

TINJAUAN TENTANG PERTANGGUNGJAWABAN PEMEGANG SAHAM DAN DIREKSI PERSEROAN PERORANGAN

INTISARI

Oleh:

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Tujuan penelitian ini adalah untuk mengetahui apakah *one tier board system* merupakan sistem yang dianut dalam perseroan perorangan, mengetahui pertanggungjawaban pemegang saham perseroan perorangan ketika *force majeure* dalam keadaan berhutang serta mengetahui bagaimana pertanggungjawaban direksi perseroan perorangan ketika terjadi *force majeure* dalam hal kepengurusan perseroan perorangan.

Penelitian ini merupakan penelitian hukum yuridis normatif. Data yang digunakan dalam penelitian adalah data sekunder. Jenis penelitian menggunakan penelitian hukum normatif karena penelitian yang dilakukan menggunakan data sekunder atau bahan pustaka mengenai kaidah peraturan perundang-undangan, jurnal penulisan hukum baik nasional maupun internasional, buku-buku mengenai pertanggungjawaban organ perseroan terbatas. Metode analisis data yang digunakan dalam penelitian adalah analisis kualitatif dengan pendekatan perundang-undangan dan pendekatan konseptual.

Hasil penelitian menunjukkan bahwa terdapat perubahan paradigma pada konsep perseroan perorangan sehingga sistem kepengurusan perseroan perorangan ialah *one tier board system duality* di mana 1 (satu) orang memiliki sifat rangkap organ perseroan. Kemudian, mengenai pertanggungjawaban pemegang saham perseroan perorangan ketika terjadi *force majeure* dalam keadaan berhutang ialah tanggung jawab terbatas. Sesuai dengan ketentuan Pasal 153 J ayat (1) Undang-Undang No 11 Tahun 2020 Tentang Cipta Kerja mengatur pemegang saham tidak bertanggungjawab secara pribadi atas kerugian yang timbul akibat perikatan yang dibuat atas nama perseroan perorangan. Pertanggungjawaban akan berubah jika pemegang saham melanggar kewajiban perjanjian kredit yang telah disepakati atau melakukan tindakan yang memenuhi ketentuan Pasal 153 J ayat (2) Undang-Undang No 11 Tahun 2020 Tentang Cipta Kerja. Selanjutnya, mengenai tanggung jawab direksi perseroan perorangan dalam kepengurusan namun terjadi *force majeure* ialah Berdasarkan Pasal 97 ayat (5) Undang Undang No. 40 Tahun 2007 tentang Perseroan Terbatas di mana direksi tidak dapat dipertanggungjawabkan atas kerugian apabila ia dapat membuktikan kerugian tersebut bukan karena kesalahan atau kelalaiannya karena berdasarkan doktrin BJR bahwa terdapat pengambilan keputusan bisnis oleh seorang direksi di mana keputusan yang diambil harus memperhatikan iktikad baik, dilakukan dengan penuh tanggung jawab, dan tidak mengandung benturan kepentingan/*conflict of interest*.

Kata Kunci : perseroan perorangan, tanggung jawab, pemegang saham, direksi

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REVIEW OF THE ACCOUNTABILITY OF SHAREHOLDERS AND DIRECTORS OF INDIVIDUAL COMPANIES

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ABSTRACT

The purpose of this study is to determine whether the one tier board system is a system adopted in individual companies, to determine the responsibility of individual company shareholders when force majeure is in debt and to find out how the responsibility of individual company directors is when force majeure occurs in terms of managing individual companies.

This research is a normative juridical law research. The data used in this research is secondary data. This type of research uses normative legal research because the research conducted uses secondary data or library materials regarding the rules of legislation, legal writing journals both nationally and internationally, books on the liability of the organs of limited liability companies. The data analysis method used in this research is a qualitative analysis with a statutory approach and a conceptual approach.

The results of the study indicate that there is a paradigm shift in the concept of an individual company so that the management system of an individual company is a one tier board duality system where 1 (one) person has the dual nature of the company's organs. Then, regarding the liability of individual company shareholders in the event of force majeure in a state of debt, it is limited liability. In accordance with the provisions of Article 153 J paragraph (1) of Law No. 11 of 2020 concerning Job Creation, it stipulates that shareholders are not personally responsible for losses arising from engagements made on behalf of individual companies. Liability will change if the shareholder violates the obligations of the credit agreement that has been agreed upon or takes action that meets the provisions of Article 153 J paragraph (2) of Law No. 11 of 2020 concerning Job Creation. Furthermore, regarding the responsibility of the directors of individual companies in the management but there is force majeure, it is based on Article 97 paragraph (5) of Law no. 40 of 2007 concerning Limited Liability Companies where the board of directors cannot be held responsible for losses if he can prove the loss was not due to his fault or negligence because based on the BJR doctrine that there is a business decision making by a board of directors where the decisions taken must pay attention to good faith, carried out with full responsibility, and does not contain a conflict of interest.

Keywords: individual company, liability, shareholders, directors.

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