



## Liability for Unlawful Acts Under the Business Judgment Rule and Piercing the Corporate Veil Doctrine

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**Abstract.** The Board of Directors, as an organ of a limited liability company, holds full authority and responsibility in managing the company's affairs. Nevertheless, in carrying out their duties, directors not infrequently commit unlawful acts that result in losses to the company as well as to third parties. This study aims to examine the concept of directors' liability for losses suffered by a limited liability company caused by unlawful acts, the limits of such liability, and the available legal protection mechanisms. Employing a normative legal research method, this study finds that Law No. 40 of 2007 on Limited Liability Companies explicitly regulates the principles of fiduciary duty and the business judgment rule as the basis for evaluating directors' liability. Directors may be held personally liable if it is proven that their actions constitute unlawful acts carried out in bad faith or due to negligence. The principle of piercing the corporate veil serves as a legal instrument that enables the disregard of the company's separate legal personality in order to impose direct liability upon the directors.

**Keywords:** Directors, Fiduciary Duty, Limited Liability Company, Piercing the Corporate Veil, Unlawful Acts.

**Abstrak.** Dewan Direksi, sebagai organ perseroan terbatas, memegang wewenang dan tanggung jawab penuh dalam mengelola urusan perusahaan. Namun demikian, dalam menjalankan tugasnya, para direktur tidak jarang melakukan tindakan melawan hukum yang mengakibatkan kerugian bagi perusahaan maupun pihak ketiga. Studi ini bertujuan untuk meneliti konsep tanggung jawab direktur atas kerugian yang diderita oleh perseroan terbatas akibat tindakan melawan hukum, batasan tanggung jawab tersebut, dan mekanisme perlindungan hukum yang tersedia. Dengan menggunakan metode penelitian hukum normatif, studi ini menemukan bahwa Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas secara eksplisit mengatur prinsip-prinsip kewajiban fidusia dan aturan pertimbangan bisnis sebagai dasar untuk mengevaluasi tanggung jawab direktur. Direktur dapat dimintai pertanggungjawaban secara pribadi jika terbukti bahwa tindakan mereka merupakan tindakan melawan hukum yang dilakukan dengan itikad buruk atau karena kelalaian. Prinsip penembusan tabir korporasi berfungsi sebagai instrumen hukum yang memungkinkan pengabaian kepribadian hukum perusahaan yang terpisah untuk membebankan tanggung jawab langsung kepada para direktur.

**Kata kunci:** Direktur, Kewajiban Fidusia, Perseroan Terbatas, Pembongkaran Tabir Korporasi, Tindakan Melanggar Hukum.



## 1. Introduction

A Limited Liability Company (*Perseroan Terbatas*/PT) constitutes a fundamental pillar of modern business organization in Indonesia, characterized by its status as a distinct legal entity separate from its founders, shareholders, and directors. This foundational principle, commonly referred to as the doctrine of separate legal entity, affirms that a PT possesses its own legal personality, enabling it to hold rights, incur obligations, and act independently as a subject of law. The principle is explicitly recognized under Law Number 40 of 2007 concerning Limited Liability Companies (*Undang-Undang Perseroan Terbatas*/UUPT), which serves as the primary legal framework governing corporate conduct in Indonesia. As a consequence of this doctrine, the concept of limited liability applies, whereby shareholders are only liable to the extent of their capital contribution, and, in principle, directors are shielded from personal liability for corporate debts arising in the course of business activities.<sup>1</sup>

Within the Indonesian business landscape, the PT has become the most dominant and preferred form of legal entity. This preference is driven by its structured governance system, operational flexibility, and the legal protections it affords to both investors and management. Article 1 point 1 of the UUPT defines a PT as a legal entity in the form of a capital partnership established based on agreement, conducting business activities with authorized capital divided into shares, and fulfilling statutory requirements. As a legal construct, a PT operates through its corporate organs, namely the General Meeting of Shareholders (GMS), the Board of Commissioners, and the Board of Directors. Among these, the Board of Directors plays a central and strategic role, as it is vested with full authority and responsibility to manage the company in accordance with its purposes and objectives, as well as to represent the company both inside and outside judicial proceedings.<sup>2</sup>

The extensive authority granted to directors must be accompanied by a proportional degree of legal responsibility. Indonesian company law imposes

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<sup>1</sup> R. Narendra Jatna et al., “Strengthening the Business Judgment Rule in Indonesia: Lessons from Malaysia,” *Journal of Sustainable Development and Regulatory Issues (JSDERI)* 3, no. 3 (2025): 569. See also, A. R. P. Negara, the doctrine of piercing the corporate veil in court decision No. 656/PDT.G/2015/PN.MDN, *Indonesia Private Law Review* (2021). See also, Asvini Puspa, and Firman Darajat, “Penyempurnaan Prinsip Keadilan Dalam Penyelesaian Tagihan Pajak Pada Proses Kepailitan,” *Mimbar Hukum* 35 (2023): 54.

<sup>2</sup> J. Andy Hartanto, “Applications of good corporate governance relating to shareholders, commissioners, and directors of limited liability companies in Indonesia,” *Problems and Perspectives in Management* 17, no. 3 (2019): 413. See also, Muhammad Reza Syariffudin Zaki et al., “Corporate Organ Governance in Indonesia’s Individual Companies: an International Perspective,” *Tirta Yasa Journal of International Law* 4, no. 2 (2025): 148.

fiduciary obligations on directors, requiring them to act in good faith, exercise due care and skill, and prioritize the best interests of the company. These fiduciary duties, particularly the duty of care and the duty of loyalty, align with global corporate governance standards. Directors are expected to make informed, prudent, and conflict-free decisions, ensuring that their actions contribute to the company's sustainability and the protection of shareholders' interests.<sup>3</sup> However, in practice, deviations from these standards are not uncommon. Directors may engage in conduct that harms the company, whether intentionally (*dolus*) or due to negligence (*culpa*), thereby triggering legal consequences.

Such harmful conduct may fall within the scope of unlawful acts (*onrechtmatige daad*) under Indonesian civil law, which gives rise to liability for damages. Directors who breach their fiduciary duties or act beyond their authority may be held personally accountable for losses suffered by the company or third parties. This reflects an important limitation to the protection afforded by the principle of separate legal entity. While corporate acts are generally attributed to the company, the legal system recognizes circumstances in which personal liability may be imposed on directors.<sup>4</sup> This ensures that the doctrine of limited liability does not become a tool for abuse or misconduct.<sup>5</sup>

The complexity of directors' liability is further illustrated by the interaction between protective doctrines and accountability mechanisms. On one hand, the Business Judgment Rule (BJR) provides a degree of protection for directors, shielding them from personal liability when decisions are made in good faith, with due diligence, and without conflicts of interest.<sup>6</sup> This doctrine is intended to encourage managerial discretion and risk-taking in business decisions. However, its application in Indonesia remains underdeveloped, characterized by limited statutory codification and inconsistent judicial interpretation, which creates uncertainty for directors in exercising their authority.<sup>7</sup> As a result, directors may face ambiguity in determining the boundaries of lawful decision-making.

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<sup>3</sup> Lisma Lumentut, "Reconceptualizing Fiduciary Duties through Environmental, Social, and Governance (ESG) Principles to Enhance Environmental Responsibility," *Journal of Law, Environmental and Justice* 4, no. 1 (2026): 30. See also, Zaki et al., "Corporate Organ Governance," 149.

<sup>4</sup> Siti Syahida Nurani et al., "The Anglo-Saxon system of common law and the development of the legal system in Indonesia," *WSEAS Transactions on Systems* (2023): 34.

<sup>5</sup> Henry Aspan et al., "Legal Mechanisms for Business Accountability: A Comparison of Soft and Hard Law in Indonesia," *Law Reform* 20, no. 2 (2024): 355.

<sup>6</sup> Faisal Santiago, "Reconstruction of the Business Judgment Rule Doctrine in Indonesia: Legal Comparison with England, Canada, the United States, and Australia," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (2024): 112. See also, Andika Wijaya, "Implementation of the Doctrine of the Business Judgment Rule on Bankruptcy Law in Indonesia," *Yuridika* 35, no. 1 (2020): 11.

<sup>7</sup> Johni Najwan Sudarna et al., "Business judgment rule application in company: a comparison based on the case in Indonesia and Malaysia," *In IOP Conference Series: Earth and Environmental Science*,

On the other hand, the doctrine of piercing the corporate veil serves as a critical exception to the principle of limited liability. This doctrine allows courts to disregard the company's separate legal personality and hold directors personally liable in cases of fraud, bad faith, abuse of authority, or failure to comply with legal obligations. Judicial practice in Indonesia demonstrates the application of this doctrine, such as in the Medan District Court decision, where directors were held personally liable for company losses resulting from negligence and misconduct.<sup>8</sup> This illustrates that the protection afforded by corporate personality is not absolute, but conditional upon the proper conduct of directors.

In addition to civil liability, directors may also face broader legal consequences, including administrative sanctions and even criminal liability in cases involving corruption, mismanagement, or violations of regulatory obligations. Furthermore, specific contexts such as bankruptcy and taxation introduce additional layers of complexity. While directors are generally not personally liable for company bankruptcy unless negligence is proven, tax regulations may still impose personal responsibility for unpaid tax obligations, thereby creating overlapping and sometimes conflicting liability regimes.<sup>9</sup> Moreover, challenges in corporate governance and regulatory enforcement exacerbate these issues.<sup>10</sup>

Research on directors' liability in Indonesian Limited Liability Companies reveals persistent structural and doctrinal gaps. Empirical studies show that Indonesia's corporate governance framework remains weak in transparency, accountability, and disclosure, limiting effective control over directors' conduct.<sup>11</sup> These weaknesses are reinforced by inconsistent judicial interpretations and the lack of clear statutory provisions, creating significant legal uncertainty.<sup>12</sup>

Furthermore, although key doctrines such as fiduciary duties, the Business Judgment Rule (BJR), and piercing the corporate veil are formally recognized, their implementation remains fragmented. The BJR lacks comprehensive codification and consistent enforcement, resulting in ambiguity regarding its protective scope and burden of proof.<sup>13</sup> Similarly, the criteria for determining unlawful acts

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vol. 399, no. 1, IOP Publishing, (2019), 12122. See also, Jatna et al., "Strengthening the Business Judgment," 570.

<sup>8</sup> Negara, the doctrine of piercing the corporate veil.

<sup>9</sup> Asvini Puspa, and Firman Darajat, "Penyempurnaan Prinsip Keadilan Dalam Penyelesaian Tagihan Pajak Pada Proses Kepailitan," *Mimbar Hukum* 35 (2023): 56.

<sup>10</sup> Noriaki Yasaka, "Knowledge management in international cooperation for anti-money laundering," *Journal of Money Laundering Control* 20, no. 1 (2017): 29.

<sup>11</sup> Hartanto, "Applications of good corporate," 414. See also, Jatna et al., "Strengthening the Business Judgment," 570.

<sup>12</sup> Sudarna et al., "Business judgment rule application," 12123.

<sup>13</sup> Sudarna et al., "Business judgment rule application," 12124. See also, Jatna et al., "Strengthening the Business Judgment," 572.

(onrechtmatige daad) and the conditions for imposing personal liability on directors are not clearly defined.<sup>14</sup>

In addition, existing studies largely examine these doctrines in isolation, with limited integrative analysis of how they interact in practice, particularly in lifting limited liability through piercing the corporate veil.<sup>15</sup> This study addresses these gaps by systematically analyzing the scope, limits, and application of directors' liability in Indonesian corporate law.

These challenges highlight the need for a comprehensive understanding of the scope and limitations of directors' liability within Indonesian corporate law. In particular, the intersection between fiduciary duties, unlawful acts, and doctrines such as the piercing of the corporate veil raises important legal questions regarding the extent to which directors can be held personally accountable for corporate losses. Based on the background described above, the formulation of the problems in this paper is as follows:

1. How is the scope and limitation of directors' liability for company losses regulated and interpreted under Indonesian Company Law (Law No. 40 of 2007)?
2. What legal criteria determine when directors' actions constitute an unlawful act (onrechtmatige daad) that gives rise to personal liability?
3. Under what conditions can the doctrine of piercing the corporate veil be applied to impose personal liability on directors in Indonesian corporate practice?

## **2. Research Methods**

This study employs a normative legal research method, focusing on the systematic analysis of legal norms, principles, and doctrines governing the liability of directors in limited liability companies. This approach is particularly appropriate given that the research addresses doctrinal ambiguities relating to fiduciary duties, unlawful acts, and the Business Judgment Rule within Indonesian corporate law. The study adopts statute, conceptual, and case approaches. These approaches enable a comprehensive examination of legislation, doctrinal development, and judicial practice.

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<sup>14</sup> Daniel Hendrawan et al., "Application of the Principles of Business Judgment in the Authoritative Function of Directors of Limited Liability Company in Singaporean and Indonesian Legal Perspectives," *Academic Journal of Interdisciplinary Studies* 9, no. 3 (2020): 93. See also, Negara, the doctrine of piercing the corporate veil.

<sup>15</sup> Sandy Nugroho et al., "Implementation of Alter Ego Shareholders and Their Responsibilities According to the Piercing the Corporate Veil Doctrine in Indonesia," *International Journal of Innovation* 425 (2020): 343.

The primary legal materials consist of statutory regulations and judicial decisions. The main statute analyzed is Law Number 40 of 2007 concerning Limited Liability Companies, which regulates the duties, authority, and liability of directors. In addition, provisions of the Indonesian Civil Code, especially Article 1365 concerning unlawful acts, are examined to establish the legal basis for directors' personal liability. Judicial decisions, including those of the Supreme Court and lower courts, are also utilized to understand how these legal norms are interpreted and applied in practice. These sources are selected based on their binding authority and direct relevance to the research issues.

Secondary legal materials include scholarly books, journal articles, and expert opinions discussing corporate law, fiduciary duties, and the doctrine of piercing the corporate veil. Tertiary materials, such as legal dictionaries and encyclopedias, are used to ensure conceptual clarity. Overall, this methodological framework supports the research objectives by providing a coherent basis to analyze the scope, criteria, and enforcement of directors' liability.

### **3. Results and Discussion**

#### **3.1. Scope and Limitations of Directors' Liability under Law No. 40 of 2007**

The Board of Directors serves as a key organ within a limited liability company. According to Article 92 paragraph (1) of the Limited Liability Company Law, the Board of Directors is responsible for managing the company in the interest of the company and in line with its purposes and objectives. This provision indicates that the authority of the Board of Directors in managing the company must always be directed toward the company's interests, rather than the personal interests of the directors or particular parties. The Board of Directors bears responsibility for the management of the company as stipulated in Article 92 paragraph (1), and such management must be carried out by each member in good faith and with full responsibility, as provided in Article 97 paragraphs (1) and (2). In this context, good faith is not merely an administrative formality but constitutes a legal obligation, the breach of which may lead to serious legal consequences.

The responsibilities of the Board of Directors in modern corporate law are grounded in two principal doctrines: the duty of care and the duty of loyalty. The duty of care obliges directors to act with a reasonable level of caution, as would be expected from a prudent person in a comparable position. In contrast, the duty of loyalty requires directors to place the interests of the company above their own personal interests.<sup>16</sup> In Indonesian civil law, unlawful acts (*onrechtmatige daad*) are

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<sup>16</sup> Pamonaran Manahaar et al., "Kedudukan Peraturan Dewan Komisaris Dalam Pengelolaan Perusahaan Dihubungkan Dengan Tanggung Jawab Direksi Dan Dewan Komisaris Berdasarkan Prinsip-Prinsip Pengelolaan Perusahaan," *Jurnal Poros Hukum Padjadjaran* 3, no. 1 (2021): 11.

governed by Article 1365 of the Civil Code, which provides that any unlawful act causing harm to another party obliges the person at fault to compensate for the resulting loss.

The doctrine of unlawful acts in the Indonesian legal system has undergone significant development. Initially, the concept of unlawful acts was defined narrowly as violations of another person's subjective rights and legal obligations stipulated in law. However, since the Lindenbaum-Cohen Arrest of 1919 in the Netherlands, which was later adopted in Indonesian jurisprudence, the definition of unlawful acts has been expanded to include violations of the propriety, care, and prudence that a person should exercise in social interactions.<sup>17</sup>

According to Rosa Agustina<sup>18</sup> an unlawful act must fulfill the following elements: (1) the existence of an unlawful act; (2) the existence of a mistake (*dolus* or *culpa*); (3) the existence of a loss; and (4) the existence of a causal relationship between the unlawful act and the loss caused. The business judgment rule is a principle derived from common law that provides protection to directors for their business decisions, provided they are based on sufficient information, made in good faith, and without personal interest. This principle essentially provides a presumption of correctness for every business decision made by directors.

Within the Company Law, the principle of the business judgment rule is embodied in Article 97 paragraph (5), which provides that members of the Board of Directors shall not be held liable for company losses if they are able to demonstrate that: (a) the losses did not arise from their fault or negligence; (b) they managed the company in good faith and exercised due care in line with the company's purposes and objectives; (c) they had no direct or indirect conflict of interest in the decisions or actions that led to the losses; and (d) they undertook measures to prevent the occurrence or continuation of such losses. The implementation of the business judgment rule in Indonesia remains relatively recent and has yet to achieve consistency in judicial practice. In several court rulings, judges still tend to apply a more straightforward approach when evaluating the liability of directors.

Law Number 40 of 2007 concerning Limited Liability Companies provides a comprehensive regulation of the responsibilities of directors. The fundamental principle established is that directors bear full personal liability when they are at fault or negligent in the performance of their duties, as stipulated in Article 97 paragraph (3) of the Limited Liability Company Law.

Article 97 paragraph (3) explicitly affirms that each member of the Board of Directors is personally and fully liable for losses suffered by the Company if such

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<sup>17</sup> Ridwan Khairandy, *Hukum Perseroan Terbatas* (Yogyakarta: FH UII Press, 2014), 72.

<sup>18</sup> Rosa Agustina, *Perbuatan Melawan Hukum [Unlawful Acts]* (Depok: Universitas Indonesia, Fakultas Hukum, Pascasarjana (in Indonesian), 2003), 23.

losses arise from their fault or negligence in carrying out their duties as referred to in paragraph (2). This provision encompasses several key elements.

First, this responsibility is personal and cannot be transferred to other company organs. Second, the emergence of liability requires an error (intentional) or negligence in carrying out duties. Third, there must be a link between the error/negligence and the losses suffered by the company.<sup>19</sup>

If the Board of Directors consists of two or more members, the liability referred to applies jointly and severally to each director, as stipulated in Article 97 paragraph (4) of the UUPT. This implies that each member of the Board of Directors bears responsibility for the entirety of the obligation, not merely for their individual share. Nevertheless, a director may be released from such joint liability if they can demonstrate that they are not at fault.

In practice, Indonesian courts have reinforced these provisions. Supreme Court Decision No. 2241 K/Pdt/2018 considers that directors who act beyond their authority (*ultra vires*) and result in losses for the company can be held personally liable. Furthermore, Supreme Court Decision No. 3150 K/Pdt/2020 emphasizes that proving bad faith on the part of directors is an absolute requirement for imposing personal liability, reflecting the application of a high standard of care in assessing directors' actions.

Overall, the findings showed that the scope and limitations of directors' liability under Law No. 40 of 2007 are not only determined by statutory provisions but are also shaped by broader developments in corporate governance and judicial interpretation. While the law clearly establishes that directors are personally liable for losses arising from fault or negligence in managing the company, this responsibility is limited by the requirement of proof of fault, causation, and the protection offered by the business judgment rule. In this context, liability is not automatic, but conditional upon a demonstrable breach of fiduciary duty within the boundaries of lawful managerial discretion.<sup>20</sup> However, the effectiveness of these legal limitations is highly dependent on enforcement capacity and consistency in judicial reasoning, as weak oversight structures may blur the boundary between protected business decisions and actionable negligence.<sup>21</sup>

Moreover, in practice, inconsistencies in corporate governance enforcement and institutional supervision continue to influence how director liability is applied,

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<sup>19</sup> Nindyo Pramono, "Tanggung Jawab Dan Kewajiban Pengurus PT (Bank) Menurut UU No. 40 Tahun 2007 Tentang Perseroan Terbatas," *Buletin Hukum Perbankan dan Kebanksentralan* 5, no. 3 (2007): 18.

<sup>20</sup> Aspan et al., "Legal Mechanisms for Business," 356. See also, Zaki et al., "Corporate Organ Governance," 151.

<sup>21</sup> Nureni Wijayati et al., "Corporate governance and corruption: A comparative study of Southeast Asia," *In Decentralization and governance in Indonesia* (Cham: Springer International Publishing, 2015), 261.

particularly in cases involving financial mismanagement or corporate misconduct.<sup>22</sup> Therefore, the scope of liability under the Company Law must be understood as a balanced framework between protecting managerial discretion and ensuring accountability, where limitations are defined not only by legal text but also by governance practice and judicial interpretation.

### 3.2. Legal Criteria for Directors' Liability Based on Unlawful Acts (Onrechtmatige Daad) in Indonesian Civil Law

The liability of directors in Indonesian Limited Liability Companies (Perseroan Terbatas/PT) based on unlawful acts is grounded in the civil law doctrine of *onrechtmatige daad*, as regulated under Article 1365 of the Indonesian Civil Code. This provision establishes that “any unlawful act that causes harm to another party obliges the person who commits the act to compensate for the loss”.<sup>23</sup> Within the corporate context, this principle becomes relevant when directors, in performing their managerial functions, engage in conduct that violates legal norms and causes losses either to the company, shareholders, or third parties.<sup>24</sup> The application of *onrechtmatige daad* to directors is not automatic; rather, it is determined through a cumulative assessment of four essential legal criteria: unlawful act, fault, loss, and causal relationship.

#### 1. Unlawful Act

The first and most fundamental criterion is the existence of an unlawful act. Indonesian civil law adopts a broad interpretation of unlawfulness, especially following the expansion of the doctrine after the landmark *Lindenbaum-Cohen* approach, which moved beyond mere statutory violations to include breaches of propriety, fairness, and societal norms.<sup>25</sup> In the corporate setting, directors are considered to commit an unlawful act when their decisions or actions violate statutory provisions, the company's articles of association, resolutions of the

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<sup>22</sup> Indah Herlina, and Bambang Slamet Riyadi, “Conflict of Law Enforcement by State Institutions over Abuse of Power and Authority: A Case Study of “Former President Director of PT. Pertamina, “*International Journal of Criminology and Sociology* 9 (2020): 2749. See also, Ferdy Saputra et al., “Resolution of the Jiwasraya insurance case: Government perspective on ensuring legal certainty and justice, “*Jurnal Hukum Novelty (1412-6834)* 16, no. 2 (2025): 45.

<sup>23</sup> Serimin Pinem Runtung et al., “Alternative dispute resolution in traffic accidents in North Sumatera highway, “In *IOP Conference Series: Earth and Environmental Science*, vol. 452, no. 1, IOP Publishing, (2020), 12074.

<sup>24</sup> Desmilia Eka Andriana et al., “Legal Standing and Organization's Right to Sue in Cases of Onrechtmatige Overheidsdaad (Unlawful Government Acts) After the Implementation of Law No. 30 of 2014, “*Nurani: jurnal kajian syari'ah dan masyarakat* 23, no. 2 (2023): 284. See also, Jordy Herry Christian, “Juridical Study of Unlawful Acts as Factors in Cancellation of Auctions on Guaranteed Objects, “*Lex Scientia Law Review* 3, no. 2 (2019): 208.

<sup>25</sup> Khairandy, *Hukum Perseroan Terbatas*, 74.

General Meeting of Shareholders (GMS), or unwritten standards of business conduct.

As noted in doctrinal literature, directors are bound to comply with multiple layers of legal norms, including formal regulations and corporate governance principles. Any deviation from these obligations—such as acting beyond authority (*ultra vires*), ignoring GMS decisions, or violating fiduciary obligations—may be classified as an unlawful act.<sup>26</sup> Thus, unlawfulness in this context is not limited to statutory breaches but extends to violations of good governance and professional standards expected in corporate management.

The broader Indonesian understanding of *onrechtmatige daad* also reinforces this element. It includes any act that violates legal rights, obligations, or norms and results in harm to others.<sup>27</sup> Therefore, directors' conduct is assessed not only against written law but also against evolving standards of reasonableness in business conduct.

## 2. Fault (Intent or Negligence)

The second criterion is fault (*schuld*), which is a subjective element central to establishing liability. Fault may take the form of intentional misconduct (*dolus*) or negligence (*culpa*). Intentional fault occurs when a director knowingly engages in conduct that leads to harm, while negligence arises when a director fails to exercise the standard of care expected from a reasonable and prudent director.<sup>28</sup>

In corporate governance practice, negligence is the more frequently examined form of fault. Directors are required to exercise due care, prudence, and diligence in managing company affairs. Failure to adequately supervise transactions, ignoring financial risks, or making uninformed decisions may constitute negligence.<sup>29</sup> The standard applied is not perfection but reasonableness whether a competent director in a similar position would have acted differently under comparable circumstances.

Indonesian jurisprudence emphasizes that fault is essential in determining liability. Courts require evidence that directors failed in their duty of care or acted with disregard for corporate interests. This aligns with the broader civil law principle that liability is not strict but fault-based.<sup>30</sup> As a result, plaintiffs must demonstrate that the director's conduct deviated from acceptable professional standards.

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<sup>26</sup> Christian, "Juridical Study of Unlawful Acts," 209.

<sup>27</sup> Runtung et al., "Alternative dispute resolution," 12075.

<sup>28</sup> Gunawan Widjaja, "Tanggung jawab direksi atas kepaillitan perseroan," *Language* 16, no. 315 (2003): 21.

<sup>29</sup> Tri Lisiani Prihatinah et al., "Legal Aspect in the Financial Service Industry's Default in Indonesia," *Pakistan Journal of Life & Social Sciences* 22, no. 2 (2024): 46.

<sup>30</sup> Irma Rachmawati, "The Transformation from Fault Liability to Strict Liability: A Cutting-edge Indonesian Maritime Tort Law," In *E3S Web of Conferences*, vol. 622, EDP Sciences, (2025), 26.

### 3. Existence of Loss

The third criterion is the existence of a loss. Under Indonesian civil law, compensable loss includes both actual material losses (*damnum emergens*) and lost profits (*lucrum cessans*).<sup>31</sup> This broad conception ensures that victims of unlawful acts are not only compensated for direct financial damage but also for economic opportunities that were reasonably expected but lost due to the unlawful conduct.

In the context of directors' liability, losses may arise in various forms, such as financial losses to the company due to mismanagement, loss of shareholder value, or harm suffered by third parties due to contractual breaches or fraudulent conduct. Importantly, the loss must be concrete and measurable, not hypothetical. Courts require clear evidence of economic harm before imposing liability.

The inclusion of both actual and potential profits reflects the compensatory nature of Indonesian tort law, aiming to restore the injured party to the position they would have been in had the unlawful act not occurred. However, courts remain cautious in awarding speculative damages, requiring a reasonable degree of certainty in quantification.

### 4. Causal Relationship

The final criterion is the existence of a causal relationship between the unlawful act and the resulting loss. Indonesian civil law applies the doctrine of adequate causation (*adequate veroorzaking*), which requires that the loss be a natural and foreseeable consequence of the unlawful act.<sup>32</sup> This means that liability arises only when the director's conduct is sufficiently connected to the harm in a legally relevant way.

Causation serves as a limiting principle, preventing overly expansive liability. Even if an unlawful act and loss exist, liability will not arise unless the loss can be directly attributed to the director's conduct. Courts assess whether the harm would have occurred in the normal course of events without the director's actions.

In practice, proving causation is often the most complex element. Plaintiffs must demonstrate a clear link between managerial decisions and financial or operational harm. If intervening factors break the chain of causation, liability may be denied.

Indonesian courts apply these four elements cumulatively. All must be proven for liability to be established. A notable example is Decision No. 27/Pdt.G/2019/PN.JKT.PST, where directors were held personally liable for fraudulent actions against business partners. The court found that the directors committed unlawful acts, acted with fault, caused measurable losses, and that a

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<sup>31</sup> Yahya Harahap, *Hukum perseroan terbatas* (Jakarta: Sinar Grafika (Bumi Aksara), 2021), 54.

<sup>32</sup> Sutan Remy Sjahdeini, "Tanggung Jawab Pribadi Direksi dan Komisaris," *Jurnal Hukum Bisnis* 14 (2001): 99.

direct causal link existed between their conduct and the harm suffered.<sup>33</sup> This case illustrates that *onrechtmatige daad* is not merely theoretical but actively applied in corporate disputes. Courts carefully assess whether directors' actions deviate from legal and ethical standards and whether such deviations result in compensable harm.

Overall, the findings showed that the liability of directors under the doctrine of unlawful acts (*onrechtmatige daad*) operates within the limitation framework of Law Number 40 of 2007, where liability is not automatic but must satisfy cumulative legal criteria. Indonesian civil law requires proof of unlawful conduct, fault, loss, and causation as interconnected elements of liability.<sup>34</sup> In corporate practice, directors may only be held personally liable when their managerial actions deviate from fiduciary standards and cause measurable harm to the company or stakeholders.<sup>35</sup> Judicial approaches also emphasize that breaches of good corporate governance and CSR obligations may strengthen the assessment of unlawfulness in directors' conduct.<sup>36</sup> Furthermore, Indonesian courts consistently apply a fault-based system, ensuring that liability arises only when negligence or intent can be demonstrated alongside a clear causal link to losses.<sup>37</sup> Thus, directors' liability remains carefully bounded to preserve managerial discretion while ensuring accountability under strict evidentiary requirements.

### **3.3. Application of the Piercing the Corporate Veil Doctrine in Imposing Personal Liability on Directors**

The doctrine of piercing the corporate veil constitutes one of the most significant exceptions to the principle of separate legal personality in company law. In Indonesian corporate law, this doctrine functions as a corrective mechanism to prevent abuse of the limited liability principle by directors or controlling persons who use the company as an instrument of fraud, injustice, or unlawful conduct.

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<sup>33</sup> Hikmahanto Juwana, "Tanggung Jawab Direksi dalam Pengelolaan Perseroan," *Jurnal Hukum Bisnis* 22, no. 4 (2003): 5.

<sup>34</sup> Christian, "Juridical Study of Unlawful Acts," 210. See also, Runtung et al., "Alternative dispute resolution," 12076.

<sup>35</sup> Peter Little, and Kamarul Bahrin Kam, "Company Law in Indonesia," In *Company Law in East Asia* (London: Routledge, 2018), 479. See also, Lumentut, "Reconceptualizing Fiduciary Duties," 32.

<sup>36</sup> Abdul Rachmad Budiono et al., "The meaning of corporate social responsibility as a legal obligation in limited company law: An Indonesian case study," *International Journal of Innovation, Creativity and Change* 12, no. 11 (2020): 514. See also, Wetria Fauzi, and Andalusia Andalusia. "Challenges of the board of commissioners in strengthening good cooperate governance in state-owned insurance companies in indonesia," *International Journal of Entrepreneurship* 25, no. 6 (2021): 9.

<sup>37</sup> Atika Wulan Dari et al., "Akibat Hukum Surat Pertanggungjawaban Laporan Tahunan Yang Tidak Ditandatangani oleh Seluruh Dewan Komisaris," *Volkgeist: Jurnal Ilmu Hukum dan Konstitusi* 3, no. 2 (2020): 135.

Although the Limited Liability Company (Perseroan Terbatas/PT) is designed as a separate legal entity with distinct rights and obligations, Indonesian law recognizes that such separation is not absolute. When directors misuse this legal protection, courts may disregard the corporate personality and impose personal liability.

The principle of limited liability is explicitly recognized under Article 3 paragraph (1) of Law Number 40 of 2007 on Limited Liability Companies (UUPT), which states that shareholders are not personally liable for the company's obligations beyond their share ownership. However, while this provision primarily regulates shareholders, Indonesian jurisprudence and doctrine extend the logic of separation also to directors in certain contexts.

The piercing the corporate veil doctrine operates as an equitable exception to this principle. As stated by Ais<sup>38</sup> “piercing the corporate veil is a legal instrument that allows the court to penetrate the principle of limited liability and impose direct responsibility on the company's directors or shareholders.” This doctrine ensures that the corporate entity cannot be used as a shield for unlawful conduct.

Indonesian legal scholars and judicial practice align this doctrine with broader tort principles under Article 1365 of the Civil Code (*onrechtmatige daad*), which provides that any unlawful act causing harm obligates the perpetrator to compensate the loss.<sup>39</sup> Thus, veil piercing is not an isolated corporate law mechanism but is deeply connected to civil liability for unlawful act. Indonesian legal doctrine and company law practice establish several conditions under which courts may disregard corporate personality and impose personal liability on directors. These conditions reflect a cumulative threshold rather than a single standalone criterion.<sup>40</sup>

One of the most recognized grounds is the use of the company as an instrument of fraud or deception. Directors who deliberately use the company to mislead creditors, business partners, or regulators may be held personally liable. Budiarto<sup>41</sup> emphasizes that veil piercing applies when the company is used “as a tool to commit fraud or deception against creditors.” This reflects the anti-abuse rationale of the doctrine. Judicial practice confirms this approach. In Decision Number 27/Pdt.G/2019/PN.JKT.PST jo. 367/PDT/2020/PT.DKI, the court held directors personally liable after finding fraudulent conduct in business

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<sup>38</sup> Chatamarrasjid Ais, *Menyingkap tabir perseroan (piercing the corporate veil): kapita selekta hukum perusahaan* (Bandung: Citra Aditya Bakti, 2000), 76.

<sup>39</sup> Runtung et al., “Alternative dispute resolution,” 12078.

<sup>40</sup> G. F. Bell, Formation of contract and stipulations for third parties in Indonesia, In *Studies in the Contract Laws of Asia II: Formation and Third Party Beneficiaries*, 2018. See also, Luther Lie, and Yetty Komalasari Dewi, “An Ineffective Institutional Investors Law in Indonesia? Why Bother,” *Indon. L. Rev.* 11 (2021): 231; Budiono et al., “The meaning of corporate social,” 516.

<sup>41</sup> Agus Budiarto, *Kedudukan hukum dan tanggung jawab pendiri perseroan terbatas* (Bogor: Ghalia Indonesia, 2002), 43.

transactions. The court reasoned that corporate personality cannot be used to protect unlawful acts, reinforcing the idea that legal personality is conditional upon lawful conduct.

Another important criterion is the commingling of assets between directors and the company. When directors fail to maintain a clear separation between personal and corporate finances, the foundational assumption of limited liability is undermined. This condition reflects the violation of corporate separateness, which is essential to maintaining legal personality. Such conduct is often interpreted as evidence of bad faith and supports judicial disregard of the corporate entity. It demonstrates that the company is not functioning as an independent legal subject but as an extension of personal interests.

Directors may also face personal liability if the company fails to comply with statutory requirements or governance formalities. This includes failure to maintain proper corporate records, hold required meetings, or comply with regulatory obligations. Such omissions indicate negligence in corporate governance and may justify piercing the veil when they result in harm to third parties. A further ground is the use of the company structure to avoid existing legal obligations. This includes attempts to escape contractual debts, statutory duties, or regulatory liabilities. Budiarto<sup>42</sup> identifies this as a key condition where directors intentionally structure corporate conduct to evade responsibility. Courts are particularly strict in cases where corporate restructuring or manipulation is used to frustrate creditor rights.

In Indonesian corporate governance, directors are bound by fiduciary duties, including the duty of care and duty of loyalty. These duties require directors to act in good faith, with prudence, and in the best interest of the company.<sup>43</sup> When directors breach these obligations, especially through bad faith conduct, courts may extend liability beyond the corporate entity. Negara<sup>44</sup> to fulfill fiduciary duties, particularly under the piercing the corporate veil doctrine. For instance, in Medan District Court Decision No. 656/Pdt.G/2015/PN.Mdn, directors were held personally responsible for company losses due to negligence and bad faith conduct. This demonstrates that fiduciary breach is not merely an internal governance issue but can escalate into external liability when it results in harm to stakeholders or abuse of corporate structure.

Indonesian Company Law explicitly regulates director liability in bankruptcy situations. Article 104 paragraph (2) of UUPT provides that: “In the event of bankruptcy caused by fault or negligence of the Board of Directors and the

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<sup>42</sup> Budiarto, *Kedudukan hukum dan tanggung jawab*, 44.

<sup>43</sup> Yafet Yosafet Wilben Rissy, “Analisis Yuridis Terkini terhadap Kewajiban Berhati-hati (Duty of Care) dan Fidusia Direktur di Inggris, Amerika, Kanada dan Indonesia, “ *Recent Legal Analysis on Duty of Care and Fiduciary Obligations of Directors in England, America, Canada and Indonesia* “. *Mimbar Hukum* 34 (2022): 543.

<sup>44</sup> Negara, The doctrine of piercing the corporate veil.

bankruptcy estate is insufficient to cover all company obligations, each member of the Board of Directors shall be jointly and severally liable for the unpaid obligations.” This provision represents a statutory form of veil piercing in insolvency contexts. It establishes that directors cannot rely on limited liability protection if their negligence or misconduct contributes to bankruptcy. The principle reflects a strong accountability mechanism aimed at preventing managerial abuse and protecting creditors.

Indonesian courts have increasingly applied veil piercing in cases involving fraud, negligence, and abuse of corporate structure. Judicial reasoning often emphasizes substance over form, meaning that courts prioritize actual conduct rather than formal corporate separation. For example, in Decision Number 27/Pdt.G/2019/PN.JKT.PST, the court explicitly rejected the argument of limited liability protection because the directors’ actions constituted fraudulent behavior. However, judicial application is not always uniform. Some scholars note inconsistencies in interpretation and evidentiary standards, which can create uncertainty in enforcement.<sup>45</sup>

The Business Judgment Rule (BJR) is intended to protect directors from liability for business decisions made in good faith and with due diligence.<sup>46</sup> However, in Indonesia, its application remains underdeveloped and inconsistently interpreted.<sup>47</sup> As a result, directors may still face personal liability even when acting within business discretion, especially when courts interpret actions as negligence or bad faith. This weak protection increases the likelihood of veil piercing being applied in practice, particularly in cases involving financial loss, insolvency, or allegations of misconduct.

Overall, the application of the piercing the corporate veil doctrine in Indonesia reflects a balance between two competing legal principles: the protection of limited liability and the need to ensure accountability. While limited liability promotes investment and economic activity, unchecked protection may lead to abuse. Thus, Indonesian law positions veil piercing as a corrective doctrine aimed at ensuring justice and preventing misuse of corporate form. It reinforces the principle that corporate personality is a privilege conditioned on lawful and responsible conduct.

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<sup>45</sup> M. Aunul Hakim, and Sheila Kusuma Wardani Amnesti, “Problematika penanganan gugatan perbuatan melanggar hukum oleh pemerintah (onrechtmatige overheidsdaad) pada Peradilan Tata Usaha Negara,” *De Jure: Jurnal Hukum dan Syari’ah* 14, no. 1 (2022): 128.

<sup>46</sup> Chandra Noviardy Irawan et al., “Implementation of Business Judgment Rules in Indonesia: Theories, Practices, and Contemporary Cases,” *Indonesian Journal of Advocacy and Legal Services* 4, no. 1 (2022): 11.

<sup>47</sup> Jatna et al., “Strengthening the Business Judgment,” 573.

#### 4. Conclusion

Based on the discussion presented, it can be concluded that the liability of directors for losses of a limited liability company in Indonesia is primarily grounded in fiduciary duty, which consists of the duty of care and the duty of loyalty. Law Number 40 of 2007 concerning Limited Liability Companies requires directors to act in good faith, prudently, and in the best interest of the company. When directors fail to meet these standards and their conduct results in corporate losses, they may be held personally liable, including on a joint and several basis where decisions are made collectively, unless absence of fault can be proven.

Director liability is further strengthened through the doctrine of unlawful acts (*onrechtmatige daad*) under Article 1365 of the Civil Code, which requires the existence of an unlawful act, fault or negligence, actual loss, and a causal relationship between the act and the damage. When these cumulative elements are fulfilled, personal liability may arise beyond internal corporate governance mechanisms.

The Business Judgment Rule provides limited protection by shielding directors from liability for decisions made in good faith, with due care and adequate information, and without conflicts of interest. However, its application in Indonesia remains inconsistent, reducing legal certainty for directors in practice. In contrast, the piercing the corporate veil doctrine operates as a corrective mechanism that allows courts to disregard separate legal personality where the company is misused for fraud, asset commingling, evasion of legal obligations, or bad faith conduct, thereby imposing direct personal liability on directors.

In terms of implications, Indonesian corporate law reflects a dual-track accountability system that balances managerial protection and legal responsibility. However, the inconsistency in applying the Business Judgment Rule and veil piercing creates uncertainty in enforcement. Therefore, it is recommended that Indonesia strengthen statutory clarification of fiduciary duties, codify clearer standards for the Business Judgment Rule, and provide more consistent judicial guidelines on veil piercing. These reforms are necessary to enhance legal certainty, improve corporate governance, and ensure fair but predictable director accountability.

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