

Making Contracts by the Board of Commissioners to Represent Limited Liability Companies in Commercial Transactions

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Abstract

The supervisory board is eligible to represent a limited liability company, within and outside the court, including forming a contract in a commercial transaction, pursuant to its articles of incorporation and approval from its general meeting of shareholders if all directors are unavailable, involved in any conflict of interest, or suspended. According to the explanation, this article discusses the validity of the contract formed by the supervisory board and its legal consequences. For addressing such issues, conceptual and statute approaches are adopted. After the analysis, the contract concluded by the supervisory board remains valid and binding if it fulfills requirements for the valid contract, laws, and the articles of incorporation. Therefore, the supervisory board is capable of acting on the company's behalf under relevant rules. As a suggestion, the supervisory board is required to understand and exercise its authority in accordance with laws and related articles of incorporation.

Keywords: supervisory board; contract; limited liability company.

Abstrak

Dewan Komisaris dapat mewakili Perseroan Terbatas di dalam maupun di luar pengadilan, termasuk membuat kontrak dalam transaksi komersial, menurut Anggaran Dasar dan persetujuan Rapat Umum Pemegang Saham jika seluruh anggota Direksi berhalangan, memiliki benturan kepentingan, atau diberhentikan untuk sementara. Berdasarkan uraian tersebut, tulisan ini membahas keabsahan kontrak yang dibuat oleh Dewan Komisaris dan akibat hukum terhadap kontrak yang dibuatnya. Untuk menjawab isu-isu tersebut, pendekatan konseptual dan pendekatan perundang-undangan digunakan. Setelah analisis, kontrak yang dibuat oleh Dewan Komisaris tetap sah dan mengikat asalkan memenuhi syarat-syarat keabsahan kontrak, peraturan perundang-undangan, dan Anggaran Dasar Perseroan Terbatas. Oleh karenanya, Dewan Komisaris bisa membuat kontrak untuk mewakili Perseroan Terbatas dengan ketentuan-ketentuan yang relevan. Sebagai saran, Dewan Komisaris wajib mengerti dan menggunakan wewenangnya sesuai dengan peraturan perundang-undangan dan Anggaran Dasar Perseroan terbatas yang bersangkutan.

Kata kunci: dewan komisaris; kontrak; perseroan terbatas.

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Introduction

The form of a Limited Liability Company (PT) legal entity is widely chosen and used by entrepreneurs because PT has a beneficial characteristic for these entrepreneurs in seeking and obtaining profit in commercial transactions. This characteristic is that PT has separate assets from investors or shareholders, Directors, and Board of Commissioners who are not responsible for their personal assets as long as they act for and on behalf of

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the PT and carry out their duties following the prevailing laws regulations. A PT is juridically a legal entity and an independent legal subject (*persona standi in iudicio*) separate from the PT individuals. PT functions like an individual; that is, it can have property, sue and be sued according to the law, buy or sell its assets, give or receive a gift from another party, accept a transfer of a bill that is the right of another person, have an obligation to pay debts or other bills to other parties, receiving or providing loans, bankruptcy, and others (Wardhana, 2019).

As a legal entity, PT in running its business is carried out by the Board of Directors as one of the organs of a legal entity, among other organs, namely the General Meeting of Shareholders (GMS) and the Board of Commissioners. Article 1, number 5 of Law Number 40 of 2007 concerning Limited Liability Companies (PT Law) juncto (jo.) Law Number 11 of 2020 concerning Job Creation (Job Creation Law), the Board of Directors is the "Company organ that is authorized and responsible full management of the Company for the benefit of the Company, following the purposes and objectives of the Company and representing the Company, both inside and outside the court following the provisions of the Articles of Association. "Meanwhile, the Board of Commissioners is "the Company's organ in charge of conducting general and/or specific supervision following the Articles of Association and providing advice to the Board of Directors" (Article 1 number 6 of the PT Law in conjunction with the Job Creation Law).

The PT organs' legal actions are obliged based on the Articles of Association (AD) of the PT. AD is an internal regulation containing the duties and authorities of PT. There is the *ultra vires*' principle in company law, which imposes violators to bear all types of losses they cause (Prasetya, 2013). Examples of violations can be acting not following the authorities stipulated in the AD or statutory regulations. One of PT's legal actions to carry out its business activities is to make a contract with another party, which is represented by one of the authorized organs, namely the Board of Directors. Apart from the Board of Directors, based on Article 118 of the PT Law, Article 32 paragraphs (1) and (2) of Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN Law) and the Employment Creation Law, the Board of Commissioners is authorized to carry out the duties of the Board of Directors as Management of PT and third parties if the Board of Directors is absent or unavailable for some reason, for example having a conflict of interest with the Company or being absent, or temporarily suspended.

In practice, many members of the Board of Commissioners who are concurrently shareholders of the PT concerned take legal actions both in management and ownership without the GMS's approval or are not following their duties and authorities stipulated in the Law on PT and AD. This was carried out by the member of the Board of Commissioners because he felt free to act as the owner or authority of the PT. PT should be represented by the authorized Board of Directors or other authorized PT organs following the PT or AD Law. The relevant Board of Commissioners often does this, especially in making contracts related to commercial transactions, such as sale and purchase, which use the member of the Board of Commissioners' personal name as if he were in the contract phase,

but he actually represented the PT concerned. The Board of Commissioners' member acts for his benefit because the PT provides capital to the relevant Board of Commissioners. For example, A, as a member of the Board of Commissioners of PT B, makes a sale and purchase contract with C, which is an individual. A lists himself as the buyer for and on behalf of PT B and C as the seller. A without the approval of the GMS commits legal actions that are not following his duties and authorities according to the Law on PT or AD PT.

The actions of the board of Commissioners actions create problems with the validity of PT's contracts, which is represented by the Board of Commissioners, which can cause harm to the opposing party and third parties. If one of the opposing parties or the third party feels aggrieved by an unauthorized member of the Board of Commissioners' actions, they will file a lawsuit regarding the contract that has been made.

Research Problems

Based on the explanation regarding the legal actions of the members of the Board of Commissioners of the Limited Liability Company above, the formulations of the problems that arise are, First, the validity of the contract made by the Board of Commissioners to represent the Limited Liability Company in commercial transactions, and Second, the legal consequences of the contract made by the Board of Commissioners. to represent Limited Liability Companies in commercial transactions.

Research Methods

In answering the problem formulations above, the writer uses a conceptual approach and a statute approach. The main sources of law used are the Civil Code (KUH Perdata), the *Het Herzien Inlandsch Reglement* (HIR) or the updated Indonesian Reglemen (RIB), Law Number 40 of 2007 on Limited Liability Companies (UU PT), and Law -Law Number 11 of 2020 concerning Job Creation (Job Creation Law). Secondary sources of law are books, journals, and legal doctrines. The legal materials were then analyzed qualitatively. The analysis is carried out by interpreting and connecting the legal materials, then making conclusions.

Discussion

The Validity of the Contract made by the Board of Commissioners to Represent the Limited Liability Company in Commercial Transactions

Article 1313 of the Civil Code (KUH Perdata) states that an agreement is "an act in which one or more people bind themselves to one or more people." The words "agreement" and "contract" have the same meaning based on the title of the second chapter of Book III of the Civil Code on "Agreements Born from Contracts or Agreements" (Hernoko, 2013). The engagement occurs because of a contract or law following Article 1233 of the Civil Code. Furthermore, according to Article 1234 of the Civil Code, the forms of achievement are "to give something, to do something or not to do something." The forms of achieve-

ment are alternative; that is, you can choose one, several, or all of them. Therefore, these achievements can be arranged separately or collectively in a contract as long as they do not conflict with compelling provisions (*dwingend recht*). With the achievement, the relationship between the engagement and the contract is a contract that gives rise to an engagement.

An engagement results in rights and obligations because each contract will always create an engagement, so the contract will also create rights and obligations for the parties who make the contract (Afrilia, Rinaldi, & Suhaimi, 2019). With the existence of a contract, the parties who enter into the contract voluntarily commit themselves to perform their performance for the interests and benefits of the parties in the contract, which must be born from the will of the parties and carried out based on the intentions of the parties making the contract. This engagement is different from an engagement born out of the law, which obliges one or more parties to the engagement, even though they do not actually want it.

An agreement born because of an agreement or contract is regulated in Book III of Chapter Two of the Civil Code. The third book of the Civil Code is open, which contains regulatory provisions (*regelend recht*) so that the parties to the contract can set them aside if they wish (Isnaeni, 2018). Apart from being regulatory in nature, Book III of the Civil Code has compelling provisions (*dwingend recht*), namely provisions that must be obeyed and cannot be distracted by the contract parties (Isnaeni, 2018). Because Book III of the Civil Code has an open and closed nature, open provisions can be distorted, replaced, and deleted as long as they do not contradict coercive provisions.

Regulatory and coercive provisions, both in the Civil Code and other statutory regulations, apply to commercial transactions. A commercial transaction is a transaction that aims to obtain profit directly or indirectly. One example of a commercial transaction is buying and selling. Based on Article 1457 of the Civil Code, sale and purchase are agreements whereby one party binds himself to deliver an object and the other party to pay the agreed price. The buyer is the party who pays the price, while the seller is the party who delivers the merchandise. In everyday life, buyers and sellers seek to profit from each other because buyers need goods sold and sellers need payment results. To fulfill the needs of a commercial transaction, contracts can be made either in writing or orally. The contract is obliged to comply with regulatory and coercive conditions to facilitate the parties' needs in a commercial transaction. By fulfilling these provisions, the contracting parties can obtain benefits following the applicable legal provisions, both regulating and compelling.

Forcing provisions are found in Chapter I to Chapter IV of Book III of the Civil Code. The provisions that are forcing include the terms of the validity of the contract as stipulated in Article 1320 of the Civil Code, namely:

1. to agree that those who bind themselves;
2. the ability to make an engagement;
3. a certain thing; and

4. a cause that is allowed.

The agreement has the meaning that the parties mutually state their respective intentions to make a contract and their wills' suitability (Supriyadi, 2016). Will is stated in an explicit written manner and an act that indicates the intention to make a contract. The contract is valid if it has agreed on basic matters, and no formalities are required unless otherwise stipulated. The exemption is regulated in the statutory regulations regarding certain formalities for several types of agreements, such as a written peace agreement with a Notary deed, an agreement to grant immovable objects with deeds made by the Land Deed Making Official (PPAT), and others (Fauzansyah, Yahya, & Jauhari, 2019). If it does not fulfill these conditions, the contract is null and void. Based on this, the failure to fulfill certain formal conditions required by statutory regulations causes the contract to be null and void.

The agreement includes two elements: the offer and acceptance (Wagian, 2015). Offer means a statement of a will that contains a proposal to make a contract, while acceptance means a statement of approval from the party receiving the offer (Widyantoro & Kurniawan, 2020). The suitability of will and statement can be tested with three theories (Mulyati, 2017):

1. The theory of will (*wilsleer; wilstheorie*), which states that a contractual relationship is born only when the statement and the will actually agree. The weakness of this theory is that it is difficult to determine its correctness in legal traffic, so there is always a question of legal certainty regarding the birth of a contractual relationship;
2. The theory of statements (*verklaringsleer, verklaringstheorie*), which states that a person or party is bound by the statements they make. The weakness of this theory is if a statement turns out to be incompatible with the will; and
3. The theory of belief (*vertrouwensleer, vertrouwenstheorie*), namely the middle way theory which accommodates the weaknesses and deficiencies of the two previous theories. This theory says that the statement on which the contractual relationship is based is a statement that should give birth to the belief that it is following the will.

Based on the theories described above, the theory adopted in Indonesian law is a belief theory because it is a theory that is formed to overcome weaknesses in the will theory and statement theory to generate trust between the parties so that the will and statement can be adjusted to the wishes of the parties. Therefore, belief theory is used to test the existence of will and statements, which are elements of the agreement.

According to Riduan Syahrani (Hernoko, 2013), there are four theories in the agreement, namely:

1. *Uitings theorie* (theory of the birth of the will). According to the theory of volition, a contract is born when the other party is willing to accept the other party's offer.
2. *Verzend theorie* (theory when sending acceptance letters). In this theory, the contract is born at the time the acceptance letter is sent to the prospective recipient.
3. *Ontvangs theorie* (theory when receiving acceptance letters). In this theory, the contract is born when the acceptance letter arrives at the recipient's address.

4. *Vernemings theorie* (theory when knowing the acceptance letter). In this theory, a new contract is born if the recipient has opened and read the acceptance letter.

In court decisions in the Netherlands and Indonesia, the *vernemings theorie* is mostly applied. This theory is most widely used because the bidder and recipient already know the information about the offer and there is almost no way to find a situation where only one of the parties knows or understands the offer. In other words, the theory can bridge the agreement entered into by the contracting parties.

If the parties have mutual knowledge and understanding of the offer given, the parties can agree upon having equal wishes or jointly agree to their wishes. The agreement of the parties can be affected if there is a defect of will, namely heresy (*dwaling*), coercion (*dwang*), and deception (*bedrog*). Based on Article 1322 to Article 1328 of the Civil Code, the legal consequence of having a defect of will is that it can be canceled. With the result that can be canceled, a contract that accommodates contradictory wills may not bind the contracting parties in all transactions.

Furthermore, the proficiency requirement to make an engagement is included in the ability to perform legal acts. The ability to take legal actions is generally tested based on the following criteria (Setiawan & Sjafii, 2019): Individual (Person): according to maturity age (*meerderjarig*); and Legal Entity (Rechtsperson): according to authority (*bevoegheid*). Article 1330 of the Civil Code stipulates that persons who are incapable of making a contract are:

1. People who are not yet mature. The age of adults is regulated in Articles 47 and 50 of Law Number 1 Year 1974 jo. Law Number 16 Year 2019 Concerning Marriage (Marriage Law) states that the adult age is 18 years because they are not under the control of their parents or are already married;
2. Those who are placed under interdiction; and
3. Women in matters stipulated by law, and all persons to whom the law has prohibited the making of certain agreements. This provision does not apply because Article 31 paragraph (2) of the Marriage Law states that husband and wife have the right to take legal actions.

In a legal entity, an organ has the authority to represent it both inside and outside the court, which is regulated in statutory regulations and the articles of association of the legal entity concerned. For example, a foundation is represented by a Management consisting of the Chairman, Secretary, and Treasurer, while the Board of Directors represents a Limited Liability Company (PT)s. The legal consequence is that if the terms of the agreement and skills, namely the contract's subjective terms, are not fulfilled, the contract that is made can be canceled (Putra & Alfathania, 2020).

A certain thing as a condition for the validity of a contract is an achievement that is the essence of a contract. The achievement is the task of the parties that can involve objects. Objects or objects that can be used as the core of a contract are objects or objects that can be traded, their type can be determined, and at the time or after making the contract, the amount can be determined, which can be found in Article 1332 and Article

1333 of the Civil Code (Sujatmiko, 2008). In Article 1334 of the Civil Code, objects that will exist in the future can also be part of a contract. In the Dutch Civil Code, the object is translated from the word "*zaak*." The word "*Zaak*" in Article 1333 of the Civil Code or Article 1369 of the Dutch Civil Code, according to the Dutch Indonesian General Dictionary by Wojowasito, can be interpreted as: objects (goods); business (company); disputes/cases; subject matter; something that is required (must); and not important.

If the above meanings are connected with Article 1320 of the Civil Code number 3, namely "a certain matter," the word "thing" comes from the Dutch language *onderwerp*, which can also mean "the subject of description or subject (or subject matter)," then *zaak* more accurately translated as the subject. *Zaak* in Articles 1332, 1333, and 1334 of the Civil Code is more suitable to be translated as the subject matter because the subject or object of the contract can contain not only objects or goods but also services as a work contract. A contract must contain a specific subject or object for it to be implemented. In other words, the conditions that must be fulfilled to become the subject or object of the contract include:

1. Goods that can be traded (Article 1332 of the Civil Code);
2. An item that can be determined for its type (Article 1333 of the Civil Code) does not become an obstacle in that the amount is not certain, as long as the amount can be determined or calculated at a later date; and
3. Items that will be there in the future (Article 1334 paragraph (1) of the Civil Code).

Meanwhile, the items prohibited from becoming the subject or object of the contract are:

1. Goods outside of trade, such as official weapons used by the state, etc;
2. Items prohibited by statutory regulations, such as drugs, and others; and
3. Inheritance that has not been disclosed (Article 1334 paragraph (2) of the Civil Code).

To be able to carry out a contract made by the parties, the subject or object of a contract must fulfill the conditions mentioned above. If there is an object that does not meet the conditions, that is, the prohibited object is part of the contract or the object cannot be determined, then the contract becomes null and void and is not binding.

Regarding a cause or *causa* that is allowed, Article 1336 of the Civil Code regulates that if there is no cause, but there is a cause that is allowed or a cause that is different from what is stated, the agreement is valid. If a contract has no cause or thing or is made with false or prohibited causes, then the contract has no power according to Article 1335 of the Civil Code (Pertiwi, 2018). In Article 1337 of the Civil Code, the contract's causes or things are prohibited from contradicting statutory regulations, decency, or public order (Sujatmiko, 2010). Based on these Articles, a contract that contains a false or prohibited cause, or does not contain a clause, will be null and void by law.

To enter into a contract in a commercial transaction, we must understand the terms of the contract's validity. These conditions cannot be separated from contract law principles, such as the principle of freedom of contract in Article 1338 paragraph (1) of the Civil Code. The principle of freedom of contract reflects one of the characteristics of Book III of the Civil Code, which is open because there is the word "all" in Article 1338 paragraph

(1) of the Civil Code as long as it does not conflict with statutory regulations, public order, and morals. Freedom of contract includes (Isnaeni, 2020):

1. freedom to enter into or not to enter into contracts;
2. freedom to determine the legal subject or the parties to enter into a contract;
3. freedom to determine or choose the causa for the contract to be made;
4. freedom to specify objects or achievements in the contract;
5. freedom to choose the form of a contract; and
6. freedom to accept or deviate from the provisions of laws and regulations that are open (*regelend recht*).

From the types of freedom of contract above, the parties can determine the type of legal subject in the contract, namely people or individuals and legal entities. PT is a type of legal entity. Article 1 point 1 of the PT Law jo. The Job Creation Law states:

Limited Liability Company, hereinafter referred to as a Company, is a legal entity which is a capital alliance, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares or individual legal entities that meet the criteria of Micro and Small Businesses as regulated in statutory regulations. regarding Micro and Small Enterprises.

With this definition, PT is indeed a legal entity because the words "legal entity" are explicitly stated. The characteristics that distinguish PT from other legal entities are as follows (Setiawan & Sjafii, 2019):

1. capital association;
2. assets and debts of a PT that are separate from assets and debts of shareholders and other organs;
3. Shareholders:
 - a. Responsible only for what is paid (limited liability);
 - b. Not responsible for losses of PT that exceed the value of shares that have been subscribed; and
 - c. Not personally responsible for the engagement made on behalf of PT.
4. separate functions between the shareholders, the Board of Directors, or the Board of Commissioners;
5. there is a director who functions as an organ that manages and represents PT;
6. There is a Commissioner who functions as a supervisor; and
7. There is a General Meeting of Shareholders (GMS).

Based on these seven characteristics, the parties have the right to determine the type of party contracting the PT because PT is a certain legal entity that has assets separate from its organs, along with a division of duties for the organs, both for supervising and managing, including representing the PT.

In legal transactions, including commercial transactions, those who can carry out legal actions are legal subjects, namely legal persons and entities. Because PT is a legal entity, there are organs, namely the Board of Directors, the Board of Commissioners, and the GMS. In carrying out legal actions, such as making contracts, the Board of Directors

as management represents the PT inside and outside the court based on Article 1 point 5 jo. Article 92 paragraph (1) of the Law on PT. In Article 1, figure 6 jo. Article 108 paragraph (1) and paragraph (2) of the PT Law, the Board of Commissioners, shall supervise management policies, the course of management in general, both regarding the Company and the Company's business, and provide advice to the Board of Directors for the interest and following the aims and objectives of PT. The supervisory functions of the Company's Board of Commissioners include (Harahap, 2011):

1. Oversee the work of the Board of Directors and PT activities in general and specifically;
2. To temporarily suspend members of the Board of Directors from their positions;
3. Approve certain actions from the Board of Directors;
4. Check PT (including bookkeeping) in terms of supervision;
5. Provide advice to the Board of Directors and the General Meeting of Shareholders, whether requested or not;
6. Carry out special tasks from the Board of Directors if specifically appointed for it; and
7. Carry out special management obligations temporarily if the Board of Directors is absent if it is stipulated in the Articles of Association.

As explained above, the Board of Directors is authorized to represent the PT inside and outside the court, including making contracts in commercial transactions. The Board of Commissioners has the duty to supervise the PT in general and or specifically along with providing advice to the Board of Directors following the interests and aims and objectives of the PT, not for the interests of special parties or groups, and other duties according to laws and regulations and AD if given the authority, including performing management duties if the Board of Directors is absent.

Although there is no prohibition against being a shareholder (shareholder) and a member of the Board of Commissioners at the same time according to the PT Law, it is better if the two positions are not held simultaneously. The reason is to maintain professionalism and prevent shareholders from abusing the PT for their own interests as shareholders. If someone holds concurrent positions as a shareholder and member of the Board of Commissioners, then he/she is obliged to report the ownership of shares and/or his family to the relevant PT and other PT, including changes in ownership according to Article 116 letter b of the PT Law and recorded in a special register of PT and its explanation. This is done to reduce conflicts of interest that may exist in the PT concerned or other PT.

In the division of tasks, the Board of Directors and the Board of Commissioners differ because several members of the Board of Directors may have different duties and powers according to the GMS's resolution (article 92 paragraph (5) of the PT Law). In contrast, members of the Board of Commissioners cannot act individually but based on the Board of Commissioners' decision. (Article 108 paragraph (4) of PT Law). In terms of accountability, if more than one member of the Board of Directors or the Board of Commissioners is guilty or negligent, the members are jointly responsible according to Article 97 paragraph (3) and (4) jo. Article 114 paragraph (3) and (4) UU PT. In Article 97

paragraph (5) of the PT Law, members of the Board of Directors are exempted from responsibility for losses of PT if:

- a. The loss is not due to his fault or negligence;
- b. has carried out the management in good faith and prudently for the interest of 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. has taken steps to prevent the loss or its continuation.

Members of the Board of Commissioners are exempted from responsibility for losses of PT based on Article 114 paragraph (5) of the PT Law if:

- a. Has conducted supervision in good faith and prudently for the benefit of the Company and in accordance with the aims and objectives of the Company;
- b. does not have personal interest, either directly or indirectly, in the management of the Board of Directors which results in losses; and
- c. has provided advice to the Board of Directors to prevent the loss from occurring or continuing.

Based on the previous explanation, it can be concluded that there are differences in the way the division of duties is divided, and the accountability between the Board of Directors and the Board of Commissioners is similar. The difference is that the Board of Directors divides its duties and has different powers among its members. At the same time, the Board of Commissioners carries out supervisory duties jointly with its members. The similarity is that they can be exempted from responsibility if they carry out their duties in good faith, following the aims and objectives of the PT, and do not conflict with the laws and regulations and the AD PT.

In carrying out the positions of the Board of Directors and the Board of Commissioners, especially in representing the PT in making contracts, there must be obstacles. One of the obstacles is that members of the Board of Directors are absent or unable to carry out their positions (Setiawan & Sjafii, 2019). Members of the Board of Directors are not authorized to represent PT if:

1. In Article 99 paragraph (1) of the PT Law:
 - a. Article 99 a. there is a case in court between the PT and the member of the Board of Directors concerned; or
 - b. the member of the Board of Directors concerned has a conflict of interest with PT.
2. Members of the Board of Directors are dismissed in writing for a reason temporarily based on Article 106 paragraph (1), (2), and (3) of the PT.

Then, in Article 99 paragraph (2) and Article 118 paragraph (1) of the PT Law, if this situation occurs, then those who represent PT are:

- a. other members of the Board of Directors who do not have a conflict of interest with PT;
- b. The Board of Commissioners when all members of the Board of Directors have a conflict of interest with PT; or

- c. another party appointed by the GMS when a member of the Board of Directors or the Board of Commissioners has a conflict of interest with PT.

If a member of the Board of Directors cannot represent a PT, not because of a conflict of interest, there is a case in court with the PT concerned, or the member of the Board of Directors temporarily stops, the member of the Board of Directors may grant special powers to 1 (one) PT employee or more or other people. In writing to perform certain legal actions for and on behalf of the relevant PT based on Article 103 of the PT. Article 103 of the PT Law does not specifically regulate the granting of power of attorney. The provisions regarding the granting of power in Chapter XVI, Book III of the Civil Code apply to the granting of attorney's power for the Board of Directors. The granting of power in Article 1792 of the Civil Code is "an agreement whereby a person gives power to another person who receives it for and in his name to carry out an affair." A power of attorney constitutes a contract that can be made following the parties' wishes as long as it does not conflict with the validity of a contract. The meaning of granting special power is found in Article 1795 of the Civil Code, namely granting power only for one or more specific interests. To represent the Board of Directors, there is a special power of attorney because the representative only performs certain actions based on the power of attorney's contents.

The form of granting power of attorney is regulated in Article 1793 paragraph (1) of the Civil Code, namely:

1. General or Authentic Deed. In Article 1868 of the Civil Code, this deed is drawn up "in the form prescribed by law, drawn up by and before public officials who are in power for that place where the deed is done," including notaries, court clerks, civil registries, and others. ;
2. The letter under the hand. Article 1874 of the Civil Code provides that underhanded letters are "letters or writings that are signed and made on purpose to become evidence of an incident without going through a public official." This letter is made by interested parties without a public official by using a written seal;
3. Letters. This shape differs from the letter under the hand. Underhanded letter requires a seal, whereas in this form there is no need for a seal; and
4. Oral. This power of attorney is made without written form and only a sense of trust between the parties.

In connection with the granting of special powers by members of the Board of Directors, certain interests must be stated in writing. In practice and theory, the written forms used are general or authentic deeds and underhand letters. Based on Article 1867 of the Civil Code, written evidence is carried out using these forms. With no specific written form determined, the Board of Directors can freely determine whether an authentic deed or an underhand letter.

If no employee can be authorized, then, in my opinion, can authorize a member of the Board of Commissioners or another person to temporarily represent him to act on behalf of the PT concerned as long as that member of the Board of Commissioners acts as a Supervisor inside or outside the court, including commercial transactions, with good

faith, prudence, and be internally responsible for carrying out supervisory duties and providing advice to members of the Board of Directors based on Article 114 paragraph (2) of the PT. Other people here have a broad meaning because it means something other than employees. Members of the Board of Commissioners have “other” scope even though they are different from the Board of Directors' organs. The mechanism for granting a power of attorney to the board of directors can be further regulated in the Articles of Association (AD) of the relevant PT. If it is not specifically regulated in the AD, it will follow the Law's general provisions on PT. In other words, a member of the Board of Directors can authorize a member of the Board of Commissioners in writing for certain legal actions only if no employee can represent the member of the Board of Directors.

In addition to the power of the Board of Directors, members of the Board of Commissioners in certain circumstances can also carry out the management of the PT, namely representing the PT for a certain period in accordance with Article 118 paragraph (1) of the PT Law in terms of:

1. The Board of Directors has a conflict of interest with the Company (Article 99 paragraph (2) letter b of the PT Law); and
2. All members of the Board of Directors are absent or temporarily suspended (Article 107 letter c of the PT Law).

Members of the Board of Commissioners can carry out their management duties based on the provisions in the AD PT or the GMS decision of the PT concerned. The rights, powers, and obligations of the Board of Directors to PT and third parties also apply to members of the Board of Commissioners according to Article 118 paragraph (2) of the PT Law. Based on this, the Board of Commissioners can represent the PT if it obtains power of attorney from the Board of Directors in the form of authentic atka or underhand letter or special circumstances, namely there is a conflict of interest by the Board of Directors and no member of the Board of Directors is on duty temporarily. Thus, members of the Board of Commissioners will carry out management and supervisory duties jointly.

In making a commercial contract represented by a member of the Board of Commissioners, the contract legality requirements stipulated in Article 1320 of the Civil Code number 2, the element of authority can be fulfilled if the member of the Board of Commissioners can prove that he is indeed authorized by a member of the Board of Directors, a member of the Board of Directors has a conflict of interest or resolution of the GMS if the position of the Board of Directors is vacant. If the elements of Article 1320 of the Civil Code and its complement are fulfilled, the contract is legally formed. If Article 1320 point 2 of the Civil Code regarding authority, in this case, the member of the Board of Commissioners is not authorized, is not fulfilled, the contract can be canceled.

Based on the explanation above, members of the Board of Commissioners can represent PT in commercial transactions if no member of the Board of Directors can represent at the time of office by granting the authority of the Board of Directors to members of the Board of Commissioners in the form of an authentic deed or a letter underhand; or a member of the Board of Directors has a conflict of interest, or no member

of the Board of Directors has served and obtained the approval of the GMS. The board of Commissioners can legally represent the PT to carry out management and supervisory actions. When a member of the Board of Commissioners makes a commercial contract to represent PT, the terms of the contract's legality are binding following Article 1320 of the Civil Code and the provisions in the relevant laws and regulations.

Legal Effects on Contracts Made by the Board of Commissioners to represent Limited Liability Companies in Commercial Transactions

Making contracts in commercial transactions is a legal act by legal subjects, including PT. With the existence of a contract, a legal relationship has been formed. Legal relationships are relationships that are governed by law, including contractual relationships. Then, legal actions and legal relationships have legal consequences. The legal effect in a contract can be divided into two, legal and illegitimate contracts.

If the contract is valid following Article 1320 of the Civil Code and related provisions, then the contract is binding on the parties (Kurniawan, 2017). The power of binding contracts (*pacta sund servanda*) can be found in Article 1338 paragraph (1) of the Civil Code, which regulates "all agreements made legally are valid as law for those who make them." The binding power of contracts can be traced to the words "act as laws to those who make them." The meaning of these words is that the contract will bind as regulations made by the parties, such as legislators' laws. Laws made by legislators have a public scope, whereas contracts only apply to parties who make them and third parties following Article 1340 paragraph (1) of the Civil Code. Regarding the validity period, the law is valid as long as it is not revoked. Still, the contract is valid for a certain period, and, in Article 1338 paragraph (2) of the Civil Code, it can be withdrawn by the parties or by statutory regulations. In other words, the contract is binding for the contracting parties and the third party for a certain time and can be withdrawn due to the contracting party's agreement or laws and regulations.

The parties must make or implement contracts in good faith following Article 1338 paragraph (3) of the Civil Code (Sanjaya, 2019). In the implementation of the contract, good faith and the principle of binding power has a very important meaning. Good faith in exercising the rights and obligations that arise because of a contractual relationship is obliged to comply with the norms of appropriateness and fairness by avoiding actions that can cause harm to other parties (Cindawati, 2014). The demand for legal certainty is contained in Article 1338 paragraph (1) of the Civil Code, that "the promise is binding," while Article 1338 paragraph (3) of the Civil Code must be understood as a demand for justice, namely good faith (Kurniawan, Imanullah, & Sudarwanto, 2020). The contract is binding on the parties not only for everything that is expressly regulated but also for everything that, according to the nature of the contract, is required by appropriateness, custom, and statutory regulations stated in Article 1339 Civil Code (Holijah, 2019). The nature of the contract is adjusted to the parties' commercial transaction with due observance of appropriateness, customs, and laws and regulations. Therefore, the parties

in determining and exercising their rights and obligations in the contract must be in good faith based on the nature of the contract's transactions (including commercial transactions), laws and regulations, customs, appropriateness, and fairness. The contract is valid and binding.

The parties are obliged to fulfill their performance stipulated in a legal and binding contract. In the process of fulfilling the obligations of the parties to the contract, there must be the possibility of not fulfilling their obligations even though the parties have good faith. There are several things that free a party from carrying out its obligations, namely *overmacht* or *force majeure* and *hardship* (Purwadi, 2015).

Based on Articles 1244, 1245, 1444, and 1445 of the Civil Code, coercion can be interpreted as an unexpected event that occurs not the fault of either party after the closure of the contract, prevents the parties from fulfilling their obligations before either party is declared negligent, and therefore cannot be blamed and so do not run the risk of the event. In its development, there are also additions regarding the limitations apart from the two. This limitation is a difficult situation (*hardship*), which is a certain condition that makes implementation fundamentally more difficult for one party so that the other party benefits more, whether the value of contract execution increases or decreases. Provisions for difficult situations are not regulated in the Indonesian Civil Code, which equates to coercion. In Article 6.2.1 of the UNIDROIT Principles of International Commercial Contracts (UPICC), there are 3 (three) elements of a difficult situation, namely changes in the fundamental balance of the contract, an increase in contract implementation costs, and a decrease in the value of contract execution received by one of the parties. If one of the parties can prove that he cannot fulfill his obligations because of fulfilling the element of force or difficult circumstances, then the consequences are (Hernoko, 2013):

1. Creditors cannot request fulfillment of obligations;
2. The debtor cannot be declared negligent;
3. The debtor is not obliged to pay compensation;
4. The risk does not transfer to the Debtor;
5. Creditors cannot file a lawsuit for cancellation; and
6. The bond is dissolved

When the components of coercion or adversity have been met, the parties, including the most disadvantaged, can be excluded from their contractual obligations and the contract is dissolved. In other words, if coercion or difficult circumstances affecting one of the parties to the contract for a commercial transaction are fulfilled and can be proven, that party can be released from its obligations and the engagement ends.

If a contract is not made following a contract's legal terms, then the contract becomes voidable or null and void. The terms of the contract's validity are regulated in Article 1320 of the Civil Code in the previous section. Requirement number one (agreement) and condition number two (skill or authority) are subjective conditions. Requirement number three (certain things) and condition number four (an allowable cause) are objective requirements (Putra & Alfathania, 2020). If the subjective conditions

are not met, the contract can be canceled. If the objective conditions are not met, the contract is null and void. If the subjective and objective conditions are not fulfilled, the contract becomes null and void.

In the case of a contract made by a PT, the legality requirement is number two in the 1320 Civil Code, namely authority. In general, the authority to administer and represent PT both inside and outside the court is the Board of Directors. The organ that has the authority to supervise PT and provide advice to the Board of Directors is the Board of Commissioners. In carrying out their positions, they must have good faith, good faith, and be responsible in accordance with the AD and the prevailing laws and regulations (Article 97 paragraph (2) and Article 114 paragraph (2) of the PT Law). In the context of making and executing contracts, PT is generally represented by members of the Board of Directors as the authorized organ.

If all members of the Board of Directors are unable to attend to represent PT, then the members of the Board of Directors may authorize in writing to employees or other persons as long as they act following the legal actions stipulated in a power of attorney for and on behalf of PT. As explained above, members of the Board of Commissioners can become the recipients of power who will carry out their duties as stated in a power of attorney for the directors. Members of the Board of Commissioners can be categorized as "other people" even though they have different organs. Furthermore, members of the Board of Commissioners can represent PT based on AD or GMS resolution, if all members of the Board of Directors have a conflict of interest, there is a case in court between the member of the Board of Directors and the PT concerned, or be suspended temporarily so that it becomes temporarily vacant. In other words, as explained above, the management and supervisory duties in the PT are carried out by members of the Board of Commissioners.

When a member of the Board of Commissioners carries out his position, he must be in good faith, be careful, and respond according to the AD PT's provisions and the laws and regulations. If there is more than one member, they constitute an assembly, and all members cannot act individually, which is called collegial and must be based on the Board of Commissioners' decision. Members of the Board of Commissioners are appointed for a certain time and can be reappointed by the GMS based on Articles (1) and (3) of the PT. In carrying out his duties, he provides advice to members of the Board of Directors to ensure that these members of the Board of Directors' actions follow the provisions in AD PT and laws and regulations.

Yahya Harahap (2011) is of the opinion that the Company Law includes five articles which strictly regulate the personal and joint responsibility of all members of the Board of Commissioners, namely:

1. Article 69 paragraph (3) of PT Law: if any financial report is shown to be inappropriate, namely untrue or misleading, the members of the Board of Directors and the Board of Commissioners will be jointly and severally liable to the injured party;

2. Article 72 paragraph (6) of the PT Law: if after the end of the year it is found that the PT has suffered a loss and the shareholders of the PT cannot return the results of the interim dividend distribution after it has been made by a member of the Board of Directors with the approval of the member of the Board of Commissioners, then the members of the Board of Directors and the Board of Commissioners will be jointly responsible;
3. Article 112 paragraph (4) of PT Law: if there is a cancellation of the appointment of a member of the Board of Commissioners due to the failure to fulfill the conditions of his appointment, then even though the legal action has been committed for and on behalf of the Board of Commissioners before the cancellation of the appointment, it remains binding and becomes the responsibility of the PT, but the member of the Board of Commissioners concerned is still responsible for the losses of the PT;
4. Article 114 paragraph (2) & (4) PT Law: if the member of the Board of Commissioners concerned consists of one or more people who are guilty or negligent in carrying out their duties, then they are jointly responsible; and
5. Article 115 paragraph (1) & (2) of the PT Law: if the bankruptcy occurs due to an error or negligence of a member of the Board of Commissioners in carrying out their duties and the assets of the PT concerned are not sufficient to pay all the obligations of the PT due to the bankruptcy, all members of the Board of Commissioners, including Members of the Board of Commissioners who have not served five years prior to the pronouncement of the bankruptcy declaration will be jointly responsible.

In principle, the Board of Commissioners does not have a management function. Its main function is to supervise management policies, general management of PT and its business, and provide advice to the Board of Directors. According to Article 117 paragraph (1) of the PT Law, members of the Board of Commissioners give members of the Board of Directors certain approval or assistance to carry out certain legal actions. Giving approval or assistance by members of the Board of Commissioners to members of the Board of Directors does not constitute a power of attorney and does not constitute a management act. Certain actions are as follows:

1. Actions based on this Article are not granting power of attorney because the duties and authorities of the Board of Directors come from the laws and regulations stipulated in the PT Law and others so that they do not require granting of power; and
2. The act is not a management even though the Board of Directors requires approval, the Board of Directors is still free not to commit the act as long as it is in good faith and does not harm the PT in accordance with Article 117 paragraph (2) of the PT Law.

Based on the explanation above, members of the Board of Directors are still free to carry out their legal actions which require the approval of the Board of Commissioners because such approval does not constitute a power of attorney or management. Even though they do not obtain or ask for the approval of the Board of Commissioners, the actions carried out by the members of the Board of Directors are still binding as long as the acts are in good faith and do not cause harm to the PT or third parties.

In carrying out their positions, members of the Board of Commissioners must also be based on three principles, namely the principle of trust obtained from the Company (*fiduciary duty*), the principle of using their expertise and being careful (*duty skill and care*), and the principle of carrying out their duties following the provisions of laws and regulations (*statutory duties*). According to the provisions in the AD PT and the laws are *ultra vires*, acts that deviate from or exceed their authority. The *ultra vires* principle aims to limit a legal entity's liability, including PT if the action is not following or in line with AD or legislation provisions. Besides, the *ultra vires* principle aims to protect the creditors of PT (Ibrahim, 2011). The PT assets can only be used for the PT stated in the clause concerning the “objectives and objectives of the Company” (*objective clause*) in the AD and for other purposes following those purposes and objectives. If a member of the Board of Commissioners violates these principles or commits *ultra vires* actions, then the member of the Board of Commissioners must be personally responsible if the violation is detrimental to the PT or a third party.

The responsibilities of the Board of Commissioners can be divided into two, namely internal responsibility (internal liability) and external responsibility to third parties (external liability). Regarding internal responsibility, negligent members of the Board of Commissioners can be personally and jointly responsible through the judiciary by shareholders for and on behalf of PT according to Article 114 paragraphs (3), (4) and (6) of the PT Law and/or by shareholders for their own interests through the court as regulated in Article 61 paragraph (1) of the PT Law, which can be called *derivative action*. For the responsibilities of members of the Board of Commissioners externally, such as their actions that harm third parties, for example, a member of the Board of Commissioners who knows that the PT concerned does not meet the requirements to make a contract but still provides or does not advise members of the Board of Directors, the member of the Board of Commissioners will be responsible personally and jointly and severally for the losses of PT and third parties according to Article 114 paragraph (3), (4) and (6), Article 61 paragraph (1), and Article 69 paragraph (3) of the PT Law. In other words, the Board of Commissioners is responsible internally and externally, following the laws and regulations. The AD PT is concerned so that it can be freed from personal and joint responsibility involved in legal matters relating to the PT.

If an act of a member of the Board of Directors according to the provisions of the AD is required to obtain the approval of the Board of Commissioners, but a member of the Board of Directors commits such act without seeking approval from the Board of Commissioners so that it is detrimental to the PT or a third party, the Board of Commissioners cannot be held responsible. In this case, based on Article 114 paragraph (5) of the PT Law, members of the Board of Commissioners are not responsible for such losses if they can prove that:

1. he has conducted supervision in good faith and prudently for the benefit of the Company and in accordance with the aims and objectives of the Company.

2. Do not have personal interest, either directly or indirectly, in the management of the Board of Directors which resulted in losses; and
3. have provided advice to the Board of Directors to prevent the loss from occurring or continuing.

Based on these three criteria, the Board of Commissioners is fulfilled cumulatively, the Board of Commissioners can be released from their responsibilities if the Board of Directors does not seek approval from the Board of Commissioners because the Board of Commissioners has carried out its duties in accordance with its duties and authorities as stipulated in laws and regulations and AD.

The implementation of the board of directors' duties and the Board of Commissioners are always connected with their obligations to carry out their *fiduciary duties* (Mundzir, 2016). *Fiduciary duties* that are not carried out by members of the Board of Directors or the Board of Commissioners make them not protected by the business judgment rule, which is an assumption that in making decisions in business, the management and supervisors of the company act based on complete information and in good faith (acting honestly) in the best interest. Companies and other parties, not for their own interests. Such protection can be obtained if these members comply with the provisions of the AD and statutory regulations. Members of the Board of Commissioners must pay attention to the four most important things, namely (Harahap, 2011):

1. Carry out all types of obligations required until the PT obtains legal entity status, because as long as the PT is not yet a legal entity, the liability is not limited to founders, members of the Board of Directors and the Board of Commissioners;
2. Carry out all types of obligations required and regulated by the applicable laws and regulations. As long as a PT as a legal entity still exists and keeps away from actions prohibited by laws and regulations, especially about the PT Law, this obligation includes reporting ownership. Their shares and/or their families in PT, other PT, and other types of companies, holding meetings and maintaining minutes of meetings not limited to company documents, making complete annual reports with annual calculations, and so on;
3. Separating personal assets from PT assets, not using PT assets for personal interests, not taking personal gain by using PT assets and / or facilities obtained from PT; and
4. Running and treating PT based on the aims and objectives and for the benefit of PT only.

If there is negligence in carrying out its obligations to fulfill its *fiduciary duties* and act beyond its authority in laws and regulations and AD (*ultra vires*), then the member of the Board of Commissioners concerned is personally responsible for the loss of the Company and third parties and jointly for each of them. each member of the Board of Commissioners.

Apart from the board of directors and the Board of Commissioners, shareholders can also be negligent. The shareholders of PT are not personally responsible for the engagement made on behalf of the PT. They are not responsible for the loss of the PT

exceeding the company's shares as regulated in Article 3 paragraph (1) of the PT Law. Therefore, the shareholders of PT have limited liability. That is, they do not personally and do not exceed the shares invested. The limited liability of shareholders becomes invalid according to Article 3 paragraph (2) of the PT Law if (Kurniawan, 2014):

1. The conditions for a PT to become a legal entity are not fulfilled or not; or
2. The relevant shareholder, either directly or indirectly, in bad faith, exploits PT only for personal gain;
3. The shareholders concerned are involved in illegal acts committed by PT; or
4. The relevant shareholder directly or indirectly violates the law using the assets of the PT, which results in the assets of the PT being insufficient to pay off the debt of PT.

These reasons are in line with the principle of piercing the corporate veil which means opening the veil of the company (Wardhana, 2019). It means: the process of imposing legal responsibility on people or companies other than the company for legal actions taken for and on behalf of the company concerned.

This doctrine explains the requirements for shareholders to be personally responsible, which is also explained in Article 3 paragraph (2) of the PT Law that other people or companies as shareholders have personal responsibility for their actions other than the PT. Shareholders can be released from personal liability if they do not violate the terms of limited liability.

PT, a legal entity independently, absolutely needs its organs, namely the GMS, the Board of Directors, and the Board of Commissioners. To make a contract in a commercial transaction, PT, as the contracting party, is obliged to pay attention to the contract's validity. As explained above, the legal conditions for a contract are regulated in Article 1320 of the Civil Code, namely agreement, skill or authority, certain matters, and a permitted cause. The first and second conditions, which are objective, if not fulfilled, then the contract can be canceled. Whereas the third and fourth conditions are objective, then the contract becomes null and void by law if not fulfilled. If connected with a PT, a legal entity that makes a contract with another party in a commercial transaction, then the second condition is the authority. In a PT, generally represented by members of the Board of Directors. If the Board of Directors is absent, has a conflict of interest, or is temporarily suspended, the Board of Commissioners will carry out its supervisory and management functions following laws and regulations, AD, and the GMS's approval. If in such circumstances the Board of Commissioners does not comply with its authority, either not exercising or exceeds its authority (*ultra vires*), to contract on behalf of the PT in a commercial transaction that results in losses for PT or other parties, then the Board of Commissioners has bad faith and is personally responsible and jointly for losses and contracts become revocable. On the other hand, if the loss arises not due to the fault of the member of the Board of Commissioners who is in good faith, namely that he is carrying out his duties and authorities based on AD, then the PT concerned will be responsible.

Based on the explanation above related to third-party losses caused by actions that exceed or deviate from AD or statutory provisions by members of the Board of

Commissioners, members of the Board of Commissioners have had bad faith and will be responsible for such losses. Compensation can be requested if there is a default or act against the law (onrechtmatige daad). We must examine how an engagement is born in commercial transactions made by members of the Board of Commissioners, either authorized to represent PT or only to act for themselves but on behalf of PT, namely a contract or statutory regulation.

Violation of contractual rights in a legal contract, including in commercial transactions, creates an obligation to provide compensation following Article 1236 of the Civil Code regarding the achievement of giving something and Article 1239 of the Civil Code regarding the achievement of doing something or not doing something. Next, regarding default, Article 1243 of the Civil Code regulates that:

Compensation of costs, losses, and interest due to non-fulfillment of an engagement will only begin to be obliged, if the person in debt, after being declared negligent in fulfilling the contract, continues to neglect it, or if something that must be given or made, can only be given or made within a grace period that has passed.

In the article of default, the debtor (including PT, members of the Board of Commissioners, etc.) is negligent if he does not fulfill his agreement which includes commercial transactions. The form of negligence can consist of being late in carrying out an obligation, carrying out an obligation but not as it should be, or doing something that should not be done. But in general, default occurs after a statement of negligence (*in mora stelling; ingebereke stelling*) from creditors to debtors. In principle, this statement of default has the objective of determining a reasonable grace period for the debtor to fulfill his obligations with liability sanctions for losses suffered by the creditor. Creditors must provide a written warning of the debtor's negligence which is called a summons (in Dutch, it is called *somatie*) based on Article 1238 of the Civil Code. With Circular Letter of the Supreme Court (SEMA) Number 3 of 1963, subpoena is not mandatory so that creditors can request that their rights be restored. In other words, parties who feel aggrieved do not need to file subpoena against parties who do not fulfill contractual obligations in commercial transactions.

A subpoena is not required if there is an absolute grace period given in the contract. A subpoena is also unnecessary if the debtor refuses to make a payment or has fulfilled his obligations but did not do it perfectly. In an agreement not to do something, the creditor generally does not need to make a subpoena. By committing an act that is not following what cannot be done, the debtor has been negligent in fulfilling his obligations. So, a "statement of negligence" is a legal effort to achieve a debtor's status to be declared in default even though it is not mandatory to do so.

There are conditions that the contracting party can be exempted from default in legal transactions, including commercial transactions. The conditions are that either party, including a contract made by a member of the Board of Commissioners for PT, can prove the existence of a force of force or a difficult situation as described in the previous paragraphs. Due to coercion or difficult circumstances, one party could not fulfill its

contractual obligations. Coercion or difficult circumstances did occur beyond the parties' expectations and were very burdensome for one of the parties to comply. If forced to fulfill it, then there will be no legal protection for the party who is burdened with the obligations that should be fulfilled. The contract can be dissolved with coercion, and the contract does not bind the parties in a commercial transaction.

After default, there is one reason to sue, namely the act of violating or against the law. According to Agus Yudha Hernoko (2013), actions against or breaking the law is:

Doing or not doing anything violates the rights of others, or is against the legal obligations of the person who does the action himself, or is contrary to decency or a proper attitude in public traffic, towards himself or other people's belongings.

This article can be interpreted as a person, whether individual, PT, or the Board of Commissioners, who commits an act against or violates the law if:

1. violating the rights of others;
2. contrary to the legal obligations of the maker;
3. contrary to decency; or
4. contrary to propriety prevailing in public traffic towards others' property or property.

Violating the rights of others means violating the subjective rights of creditors. Subjective rights recognized in jurisprudence are as follows (Hernoko, 2013):

1. individual rights such as freedom, honor, reputation; and
2. rights to property, including material rights and other absolute rights.

Claims for compensation based on actions against the law are found in Article 1365 of the Civil Code, which stipulates: "Every act of violating the law, which brings harm to another person, obliges the person who due to his wrongdoing the loss to compensate for the loss". When analyzing Article 1365 of the Civil Code, there are the following elements:

1. an act that violates the law (*onrechtmatige daad*);
2. there is an error;
3. any losses arising; and
4. There is a cause-and-effect relationship between actions and losses.

Furthermore, Article 1366 of the Civil Code also states that all people are responsible for losses resulting from their actions, and these losses arising from their negligence or carelessness. Article 1367 of the Civil Code stipulates that offenders are responsible for their actions and for damages that are born due to the actions of those who are their dependents or objects under their control. Based on this explanation, it can be concluded that acts against the law can be used as a basis for asking for compensation against offenders, including individuals, PT, and members of the Board of Commissioners, in commercial transactions not only because of their actions, but also because of negligence, carelessness, or people or things that are borne and supervised by them.

In civil law, there is no difference between deliberate misconduct and negligence or carelessness. It was mentioned by Riduan Syahrani that "it does not distinguish between deliberate errors and inadvertent errors" (Hernoko, 2013). Losses that arise due to illegal actions can be in the form of material losses and immaterial losses. Material loss is a loss

that can be calculated in value. Another case with material losses is that immaterial loss cannot be calculated in value, such as defamation, death, etc. The existence of a cause-and-effect relationship means that the loss is born or caused by an illegal act by the perpetrator; in other words, if there is a cause, but that cause does not give rise to a loss, or there is a loss that does not arise because of the perpetrator, it can be concluded that there is no cause-and-effect relationship between the act and the existing loss.

Apart from the circumstances of default and unlawful acts mentioned above, the contract can also be submitted to the Court for cancellation. The cancellation is submitted if there are subjective and/or objective conditions of contract validity not fulfilled. If a member makes the contract of the Board of Commissioners who is not authorized even though it is carried out for and on behalf of the PT in a commercial transaction, then the contract can be requested to be canceled because the subjective requirements of authority are not fulfilled. If a PT acknowledges and ratifies the actions of a member of the Board of Commissioners who were not previously authorized, then the authority requirements have met so that the contract becomes valid and binding. Even though the actions of the Board of Commissioners are authorized or not authorized to contract and do not meet the objective requirements, namely an object (object) or cause that is not allowed, the contract is null and void since the beginning of the contract, and the cancellation must be submitted to the Court. After the contract's cancellation is granted by the Court, either because it does not meet subjective or objective requirements, the parties can ask for restoration by demanding compensation for the parties who feel they have been harmed. In contrast, the other party who has already received the other party's achievement is obliged to return it. Thus, the contract is deemed never to exist, and the parties' position and the object of the contract are returned to their original state as if there was no contract.

The previous explanation regarding the engagement that was born in commercial transactions due to contracts and legislation can be interpreted as follows. If the agreement arises because of a legal contract or statutory regulation in a commercial transaction represented by an authorized member of the Board of Commissioners (in good faith) and there are contractual obligations that have not been fulfilled or an act against the law by PT. PT is responsible for such loss, and the member of the Board of Commissioners is exempted from this responsibility. If a member of the Board of Commissioners who is not authorized (in bad faith) but on behalf of the PT concerned does not fulfill his contractual obligations or commits an illegal act in a commercial transaction, and the PT acknowledges and ratifies the action of the member of the Board of Commissioners, then the PT is responsible for the loss. If an unauthorized member of the Board of Commissioners (in bad faith) acts as if the PT concerned did not fulfill its contractual obligations or committed an illegal act in a commercial transaction. The PT does not acknowledge and endorses the member of the Board of Commissioners' action, responsible for his personal losses and joint liability, and the contract made can be canceled through the Court.

In relation to lawsuits, it is better not to combine default claims and unlawful acts because the lawsuit will confuse the judges so that the lawsuit becomes unclear (obscure libel). This has been discussed by judges of the Supreme Court (MA) in the Supreme Court Decision No. 1875 K/Pdt/ 984 dated 24 April 1986. Furthermore, the Supreme Court Decision No. 879 K/Pdt/1997 dated January 29, 2001, stated that the merger of a default suit with an illegal act due to violation of procedural rules, both of which had to be resolved separately. Therefore, a claim for default and action against the law cannot be combined because the lawsuit is unclear.

In addition to suing on the basis of the 1243 Civil Code regarding default to the District Court, the plaintiff can base Article 1267 of the Civil Code which provides that:

The party to whom the engagement is not fulfilled can choose whether it, if it can still be done, will force the other party to fulfill the agreement, or whether it will demand the cancellation of the agreement, accompanied by compensation for losses and interest.

In Article 1267 of the Civil Code, there are a number of things that can be sued or prosecuted from the parties who default as follows:

1. Fulfillment of the engagement, namely the fulfillment of the debtor's obligations;
2. Fulfillment of the engagement with compensation;
3. Compensation, which includes three elements, namely costs, losses, and interest. Costs are all expenses that have actually been incurred by one party. Loss is loss due to damage to the creditor's property due to the debtor's carelessness or negligence. Interest is the loss in the form of loss of profit that has been planned or estimated by the creditor;
4. Cancellation (called dissolution) of the agreement. After the contract is dissolved, the parties' positions return to the state they were in before the contract was drawn up. If the parties have received something from the other party, be it money or goods, then the said goods must be returned;
5. Termination of the agreement with compensation.

A claim for default or contract cancellation can also be filed through the District Court as stated in the parties' contract clause, including PT. If the contract does not regulate the District Court being selected, the District Court referred to is the District Court where the defendant resides following Article 118 paragraph (1) of the *Het Herzien Inlandsch Reglement* (HIR) or the Updated Indonesian Reglemen (RIB). In Article 118 paragraph (3) RIB, if the defendant's residence is unknown, then the lawsuit can be filed at the District Court where the plaintiff is domiciled. If the defendant's place is unknown and there is an object of dispute, then the lawsuit is submitted to the District Court where the object is located. Based on this, the Board of Commissioners who caused the loss was sued in the District Court where the board of Commissioners lives. If the residence place is unknown, then the lawsuit is filed at the District Court where the plaintiff resides who is a member of the Board of Commissioners. If the residence of the member of the Board of Commissioners is unknown and involves the object of the dispute, then the member of

the Board of Commissioners will be sued at the District Court where the object of the dispute is located.

In connection with the contract made by a member of the Board of Commissioners who legally represents the PT and in good faith, as long as the member of the Board of Commissioners is in good faith, he is released from his personal responsibility so that the PT must be responsible for the injured party. If the member of the Board of Commissioners does not legally represent the PT, including doing actions beyond his/her authority (*ultra vires*), does not obtain GMS approval or is not by the AD, not in the absence of the Board of Directors or there is no conflict of interest, bad faith, or there is a conflict of interest. The board of Commissioners can be sued regarding his personal or joint responsibility against the PT or other party that is harmed based on cancellation because there is no authority and acts against the law. A lawsuit addressed to the board of Commissioners concerned is filed following the prevailing laws and regulations.

Conclusion

The validity of contracts in commercial transactions made by members of the Board of Commissioners is still based on Article 1320 of the Civil Code, namely agreement, skill or authority, certain matters, and a permitted cause. In the context of a Limited Liability Company legal entity, the second requirement is a member of the Board of Commissioners' inherent authority as long as he legally represents. The legal consequence is that if a legal member makes a commercial contract with the Board of Commissioners, the contract will be legally binding. If an illegal member makes the contract of the Board of Commissioners, then he will be personally and jointly responsible for the losses caused to the Limited Liability Company concerned or the third party.

Suggestion

The Board of Commissioners must understand its rights, obligations, and authorities following the provisions in the Articles of Association of the Limited Liability Company and related laws and regulations so that the parties to the contract and third parties are not harmed by bad faith, carelessness, and negligence of the Board of Commissioners. The. In making a contract in a commercial transaction, the parties to the contract must also see, know, and understand the representative authorized to make contracts for and on behalf of the Limited Liability Company.

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