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Legal Liability for the Bankruptcy of a Limited Liability Company Resulting from Unlawful Conduct

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Abstract: This study explores the legal liability of a limited liability company in the event of bankruptcy arising from unlawful acts committed by its management or controlling parties. The research aims to analyse the extent to which corporate liability can be imposed under Indonesian company law, bankruptcy law, and civil law principles, particularly when the principle of limited liability is challenged by fraudulent or unlawful conduct. Using a normative juridical method, this study examines primary legal sources, including the Indonesian Civil Code, Law No. 40 of 2007 concerning Limited Liability Companies, and Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Secondary legal materials, such as books, journal articles, and legal commentaries, are also analysed to provide theoretical support and comparative perspectives. The findings suggest that although the doctrine of separate legal personality protects shareholders from personal liability, exceptions may apply when unlawful acts such as fraud, bad faith, or abuse of corporate structure occur, thereby justifying the piercing of the corporate veil. This study highlights the importance of balancing legal certainty with fairness and accountability in corporate bankruptcy cases which offers recommendations that strengthen creditor protection and ensure directors cannot evade responsibility through corporate formalities.

Keyword: Limited Liability Company, Bankruptcy, Legal Liability, Unlawful Conduct

INTRODUCTION

A Limited Liability Company (LLC or PT) is a form of legal entity that holds a significant position in the development of Indonesia's economic activities (Saputra, 2025b). As a legal entity, an LLC is governed by a structured management system divided into its respective functions and authorities, namely, the General Meeting of Shareholders (GMS), the Board of Commissioners, and the Board of Directors (Setyarini et al., 2020). Fundamentally, an LLC adheres to the principle of asset separation, which establishes a clear distinction between the company's liabilities and the personal responsibilities of its management. The Board of Directors plays a central role in overseeing the company's operations and representing it both within and outside the judicial system. Due to its strategic position, any legal action taken by the directors directly impacts the company's continuity (Setyarini et al., 2020). However, this also gives rise to complexities in legal accountability, particularly when the company encounters issues that lead to insolvency. As a result, the position of the directors is inherently exposed to various legal risks.

In corporate economic activities, it is not uncommon to encounter cases involving members of the board of directors who deviate from legal provisions or the company's articles of association, resulting in financial losses that may lead to corporate bankruptcy. Such actions can be classified as unlawful conduct (*onrechtmatige daad*) under Paragraph 1365 of the Indonesian Civil Code as the resulting damages affect not only the company itself but also shareholders, creditors, and third parties (Saputra, 2025a; Setyarini et al., 2020).

This issue has garnered significant attention and is addressed under Law No. 40 of 2007 concerning Limited Liability Companies and Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. These laws provide the legal framework for directors' accountability and bankruptcy procedures. Bankruptcy, in this context, refers to the process of asset seizure from a debtor declared bankrupt by a court-appointed curator, under the supervision of a Supervisory Judge. This process requires specific conditions to be met: the debtor must have at least two creditors and must have failed to pay a due debt to one of them. A bankruptcy ruling can only be issued by the court upon petition by the debtor or one of the unpaid creditors (Siahaan et al., 2024). Nevertheless, the practical implementation of these legal provisions continues to raise complex issues, particularly regarding the extent of directors' liability in bankruptcy proceedings.

As a legal entity, a limited liability company is, from a juridical standpoint, a legal subject and is responsible for fulfilling its civil obligations. However, when directors are proven to have committed unlawful acts through negligence or misconduct, questions arise regarding the extent of their personal liability—particularly in light of the fiduciary duty and duty of skill and care that obliges directors to act in good faith, exercise due care, and prioritize the interests of the company (Nababan & Nurkhaerani, 2025).

In this context, the phenomenon of disregarding the legal separation between the corporation and its individual members, commonly referred to as piercing the corporate veil, becomes highly relevant, especially when there are indications that directors have acted beyond their authority or contrary to the company's objectives. Through this legal doctrine of exception, courts are empowered to set aside the corporate entity's legal boundaries, thereby allowing the company's responsibilities and liabilities to be directly imposed upon its shareholders or directors in their personal capacity (Nusantara, 2025).

In this context, a comprehensive examination of legal accountability mechanisms is essential to ensure justice for all parties who have suffered losses. An in-depth analysis of the legal consequences arising from the bankruptcy of a limited liability company due to unlawful acts committed by its directors is critical in safeguarding legal certainty and providing protection for business actors and the broader public. This study aims to explore various legal dimensions related to the issue, including the theoretical foundations of directors' liability, the characteristics of unlawful conduct within the framework of corporate management, and the legal implications resulting from insolvency. Referring to the background of the issues previously outlined, this study aims to conduct an in-depth examination of three key areas: the legal liability of directors within the framework of a limited liability company, unlawful acts committed by directors and their impact on corporate bankruptcy, and the legal consequences of bankruptcy for both the directors and the company itself. The findings of this research are expected to contribute meaningfully to the development of legal scholarship, particularly in the fields of corporate law and bankruptcy law, and to serve as a practical reference for legal professionals, business practitioners, and policymakers in addressing similar cases.

METHOD

This research employs a normative juridical method with a doctrinal approach, which focuses on the study of legal norms, principles, and doctrines relevant to the liability of a limited liability company in cases of bankruptcy arising from unlawful acts. The primary legal materials analysed in this study include the Indonesian Civil Code, the Commercial Code (KUHD / *Kitab Undang-Undang Hukum Dagang*), Law No. 40 of 2007 on Limited Liability Companies, and Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, as well as relevant judicial precedents. These primary sources are complemented by secondary legal materials in the form of scholarly books, peer-reviewed journal articles, and legal commentaries that discuss corporate liability, bankruptcy law, and the doctrine of piercing the corporate veil. The research is conducted entirely through literature study which emphasize statutory interpretation, theoretical analysis, and the examination of academic discourse. Data analysis is carried out qualitatively by classifying and systematizing legal materials, interpreting relevant provisions, and also connecting the normative framework (*das sollen*) with its practical application (*das sein*). Through this approach, the study aims to construct a comprehensive understanding of how unlawful acts committed by a company's management may undermine the principle of limited liability and trigger corporate accountability in bankruptcy proceedings.

RESULTS AND DISCUSSION

Directors' Liability under Indonesian Company Law (UUPT)

The Indonesian Company Law (UUPT or Law No. 40 of 2007) establishes directors as fiduciaries of the company which hold both managerial and representational authority. This legal framework is built on the principle of separate legal personality, where a company is a distinct legal subject and directors are agents tasked with safeguarding corporate interests (Undang-Undang (UU) Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, 2007). However, while this principle provides a degree of protection for directors, it is not absolute. Paragraphs 97 and 104 UUPT explicitly set liability standards which place personal responsibility on directors who act negligently or unlawfully, especially in circumstances leading to corporate bankruptcy (Pardamean, 2024).

Paragraph 97(3) states that each director is personally liable for company losses caused by their actions or negligence. Where the board acts collectively, liability is joint and several. To rebut liability, directors must prove four cumulative conditions under Paragraph 97(5) which consist of (i) the loss was not due to their fault or negligence, (ii) management was performed in good faith and for lawful purposes, (iii) there was no conflict of interest, and (iv) reasonable preventive measures were taken (Zia & Agusta, 2024). These requirements are known as Indonesia's statutory codification of the business judgment rule (BJR), which protects directors from liability for legitimate and informed risk-taking but withdraws that protection in cases of misconduct or recklessness (Gunawan & Gunadi, 2023; Johan & Ariawan, 2021). The inclusion of a derivative suit mechanism in Paragraph 97(6) which allows shareholders holding at least 10% of voting shares to sue on behalf of the company reflects Indonesia's shift toward aligning corporate governance with accountability norms in jurisdictions like the U.S. and U.K. (Pakpahan et al., 2025).

In insolvency situations, Paragraph 104 provides a specific liability gateway. Directors can be held jointly and severally liable for any unpaid debts if a company's bankruptcy occurs due to their fault or negligence and the estate is insufficient to pay creditors. This extends to former directors within a five-year look-back period to ensure accountability beyond a director's term of office (Undang-Undang (UU) Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, 2007). The same BJR-style exculpation applies under Paragraph 104(4) which underscores that liability in bankruptcy is tied to culpability, not mere poor outcomes. As a statutory mechanism designed to safeguard the principle of limited liability while simultaneously ensuring accountability, Paragraph 104 of the Indonesian Company Law (UUPT) serves to hold directors personally responsible for acts of mismanagement or negligence that contribute to or aggravate a company's insolvency.

Furthermore, the UUPT interlinks civil and procedural remedies to strengthen enforcement (Jayadi, 2023). Liability claims under Paragraphs 97 and 104 can be pursued alongside other remedies, such as tort actions under Civil Code Paragraph 1365 or avoidance measures under the Bankruptcy Law (Law No. 37/2004) to ensure that misconduct does not escape scrutiny.

Unlawful Acts by Directors and Their Implications for Corporate Bankruptcy

The legal responsibility of directors for acts that lead to a company's insolvency sits at the intersection of corporate governance, tort law, and bankruptcy regulation in Indonesia. While the Indonesian Company Law (UUPT or Law No. 40/2007) grants directors discretion to manage corporate affairs and shields them through the business judgment rule (BJR: protecting decisions taken in good faith, with due care, and for the company's best interest), this protection ends where conduct crosses into illegality or bad faith (Mokoagow et al., 2025). Paragraphs 97 and 104 of UUPT outline directors' fiduciary duties and liability standards which are directors may be held personally accountable for company losses if they act negligently or unlawfully, and their liability extends to bankruptcy situations when their actions contribute directly to the company's inability to satisfy its debts (Luwinanda, 2024).

Indonesian law thus adopts a dual-track liability structure. Internally, directors may be sued by the company or shareholders (via derivative suits) under Paragraph 97 for breach of duty. Externally, Civil Code Paragraph 1365 (*onrechtmatige daad*) provides a tort basis for creditors and third parties to hold directors personally accountable when their misconduct causes direct harm which illustrates that corporate personality does not insulate wrongful acts by individuals (Putra, 2021). This duality ensures that both internal corporate harm and external creditor losses are legally recognized to reinforce accountability in insolvency contexts.

The Bankruptcy and PKPU Law (Law No. 37/2004) lowers procedural barriers for declaring bankruptcy which only need a debtor with two or more creditors and one unpaid due debt to be declared bankrupt, with proof evaluated under a "simple proof" standard (Undang-undang (UU) Nomor 37 Tahun 2004 tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, 2004). Once declared, management control shifts to a curator who acts under a Supervisory Judge's oversight to manage and recover the estate (Shohihah & Murtadho, 2024). The law equips curators with *Actio Pauliana* (Paragraph 41-49) which allows the reversal of pre-bankruptcy transactions executed in bad faith or without obligation that harmed creditors, thereby restoring assets and demonstrating the causal chain between misconduct and insolvency (Luwinanda & Handayani, 2024). In this case, *Actio Pauliana* role as a key remedy to undo fraudulent transfers and ensure *paritas creditorium* (equal treatment of creditors) under Civil Code Paragraph 1131–1132 (Alfany, 2024; Busroh et al., 2024).

Where misconduct and insolvency intersect, Paragraph 104 UUPT provides a clear mechanism for shortfall liability. Directors may be held jointly and severally liable for unpaid debts if the company's bankruptcy resulted from their fault or negligence and the estate proves insufficient. The statute extends this liability to former directors within a five-year look-back period to ensure accountability even after resignation (Undang-Undang (UU) Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, 2007). This provision represents a normative shift: limited liability is not absolute, and the law reassigns losses to those whose actions precipitated insolvency. Directors may rebut liability only by meeting stringent conditions that mirror the BJR: evidence of good faith, prudence, no conflict of interest, and preventive measures. In extreme cases where the company structure itself has been manipulated to evade obligations, piercing the corporate veil (PCV) under Paragraph 3(2) UUPT serves as an exceptional remedy. Courts may disregard separate legal personalities when shareholders or controllers abuse the entity to commit fraud or harm creditors (Intihani, 2022; Kamaluddin, 2025). Indonesian court practice highlights that evidence is central to these claims: contemporaneous documents, bank transfers, board minutes, and timing of suspicious transactions are key to linking misconduct with insolvency outcomes.

Taken together, these findings show a layered legal architecture that balances legal certainty with substantive fairness. The law encourages entrepreneurial decision-making by protecting directors who act diligently and loyally but removes that protection when misconduct erodes creditor trust or company solvency. The combined framework, comprising Paragraph 1365 tort claims, *Pauliana* avoidance actions, Paragraph 104 shortfall liability, and PCV, creates a coherent path for courts to hold wrongdoers accountable without undermining the predictability of limited liability. There is a need to harmonize these provisions to establish clear and consistent standards regarding the definition of 'bad faith,' the timing and evidentiary thresholds in avoidance actions, and also the application of the business judgment rule to enhance creditor protection and reinforcing the integrity of corporate governance.

Beyond internal fiduciary claims, directors face external liability in tort under Paragraph 1365 of the Indonesian Civil Code for unlawful acts (*onrechtmatige daad*) that cause loss to creditors or third parties (Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek voor Indonesie), 1847). Claims under Paragraph 1365 of the Civil Code may be pursued concurrently with claims under Paragraph 97 of the UUPT in cases of director mismanagement, provided that fault, harm, and a causal link between the director's actions and the resulting damage are established. In such circumstances, directors cannot rely on the company's separate legal personality to evade personal liability when their actions directly harm creditors or other third parties. When managerial unlawful acts occur near insolvency, the Bankruptcy Law (Law No. 37 of 2004) equips the curator with *Actio Pauliana* to avoid debtor transactions that prejudice the estate (gratuitous transfers, clandestine asset dispositions, or collusive preferences). Successful *Pauliana* actions restore assets to the estate and can sharpen the causal link between directors' misconduct and insolvency loss (Busroh et al., 2024). Indonesia recognizes piercing the corporate veil against shareholders and controllers in Paragraph 3(2) UUPT, such as bad-faith misuse of the company, participation in unlawful acts, or unlawful use of company assets that leaves the company unable to pay debts. Courts may also reallocate liability to controllers in egregious circumstances, often alongside PMH, BJR failure, and bankruptcy tools.

Legal Consequences of Bankruptcy for The Board of Directors and Limited Liability Companies

The bankruptcy of a Limited Liability Company (LLC) has various legal consequences both for the company itself as a legal entity and for the board of directors as the company's governing body (Liu & Li, 2025). Each member of the board of directors may be held personally and fully liable for losses suffered by the company if it can be proven that such losses arise from their negligence or misconduct in carrying out managerial duties (Miao et al., 2025). Such liability occurs particularly when the directors perform their responsibilities without due care, accountability, and good faith as required by law. Based on the provisions of Paragraph 1 Sub-section 1 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU), bankruptcy is defined as a general seizure of all the debtor's assets, the management and settlement of which is carried out by a curator under the supervision of a supervisory judge (Setyarini et al., 2020). Accordingly, once an LCC is declared bankrupt, all of its assets are placed into the bankruptcy estate which results in the company losing its authority to manage or dispose of its assets (Hudyarto, 2021). Bankruptcy of an LLC generates significant legal consequences. First, the authority to manage the company's assets is transferred from the board of directors to the curator, thereby depriving the company of its freedom to administer or dispose of its property. Second, the company's business activities are disrupted and may even come to a halt, as its assets are placed under general attachment. Third, bankruptcy may ultimately lead to dissolution of the company in accordance with Paragraph 142 Sub-section 1 Letter C of the Indonesian Company Law, particularly when no assets remain after liquidation. This situation also adversely affects creditors, who may not recover their claims in full, as well as shareholders who lose their invested capital since the company's assets are utilized for debt repayment. For the board of directors, bankruptcy entails different consequences. The directors lose their authority to manage the company once it is declared bankrupt and only actions taken by the curator are legally valid. Furthermore, if bankruptcy arises due to negligence or misconduct by the directors, they may be held personally liable pursuant to Paragraph 97 Sub-section 3 of the Indonesian Company Law.

CONCLUSION

The study highlights that the legal liability of directors in a Limited Liability Company (LLC) occupies a crucial position in balancing the principle of limited liability with the need for accountability. While an LLC is recognized as a separate legal entity with asset segregation from its members, this protection is not absolute. Directors who commit unlawful acts, whether through negligence or misconduct, may face personal liability when their actions cause financial losses leading to bankruptcy. Indonesian laws, particularly Law No. 40 of 2007 on Limited Liability Companies and Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, provide the normative framework governing such accountability, though their implementation remains complex.

The doctrine of piercing the corporate veil becomes a relevant corrective measure when directors abuse their authority or act in bad faith which allows courts to set aside the corporate shield and directly impose liability on individuals. Bankruptcy further underscores these consequences, as directors lose managerial authority to a court-appointed curator and may bear personal responsibility if insolvency results from their unlawful acts. Therefore, the accountability of directors serves not only as a legal safeguard for shareholders, creditors, and third parties but also as a mechanism to preserve the integrity of corporate governance. Strengthening clarity in the scope of directors' liability is essential to ensure legal certainty, protect business actors, and promote trust in Indonesia's corporate and economic system.

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