# Juridic Analysis Of Good Faith In Limited Company Management

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***Abstract***.
*The Board of Directors is one of the organs of the Limited Liability Company in charge of managing the Company. For this reason, Law Number 40 of 2007 stipulates that the board of directors in managing the Company must have good intentions. However, the law does not determine and formulate the meaning of good faith, so legal certainty is needed. This research uses normative legal research, namely research on secondary data in the form of primary, secondary, and tertiary legal materials. The legal materials were obtained through literature study. Then the secondary data is processed and analyzed descriptively qualitatively. The results of the study show that first, the meaning of good faith in the management of the company by the directors based on the opinion of M. Yahya Harahap, among others, is being honest, referring to the aims and objectives of the company, as well as laws and regulations and being loyal to the company. Second, every member of the board of directors who does not have good intentions in managing the company is personally responsible for the company's losses.*

***Keywords:*** *Good Faith, Management, Company*

## I. INTRODUCTION

Economic development in this era of globalization shows rapid growth, this is evidenced by the emergence of business actors who set up business entities that are legal entities or those that are not legal entities. One of the legal entities established by business actors is a Limited Liability Company (PT).The presence of a Limited Liability Company as a form of business entity in daily life is one of the means to carry out economic activities that have an important role in the life of the community and the state. Business practices carried out by business actors, such as traders, investors, contractors, bankers, and others cannot be separated from the presence of a Limited Liability Company.[i]National economic development is carried out based on the principles of economic democracy with the principles of togetherness, efficiency that is just, sustainable, environmentally friendly, and national economic unity aimed at realizing the welfare of the wider community. The activities of the company are part of the economic activities carried out by an organization, openly and continuously regarding an object, either movable or immovable.[ii]The existence of a Limited Liability Company in Indonesia is currently regulated by Law Number 40 of 2007 concerning Limited Liability Companies and their Implementing Regulations. Article 1 point 1 of the Law states that a Limited Liability Company or Company is a "legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this Law and its implementing regulations".

Based on the provisions of Article 1 point 1 of Law Number 40 of 2007 that Limited Liability Companies have the status as legal entities. As a legal entity, a Limited Liability Company in carrying out its business activities is carried out by an organ of the company. According to Article 1 point 2 of the Law, the organ of a company is "a general meeting of shareholders, directors and board of commissioners". The general meeting of shareholders (GMS) is the organ of the company that has the highest authority in a Limited Liability Company. The Board of Directors is a company organ that is authorized and fully responsible for managing the company for the benefit of the company, in accordance with the aims and objectives of the company and representing the company, both inside and outside the company in accordance with the provisions of the articles of association. The Board of Commissioners is a company organ in charge of supervising and providing advice

to the board of directors.The Board of Directors as one of the organs of the company has a very important position. Because the board of directors has full authority and responsibility in managing the company. The management of the company is aimed at the interests, aims and objectives of the company and represents the company, both inside and outside the company in accordance with the provisions of the articles of association. Thus the forward or backward of the company's activities lies in the management of the board of directors.

According to Article 92 paragraphs (1) and (2) of Law Number 40 of 2007 that the board of directors in managing the company must be guided by: (1) the interests of the company, (2) the goals and objectives of the company, and (3) appropriate policies within the limits of determined by law and/or articles of association. The duties and authorities of the board of directors in managing the company are burdened with responsibilities. This is stipulated in Article 27 of Law Number 40 of 2007, among other things, that the board of directors is responsible for the management of the company. The management must be carried out by each member of the board of directors in good faith and full of responsibility. Then each member of the board of directors is personally responsible for the loss of the company if he is guilty or negligent in carrying out his duties, namely not having good intentions and not being full of responsibility.Based on the provisions of Article 97 of Law Number 40 of 2007 that the principle of good faith in managing the company has an important meaning in the context of determining the responsibilities of the board of directors. The problem is what are the limits of this good faith. This is not regulated and explained by the law, while it is known that good faith in civil law is one of the principles of contract law. In the absence of restrictions on good faith for the board of directors in managing the company, it illustrates legal uncertainty because it creates multiple interpretations. To realize legal certainty as one of the basic values of the law as stated by Gustav Radbruch, it is necessary to have clear and firm regulations regarding the limits of good faith in company supervision.

## II. METHODS

### A. Research Type

This research uses normative legal research. Soerjono Soekanto said that normative legal research or library law research is "legal research that examines library materials (secondary data)[iii]. Meanwhile, according to Peter Mahmud Marzuki that normative legal research is "research that is based on a process to find the rule of law, legal principles as well as legal doctrines in order to answer the legal issues faced so as to obtain new theoretical arguments or concepts as prescriptions in solving problems.[iv]

Based on this understanding, normative legal research is research on secondary data in the form of legal materials relating to the issue of good faith limits for directors in managing the company.

### B. Research Approach

This research uses a statutory approach (Statute Approach) and a concept approach (Concept Approach). The statutory approach is a study of the norms contained in the laws and regulations with a view to knowing the arrangements regarding the management of the company in good faith. While the concept approach (Concept Approach) is an approach that is based on the views and doctrines developed in the science of law. With this approach, ideas will be found that give birth to legal concepts and legal principles that are relevant to legal issues.

### C. Nature of Research

This research is descriptive analytical, which is a study that aims to provide an overview of the object of research, in this case the principle of goodwill in managing the company.

### D. Types of Legal Material Source

The legal materials used in this research consist of:

a) Primary Legal Materials, namely binding legal materials in the form of statutory regulations:

1. Civil Code (KUHPerdata);
2. Law Number 40 of 2007 concerning Limited Liability Companies.

b) Secondary Legal Materials, namely legal materials in the form of text books, legal journals, legal articles, and others that are relevant to the subject matter.
c) Tertiary legal materials, namely legal materials that can explain primary and secondary legal materials in the form of legal dictionaries.

**E. Legal Materials Collection and Processing Techniques**

The legal materials used in this study were collected through a documentary study. Documentary studies are studies that examine various documents, both those relating to laws and regulations and existing documents.

**F. Legal Material Analysis**

The legal materials that have been collected are then analyzed qualitatively, namely data analysis that does not use numbers but provides a description in words of the research results.

## III. RESULT AND DISCUSSION

### A. The Meaning of Good Faith in Company Management

Limited Liability Company (PT) or company is a form of business entity that is a legal entity which is generally chosen by business actors in the context of carrying out their business activities. This is partly because the Company has limited liability for its business activities and relationships with third parties. In addition, the owner of the company is quite easy to trade his shares to third parties compared to other business entities.[v]
Article 1 number 1 of Law Number 40 of 2007 stipulates that the company is a legal entity and based on positive law is domiciled as a legal subject, namely the bearer of rights and obligations in legal traffic, just like humans.
The company as a legal entity in various corporate legal literature appears several variations of thought, but in principle they are not much different. Gunawan Widjaja stated that "the company is a legal entity, so it is not possible to carry out its own activities, but is represented by the company's organs. In this case, the board of directors who carry out the daily activities of the company are under the supervision of the commissioner's organ.[vi] Then Fres BG Tumbuan stated that the directors are people representing the interests of the company as a legal subject.

The company is the cause of the existence of the board of directors, if there is no company, then there is no board of directors therefore the directors should serve the interests of the company (shareholders). person stand in juditio).[vii]According to Law Number 40 of 2007 that the company's organs include the General Meeting of Shareholders (GMS), the Board of Directors and the Board of Commissioners. In this case, the existence of the board of directors has an important role for the daily activities of the company, because it is the director who takes care of the company. This is in accordance with Article 92 paragraphs (1) and (2) of Law Number 40 of 2007 which states that the board of directors carries out the management of the company for the benefit of the company and in accordance with the aims and objectives of the company. In addition, the board of directors manages the company based on policies deemed appropriate within the limits determined by this law and/or the articles of association.According to Article 97 paragraphs (1), (2), and (3) of Law Number 40 of 2007 that the board of directors is responsible for the management of the company, and the management is carried out in good faith and full of responsibility. Each member of the board of directors is personally responsible for the loss of the company if the person concerned is guilty or negligent in carrying out his duties, namely not in good faith and not full of responsibility.

The legal issue that needs to be raised from Article 97 paragraph (2) of Law Number 40 of 2007 is regarding the principle of good faith in relation to the management of the company by the board of directors. What is the meaning of good faith, it turns out that Law Number 40 of 2007 does not formulate it and determine the criteria. In the absence of regulation on this issue, it creates legal uncertainty. In this case, legal certainty regarding the criteria of good faith has an important meaning because it involves the responsibility of the board of directors for the management of the company.According to civil law, especially contract law, good faith is one of the principles of contract law as stipulated in Article 1338 paragraph (3) of the Civil Code, namely "every

agreement must be carried out in good faith". The principle of good faith has a very important function in making an agreement or contract. Because the principle of good faith is a legal obligation in the implementation of the contract that must be fulfilled.[viii]The concept of good faith as stipulated in Article 1338 paragraph (3) of the Civil Code is very abstract. Because the Civil Code itself does not formulate boundaries and determine benchmarks or criteria for good faith.

The principle of good faith comes from the civil law contract law system which is rooted in Roman law. Good faith in Roman contract law refers to three forms of behavior of the parties, namely:

1) The parties must adhere to their promises or words;
2) The parties must not take advantage of actions that mislead one of the parties;
3) The parties comply with their obligations and behave as honorable and honest persons, even though these obligations are not expressly promised.[ix]

Good faith is divided into two types, namely relative good faith and absolute good faith. In good faith, what people pay attention to is the real attitude and behavior of the legal subject. Whereas in absolute good faith, the judgment lies in common sense and fairness, an objective measure is made to assess the situation according to objective norms.[x]Although good faith is understood as one of the most important and influential principles in contract law, there is no comprehensive definition that can explain the meaning of good faith itself. According to Ridwan Khairandy, it is the abstraction of its meaning, so that different understandings of good faith arise. Good faith does not have a single meaning, and until now there are still differences regarding the true meaning of good faith.

Based on the results of the National Civil Law symposium organized by the National Legal Development Agency (BPHN), good faith should be defined as follows:

a. Honesty when making contracts;
b. At the stage of making a contract which is carried out in front of an official, the parties are considered to have good intentions.

Regarding the limits of good faith in the management of the company by the board of directors, M. Yahya Harahap stated that the meaning of good faith in the context of the implementation of the management of a limited liability company by members of the board of directors in practice and legal doctrine has a wide range, including:

1) Must be trusted (fiduciary duty);
2) Obligation to carry out management for a proper purpose (duty to act for a proper purpose);
3) Obedience to the laws and regulations (statutory duty);
4) Must be worthy of the company (loyalty duty);
5) Must avoid conflict of interest.

Based on the information above, it can be said that the meaning of good faith in managing the company by the board of directors is as stated by M. Yahya Harahap, namely fulfilling 5 (five) obligations as follows: being trusted, managing the company for a reasonable purpose, obeying regulations laws and regulations, be loyal to the company, and avoid conflicts of interest.

**B. Responsibilities of the Board of Directors for the Management of Limited Liability Companies**

Limited Liability Company or Company as a legal entity has the same rights as humans in legal traffic, but besides these similarities there are essential differences in the ability to take legal action. Humans are biologically able to perform any action, except those prohibited by law. On the other hand, the company as a legal entity cannot take any action except those permitted by law.[xi]Limited Liability Company is a legal entity which is a capital partnership, established based on an agreement to conduct business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this law and its implementing regulations.The authority to act for a company is clearly and clearly contained in the law and the

articles of association. It has become standard practice in various countries that the law on Limited Liability Companies (Corporation Act). Ordering the articles of association of a Limited Liability Company to include a list of the powers possessed by a corporation.The legal entity form of Limited Liability Company is the most widely used by business actors. In fact, not only private companies and national companies.

The form of the Limited Liability Company is widely used by the state.Limited Liability Company as a legal entity in carrying out legal actions is represented by an organ. According to Law Number 40 of 2007 the Company's organs include the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners. The Board of Directors as one of the organs of the company has an important position in its business activities. Because it is the board of directors who manages the company, and this is stipulated in Article 92 paragraphs (1) and (2) of Law Number 40 of 2007, namely the board of directors carries out the management of the company for the benefit of the company and in accordance with the aims and objectives of the company.The authority of the board of directors in managing the company is accompanied by responsibility if the company suffers a loss. According to Article 97 of Law Number 40 of 2007 that the board of directors is responsible for the management of the company. The management of the company must be carried out by each member of the board of directors in good faith and full of responsibility. If each member of the board of directors is guilty or negligent in carrying out their duties, namely not having good intentions and not being fully responsible for causing losses to the company, then the person concerned is fully responsible personally. Members of the Board of Directors cannot be held responsible for the company's losses if they can prove, namely:

a. The loss is not due to his fault or negligence;

b. Has carried out management in good faith and prudence for the benefit and in accordance with the aims and objectives of the company;

c. Does not have a conflict of interest, either directly or indirectly, over management actions that result in losses; and

d. Have taken action to prevent the occurrence or continuation of the loss.

Based on the provisions of Article 97 of Law Number 40 of 2007 mentioned above, one of the things that gives birth to the responsibility of the board of directors for the loss of the company is not having good intentions in managing the company, unless the directors can prove that in managing the company they have good intentions.Good faith is one of the principles of contract law as stipulated in Article 1338 paragraph (3) of the Civil Code. However, the Civil Code itself does not formulate the limits or meanings and criteria of this good faith. Likewise, Law Number 40 of 2007 does not formulate limits or meanings and criteria for good faith in the context of managing the company by the board of directors.Starting from what was stated by M. Yahya Harahap that the meaning of good faith in managing the company is being trusted (honest), managing the company for a reasonable purpose, complying with laws and regulations, being loyal to the company and avoiding conflicts of interest.Based on the meaning of good faith above, if the board of directors in managing the company is dishonest and based on a reasonable goal, violates the laws and regulations and is not loyal to the company and there is always a conflict of interest that results in the company experiencing losses, then every member of the board of directors who does these things The company is personally responsible for the loss of the company. In this case, the board of directors can be said to have made mistakes or omissions, namely not having good intentions in negligence, namely not having good intentions in managing the company which resulted in losses for the company. For this incident, each member of the board of directors is personally responsible for the company's losses.Legal certainty is one of the basic values of law or legal objectives as stated by Gustav Radbruch. Legal certainty requires clear and firm legal provisions, so that in its application it does not cause multiple interpretations. For this reason, it is necessary to have clear and firm regulations regarding good faith as one of the benchmarks for the responsibility of the board of directors for the management of the company for legal certainty.

## IV. CONCLUSION

Based on the discussion that has been stated, the following conclusions can be drawn:

a. Law Number 40 of 2007 does not formulate and determine the meaning of good faith in managing a limited liability company by the board of directors. Referring to the opinion of M. Yahya Harahap, that the meaning of good faith in managing a limited liability company, among others, is being honest, adhering to the aims and objectives of the company and the laws and regulations;

b. Each director who manages a limited liability company does not have good intentions, then the person concerned is personally responsible for the company's losses.

The suggestions that can be put forward to the problems mentioned above are as follows:

a. In the interest of legal certainty, the meaning of good faith in managing a limited liability company by the board of directors needs to be regulated and formulated clearly and firmly in Law Number 40 of 2007 or its implementing regulations.

b. For the benefit of shareholders and employees, the board of directors in managing a limited liability company is based on good faith.

## V. ACKNOWLEDGMENTS

Thank you to all those who have helped in completing this research, especially Universitas Islam Kalimantan Muhammad Arsyad Al-Banjari.

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