law of agreements set out in the third book of the Civil Code (hereinafter referred to as the Civil Code), in particular concerning the provisions of the law of agreements, the terms of agreements and the legal effects of agreements. This means that in terms of contract law, the formation of a Company as a legal entity is "contractual" in nature (based on a contract, according to an agreement, i.e. the formation of a company is the result of a contract). In addition to being contractual, the Company is an "agreement" in the form of an agreement that they enter into a contract to form a Company. The Company as a legal entity means that the Company becomes one of the subjects of law, the Company must be run by parties called the Company's organs.

A Limited Liability Company has 3 (three) organs, the three organs that make a Company able to run its business and perform a legal action. The organ of the Company in question is the General Meeting of Shareholders (GMS) which has the highest position compared to other organs of the Company, because it has all the authority that is not given to other organs. Next is the Board of Directors, which is the organ that 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 in accordance with the provisions of the Company's articles of association, and finally the Board of Commissioners, which supervises the management policies carried out by the Board of Directors The three organs of the Company have a very important role in the management of the Company.

Of the three organs of the Company, the GMS is the organ that holds the highest power in a Company, including the appointment, replacement or dismissal of the Board of Directors and the Board of Commissioners. TheBoard of Directors and Board of Commissioners are appointed by theGMS, but for the first time appointed by the founders of the Company in the deed of establishment for a certain period of time and can be reappointed after the term of office expires based on the decision of the GMS. Based on the duties and functions of each organ of the Company, the party entitled to manage and represent the Company to perform any legal action is the Board of Directors. If in an intersection, the Board of Directors has a conflict of interest with the Company, other members of the Board of Directors who do not have a conflict of interest with the Company can replace them. Or in the event that all members of the Board of Directors have a conflict of interest, the authorized party is the Board of Commissioners. However, in the event that all members of the Board of Directors or the Board of Commissioners have a conflict of interest, the GMS may appoint another party to represent the Company.

However, in practice it is not uncommon to encounter several problems related to the management and representation of the Company. One of them is when the term of office of the Board of Directors and Board of Commissioners appointed for a certain period of time has ended before the GMS is held to appoint the new Board of Directors and Board of Commissioners. In this condition, the Company cannot appoint another party to represent or manage the Company because the appointment is made by the GMS, while the GMS cannot be carried out because the Board of Directors is no longer there, in this case the term of office of the last Board of Directors has expired. This condition of the Company is often found in small companies where the shareholders are usually also the Directors and the Board of Commissioners, while on the other hand they only understand how to do business and do not understand the rules of the Company such as the Company Law and so on.

One example of this can be seen in case Number: 825/Pdt.P/2019/PN.Jkt.Brt at the West Jakarta District Court. The term of office of the Company's Board of Directors and Board of Commissioners (who are also shareholders) has ended before the annual GMS or other GMS to appoint new members of the Board of Directors and Board of Commissioners. Thus, there is a vacancy in the Company's management who is authorized to carry out management and represent the Company in any legal action to be taken, including to hold a GMS. This resulted in no party being able to manage and represent the Company. This condition occurred because the Board of Directors, who were also shareholders, did not have sufficient knowledge of various Company regulations, both laws and articles of association, including the limitation of the term of office and the obligation to hold a GMS every year. Therefore, the Company in that case was still run by the former Board of Directors, who legally could not run the management of the Company because their previous term of office had ended.

It becomes interesting, related to the context of responsibility for the management of the Company in the condition that the term of office of the Board of Directors and the Board of Commissioners has ended before the GMS of the appointment of the new Board of Directors and the Board of Commissioners so that the Company is “forced” to be run by the former Board of Directors without a definite legal basis. Therefore, according to the author, it is necessary to conduct a deeper study of the arrangements for the appointment and dismissal of the Board of Directors and the Board of Commissioners as well as the legal liability of former Directors or other parties who carry out management and represent the Company without a definite legal basis. The scope of the study is to conduct an in-depth analysis of the regulations governing the Company to examine the existence of the Company after the expiration of the management period of the Board of Directors and the Board of Commissioners of the Company before the GMS of the appointment of the new Board of Directors and see the legal liability for their management when the Company is still running.

When compared with previous research, this research has similarities in terms of topics because both discuss the issue of legal actions taken by the Company when the term of office of the Board of Directors appointed by the GMS has ended, but this research has a different focus of study. This paper specifically examines the legal responsibility of the former Board of Directors for the management of the Company which they continue to carry out even though their term of office has ended because the GMS cannot appoint a new Board of Directors. The previous study was conducted by Salsabila in 2013 which examined “The validity of the Company's decision in the event that the Board of Directors who made the decision whose term of office had ended based on the deed of amendment to the last Articles of Association”. The focus of this research study is on the validity of company decisions in the event that the Board of Directors who make decisions whose term of office has been completed based on the deed of amendment to the articles of association ends and the legal consequences of decisions by unauthorized Directors and their engagement with third parties.

The problem in this research is how is the regulation of the procedures for the appointment and dismissal of the Board of Directors and the Board of Commissioners of a Limited Liability Company and how is the legal responsibility of former Directors who continue to manage the Company when their term of office has ended before the GMS of the appointment of new Directors. The purpose of this study is to provide an understanding of the legal liability of former Directors for the management of a Limited Liability Company when the term of office of the Board of Directors and the Board of Commissioners has ended simultaneously before the GMS of the appointment of the new Board of Directors and Board of Commissioners.

METHOD

This research uses normative legal research methods, namely examining laws and regulations related to the topic of discussion to be studied while still paying attention to the hierarchy of the regulations themselves. In this case the law is placed as a system of norms based on principles, rules, statutory rules, agreements, doctrines and court decisions. The approach used is a statutory approach (statue approach), which is carried out by examining the UUPT and case approach, which is an approach carried out by conducting a study of cases related to the issues discussed. This research was conducted by analyzing primary legal materials, namely examining the UUPT and secondary legal materials obtained through scientific journals, books, articles and the decision of the West Jakarta District Court Number: 825.Pdt.P/2019/PN.Jkt.Brt.

RESULTS AND DISCUSSION

Regulations on the Appointment and Dismissal of Directors and Board of Commissioners of Limited Liability Companies

In a Company, the Board of Directors is an organ of the Company that has the authority and is fully responsible for the management of the Company for the interests of the Company, so it can be said that the existence of the Board of Directors is a central point in a Company. The duties of the Board of Directors are to lead and manage the Company, in accordance with the purposes and objectives of the Company and to represent the Company both inside and outside the court in accordance with the provisions of the Company's Articles of Association. The Board of Directors in running the Company based on its authority must always act carefully, because every policy it makes considers the circumstances, conditions and costs of management. In the principle of prudence carried out by the Board of Directors, the Board of Directors and the Board of Commissioners as supervisors by providing considerations for the optimal management of the Company in the corridor of the Company's goals and objectives.

The Board of Directors and the Board of Commissioners as organs of the Company that are appointed for a certain period of time have the consequence of an appointment period and an expiration period, so that the Company Law has regulated the appointment and dismissal of members of the Board of Directors and the Board of Commissioners. As regulated in the provisions of the Company Law, the Board of Directors of the Company is appointed by the GMS, but for the first time, the appointment is made by the founder in the deed of establishment of the Company. The appointment of the BOD is based on the principle of trust given by the Company. The principle of trust requires the BOD to always act in good faith and with care and responsibility. The discussion on the appointment of the Board of Directors includes matters relating to:

a. The number of Directors;
b. Terms of appointment;
c. Division of duties;
d. Method of election;
e. Salary and allowances;

f. Replacement and dismissal.

Basically, the Company is free to choose how many members of the Board of Directors will be elected to manage the Company, the number of members of the Board of Directors depends on the Company's business. The GMS has the freedom to choose and determine how many people will be appointed as Directors of the Company. The Company Law only regulates the minimum number, namely 1 (one) member of the Board of Directors, and looking at the provisions of Article 92 paragraph (4) of the Company Law, it is stipulated that for certain Companies it is required to have at least 2 (two) members of the Board of Directors, namely:

a. Companies whose business activities are related to collecting and/or managing public funds;
b. Companies which issue debt acknowledgment letters to the public; and
c. Public Company.

Members of the Company's Board of Directors are appointed for a certain period of time, and may be reappointed by the GMS. The meaning of the appointment of members of the Board of Directors for a "certain period of time", is intended that members of the Board of Directors whose term of office has expired do not automatically continue their original position, except by reappointment based on the decision of the GMS. For example, a period of 5 (five) years from the date of appointment, then since the expiry of that period the former member of the Board of Directors concerned is no longer entitled to act for and on behalf of the Company, except after being reappointed by the GMS.

In addition to being considered to clearly understand the management needs of the Company, a person who will be appointed to serve as a member of the Board of Directors also cannot be done by "just anyone". Because in addition to concerning the capacity and capability of the person, the law also regulates in such a way, people who can serve and who cannot serve as members of the Board of Directors. This is clearly regulated in the provisions of Article 93 paragraph (1) of the Company Law which regulates the requirements of persons who can be appointed as members of the Board of Directors, namely individual persons who are capable of performing legal acts, unless within 5 (five) years before their appointment have been:

a. declared bankrupt;
b. been a member of the Board of Directors or a member of the Board of Commissioners found guilty of causing a Company to be declared bankrupt; or
c. convicted of a criminal offense that is detrimental to state finances and/or related to the financial sector.

In addition to being appointed through the GMS as described above, the Company Law also provides room for the appointment of the Board of Directors outside the GMS forum, namely through a circular resolution mechanism as stipulated in the provisions of Article 91 of the Company Law. Shareholders may also make binding decisions outside the GMS provided that all shareholders with voting rights agree in writing by signing the relevant proposal, including decisions regarding the appointment of new Directors.

Article 105 paragraph (1) of the Company Law states that "the Board of Directors may be dismissed at any time by resolution of the GMS by stating the reasons". In other words, the one who has the right to dismiss the Board of Directors is the GMS, the dismissal of the Board of Directors concerned must also be notified. Regarding the reasons used as the basis for the dismissal of the Board of Directors, it has been determined in the explanation of Article 105 paragraph (1) of the Company Law, namely that the Board of Directors concerned no longer meets the requirements as stipulated in the Company Law, among others, committing actions that are detrimental to the Company or for other reasons deemed appropriate by the GMS.

In addition, members of the Board of Directors who are dismissed by the GMS must also be given the opportunity to defend themselves. Article 105 paragraph (2) of the Company Law states that the decision to dismiss a member of the Board of Directors is taken after the person

concerned has been given the opportunity to defend himself in the GMS. Then Article 105 paragraph (3) of the Company Law regulates the procedures for dismissal of members of the Board of Directors if it is carried out by a decision outside the GMS, what is meant by dismissal outside the GMS is dismissal by circular resolution method as also used in the appointment of the Board of Directors above. Where the shareholders can take a binding decision outside the GMS to dismiss the Board of Directors, provided that the dismissal must be notified in advance to the Directors to be dismissed. And all shareholders with voting rights agree in writing by signing the dismissal proposal. For such dismissal, the Directors concerned are notified in advance of the notification plan and given the opportunity to defend themselves before the dismissal decision is made.

Meanwhile, with regard to the expiration of the position of the Board of Directors due to its own initiative or due to resignation from the original position, the Company Law has regulated it in the provisions of Article 107, but it is not regulated in detail. Rather, it only submits the arrangement to the Articles of Association of each Company by ordering the articles of association to regulate the provisions regarding the procedures for resignation of members of the Board of Directors, procedures for filling vacant positions of members of the Board of Directors and parties authorized to carry out management and represent the Company in the event that all members of the Board of Directors are absent or temporarily dismissed. The procedure for resignation of members of the Board of Directors stipulated in the articles of association regulates the resignation that must be submitted within a certain period of time. After such period, the member of the Board of Directors concerned ceases to hold office without requiring the approval of the GMS.

Like the Board of Directors, the Board of Commissioners as an organ of the Company is also appointed by the GMS and for the first time members of the Board of Commissioners were appointed by the founders in the Company's deed of establishment. Provisions regarding the requirements, appointment and dismissal of members of the Board of Commissioners are substantially the same as those applicable to members of the Board of Directors as previously described. The Board of Commissioners consists of 1 (one) or more members, specifically for a Company whose business activities are related to collecting and/or managing public funds, a Company that issues debt acknowledgment letters to the public or a Public Company must appoint at least 2 (two) members of the Board of Commissioners. Meanwhile, for a Company conducting business activities based on sharia principles, in addition to having a Board of Commissioners, it must have a Sharia Supervisory Board consisting of one or more sharia experts appointed by the GMS on the recommendation of the Indonesian Ulema Council.

For the Board of Commissioners consisting of more than 1 (one) member, it is in the form of a panel, and because it is in the form of a panel, the collegial collective principle that exists in the Board of Directors becomes different from the Board of Commissioners. As an assembly, according to Article 108 paragraph (4) of Law No. 40/2007, each member of the board of commissioners cannot act alone when carrying out their duties, but must be based on a joint decision. A decision is not made if the members disagree. In the event of disagreement among them when approval is sought by the Board of Directors, it is tantamount to the Board of Commissioners disagreeing with the action to be taken by the Board of Directors.

Those who can be appointed as members of the Board of Commissioners are individuals who are capable of performing legal acts, unless within 5 (five) years before their appointment have:

a. declared bankrupt;
b. been a member of the Board of Directors or a member of the Board of Commissioners found guilty of causing a Company to be declared bankrupt; or
c. convicted of a criminal offense that is detrimental to state finances and/or related to the financial sector.

The appointment of a member of the Board of Commissioners who does not fulfill the requirements as referred to above shall be void by operation of law from the time when the other members of the Board of Commissioners or the Board of Directors become aware of the non-fulfillment of such requirements. Thereafter, within a period of no later than 7 (seven) days as from the date of becoming aware, the Board of Directors must announce the cancellation of the appointment of the member of the Board of Commissioners concerned in a Newspaper and notify the Minister to be recorded in the register of the Company.
Based on the above description and as the arrangements for the appointment and dismissal of the Board of Directors that have been described, mutatis mutandis applies to the appointment and dismissal of the Board of Commissioners. This includes appointment and dismissal through the circular resolution mechanism as stipulated in the provisions of Article 91 of the Company Law.

Legal Liability of Ex-Board of Directors for the Management of the Company When Their Term of Office Has Ended Prior to the GMS of Appointment of New Directors

As explained above, the Company has 3 (three) organs of the Company, including the GMS, Board of Directors and Board of Commissioners. These three organs have different duties, authorities and responsibilities from one another. The Board of Directors is one of the Company's organs that has the duty and is fully responsible for the management of the Company for the benefit of the Company and represents the Company both outside and inside the court in accordance with the provisions of the Articles of Association. In this case, the Board of Directors has a very central function and role in the Limited Liability Company paradigm, because the Board of Directors will carry out the management and representative functions of the Company.
As previously described, the Board of Directors and Board of Commissioners are appointed by the GMS of the Company for a certain period of time as stipulated in the provisions of Article 94 and Article 111 of the Company Law. Appointed for a certain period of time means that the Board of Directors and Board of Commissioners appointed by the GMS have a limited term of office, which is limited by time as decided by the GMS itself, such as for a period of 3 (three) years, 5 (five) years, and so on. This means that when the term of office of the Board of Directors and Board of Commissioners expires, the old Board of Directors and Board of Commissioners do not automatically continue their original positions, but must be appointed again by the GMS of the Company.
As stipulated in the provisions of Article 92 paragraph (1) jo. Article 79 paragraph (1) of the Company Law, the Board of Directors as an organ of the Company that has the authority to carry out the management of the Company is tasked with organizing GMS, both annual GMS, other GMS, including GMS to reappoint the Board of Directors and Board of Commissioners after the term of office of the old Board of Directors and Board of Commissioners will expire. This is because “organizing the Company's GMS” is one of the Company's management duties, which generally only has the authority of the Company's Board of Directors.
However, when the term of office of the Board of Directors and Board of Commissioners appointed for a certain period of time has expired before the Board of Directors performs its duty to organize a GMS to appoint a new Board of Directors and Board of Commissioners, the appointment of a new Board of Directors and Board of Commissioners in accordance with Article 79 paragraph (1) cannot be carried out, because the only organ authorized to summon the GMS no longer exists. Meanwhile, at the same time, when the term of office of the Company's Board of Directors and Board of Commissioners has ended, legally there is no longer a party who can carry out management and represent the Company both inside and outside the court. The general definition of management carried out by the Board of Directors in the context of the Company includes the task or function of exercising administrative powers

and maintaining the Company's assets. This means that the administrative power includes the power to administer the implementation of the GMS to appoint the new Board of Directors and Board of Commissioners.

So that in such conditions the only institution that can be carried out in accordance with the provisions of the Company Law is the appointment of new Directors and Board of Commissioners through a binding shareholder resolution outside the GMS in accordance with the provisions of Article 91 of the Company Law or better known as the circular resolution method. However, as explained in Article 91 of the Company Law, the decision must be approved by all shareholders, meaning that if there is only 1 (one) shareholder who does not agree, the appointment of the new Board of Directors and Board of Commissioners cannot be carried out.

When there is no longer an organ of the Company that can legally carry out the management of the Company, then the question becomes who is responsible for the wheels of the Company's organization until there is a new definitive Board of Directors and Board of Commissioners and how the legal liability of former Directors who fail to carry out the GMS appointment of new Directors and Board of Commissioners before their term of office ends. In practice, as can be seen in case Number: 825/Pdt.P/2019/PN.Jkt.Brt at the West Jakarta District Court, where the former Directors who did not understand the regulations in Limited Liability Company law neglected to hold a GMS to appoint a new Board of Directors when their term of office was about to expire, and the former Directors of the Company continued to carry out the management of the Company even though their term of office had ended. After knowing his mistake, the former Board of Directors, who was also a shareholder, in his position took actions in the form of inviting other shareholders to hold a GMS, as can be seen in the legal facts contained in the legal considerations in determination Number: 825/Pdt.P/2019/PN.Jkt.Brt, namely:

“and although in the letter of invitation to the GMS submitted by Applicant I he acts on behalf of the President Director of the Company, this is the position or position of Applicant I which he last held in the last GMS held by the Company and Applicant I has also issued a guarantee letter as evidence P-13 in the form of a Statement and Guarantee by Applicant I / formerPresident Director / shareholder regarding the writing of the position of President Director dated March 4, 2019, so that there is no confusion in the application of the Plaintiffs and the exception regarding this matter must be rejected”.

“Considering, that Applicant I, who in his last position was the President Director of the Company, has attempted to take various kinds of settlements that occurred among the shareholders of the Company, as evidenced by the following letter evidence:

- January 15, 2019 Applicant I Surya Susanto sent a letter to the Respondents to adjust the Company's Articles of Association to the provisions of Article 158 of Law No. 40 of 2007 concerning Limited Liability Companies, Exhibit P-11;
- On March 4, 2019 Applicant I/ Surya Susanto/ shareholder/ former President Director of the Company took the initiative again to circulate a letter proposing a Shareholders' Resolution without holding a GMS to all Shareholders, including Br. Mardjan Saronamihardja/ former President Commissioner and Br. Haryo Padmoasmolo/ former Commissioner). The decision of the Shareholders without holding a GMS is in accordance with the provisions of Article 91 of Law 40 of 2007, Exhibit P-12”.

From the legal facts quoted as legal considerations, it can be seen that the former Directors, in this case the former President Director, who is also a shareholder of the Company, continues to manage the Company when his term of office has ended. The incident as occurred in case Number 825/Pdt.P/2019/PN.Jkt.Brt is very likely to happen a lot in a company, especially a company that is still relatively small. The ability of the shareholders and/or the Board of Directors of the Company who are reliable in doing business and managing the company is not

always directly proportional to their knowledge of Company law and the obligations that must be carried out in accordance with the law and the Company's articles of association.
This happens a lot in companies that do not specifically have a legal division or consultant in the field of law or at least a division that functions to provide advice and remind the Board of Directors of the obligations stipulated in the law and the Company's articles of association. Therefore, when the Board of Directors fails to hold a GMS to appoint the new Board of Directors and Board of Commissioners while the term of office of the old Board of Directors and Board of Commissioners has already expired, the only way that is often taken by the former Board of Directors is to continue to carry out the management of the Company, even though normatively their authority has ended when their term of office appointed under the GMS has expired.
Meanwhile, the Company Law does not regulate the legal actions of former Directors who continue to manage the Company as mentioned above. The Company Law only regulates the legal responsibility of the definitive Board of Directors who carry out management and represent the Company both inside and outside the court. Or at least the UUPT also regulates the legal liability of members of the Board of Directors who are appointed definitively and then their appointment is declared void. So that the existing provisions still do not provide legal certainty for the problems faced by the Company.
According to Article 95 paragraph (1) of the Company Law, the appointment of a member of the Board of Directors who does not fulfill the requirements as stipulated in Article 93 of the Company Law, shall be declared null and void since the other members of the Board of Directors or the Board of Commissioners become aware of the non-fulfillment of such requirements. Meanwhile, in relation to legal actions that have been carried out for and on behalf of the Company by the member of the Board of Directors concerned before his appointment is canceled, will remain binding and become the responsibility of the Company, and legal actions carried out by members of the Board of Directors for and on behalf of the Company after his appointment is canceled, have the consequence of being invalid and become the personal responsibility of the member of the Board of Directors concerned.
Based on the above description, if systematic interpretation is carried out, namely interpretation that connects one Article with other Articles in the relevant legislation or in other legal legislation, or reads the explanation of a law, so that we understand what is meant, with reference to the provisions of Article 95 of the Company Law, then legal actions carried out by former Directors both in terms of management and representing the Company inside and outside the court will be invalid and can be held personally liable. Then, the next question is what if the management and actions representing the Company both inside and outside the court carried out by the former Directors are carried out based on the principle of good faith, and are solely carried out to maintain the existence of the Company. It turns out that the UUPT does not regulate it explicitly, but if the author looks closely at the understanding and authority possessed by the GMS by using Analogy Interpretation, it turns out that the UUPT has implicitly regulated it.
This means that legal actions in the form of management and representation of the Company carried out by former Directors in good faith during the status of the Company which is in a state of vacancy of the Board of Directors and Board of Commissioners can be decided or ratified into legal actions of the Company by the GMS. So that the actions of the former Directors who carry out the management of the Company, which mutatis mutandis based on Article 95 of the Company Law, from what was originally an unauthorized act and can be held personally liable, can be ratified and accounted for as a legal act of the Company because it is carried out in good faith and solely for the existence and legal interests of the Company.
This is also in line when analyzed using the “analytical knife” of legal benefit theory and Stakeholders Theory. In relation to this research, the author uses the theory of legal expediency

and stakeholder theory to examine, measure, and provide arguments on how beneficial the management of the Company carried out by the former Board of Directors is for the Company and all stakeholders of the Company. Benefit means that the law must provide benefits to every community that needs it, both for parties who feel harmed and parties who feel not harmed. Both parties must be able to benefit from every legal decision. Law must be intended for something that is useful or has benefits. Adherents of the utilitarianism (utilitis) school pioneered by Jeremy Bentham say that the law aims to ensure thegreatest happiness of thegreatest number of people. In essence, the core teaching of utilitarianism theory is that the purpose of law is to produce the greatest pleasure or happiness for the greatest number of people While stakeholder theory states that companies are not entities that only operate for their own interests, but must also provide benefits to stakeholders (shareholders, creditors, consumers, suppliers, government, society, analysts, and other parties).

If indeed the management carried out by the former Directors is carried out based on the principle of good faith, and is solely carried out to maintain the existence of the Company and produce good benefits for the Company and all stakeholders of the Company, then the management carried out by the former Directors should and should be ratified into the legal acts of the Company and the former Directors are released from their personal liability. Thus the law has provided benefits for "those who need it", both for the party who feels harmed and the party who feels not harmed (in this case the Company and all its stakeholders). So that all of them can feel the benefits of every legal decision and the law has succeeded in achieving its goal of being something that is useful or has benefits.

CONCLUSION

Board of Directors and Board of Commissioners are appointed by the GMS for a certain period of time and may be re-appointed by the GMS. reappointed by the GMS. The meaning of appointment for a certain period of time term of office is intended that members of the Board of Directors and Board of Commissioners whose term of office term of office has expired do not automatically continue their original position, except by reappointment based on GMS resolution. The Board of Directors and Board of Directors and Board of Commissioners may also be dismissed at any time based on a resolution of the GMS by stating the reasons and being given GMS by stating the reasons and given space to conduct a defense. defense. Appointment and dismissal of the Board of Directors and Board of Commissioners can also be done outside the GMS, namely based on Article 5 of the GMS. can also be carried out outside the GMS, namely based on Article 91 of the Company Law through the method of circular resolution with the condition that all shareholders must agree with the proposed resolution. Mutatis mutandis based on the provisions of Article 95 of the Company Law, legal actions performed by the former Board of Directors both in terms of management and representing the Company in and out of court are the Company in or out of court is an unauthorized act and can be held liable. and can be held personally liable. However, based on authority under the Company Law, the GMS can ratify or approve all legal actions both in the form of management and representation of the Company in and out of court. approve all legal actions, both in the form of management and representation of the of the Company performed by the former Board of Directors in good faith for the sake of the Company's existence. Company into a legal action of the Company, so that the legal actions legal action becomes the Company's legal action and becomes the legal responsibility of the Company. legal responsibility of the Company.

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