Contractus Vol. 01 No. 2 (2026): 73-79
E-ISSN: xxxx-xxxx (*Online*)

Directors' and Commissioners' Liability in Corporate Bankruptcy: A Legal Analysis of Corporate Responsibility

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Article Information
Article History
Submitted: 29 April 2026
Received: 09 June 2026
Accepted: 29 July 2026

Keywords:
Corporate Bankruptcy; Directors' Liability; Commissioners' Liability; Limited Liability Company; Legal Certainty; Creditor Protection

Abstract
Corporate bankruptcy raises significant questions concerning the extent to which directors and commissioners may be held personally liable when the company's assets are insufficient to satisfy its obligations. This study examines the legal implications of Article 115 of Law Number 40 of 2007 concerning Limited Liability Companies for the liability of directors and commissioners in corporate bankruptcy. This study employs normative juridical research using statutory and conceptual approaches to analyze the relevant provisions governing corporate liability, bankruptcy, and the supervisory duties of commissioners. The findings indicate that personal liability does not arise merely from the declaration of bankruptcy but requires the establishment of fault or negligence in the performance of corporate duties. Article 115 provides a legal basis for imposing joint and several liability on commissioners where their supervisory failure contributes to the bankruptcy and the bankruptcy estate is insufficient to satisfy the company's obligations. The study concludes that the application of this provision requires a careful distinction between managerial responsibility and supervisory responsibility to ensure proportional liability, creditor protection, and legal certainty.

Introduction

Corporate bankruptcy has become an important issue in Indonesian business law because the failure of a company to fulfil its obligations may affect not only the company but also its creditors and other stakeholders. As a separate legal entity, a Limited Liability Company (Perseroan Terbatas or PT) generally has assets separate from those of its shareholders, directors, and commissioners. This principle of limited liability, however, is not absolute and may be set aside under certain circumstances where corporate organs are proven to have acted improperly or negligently.[1]

[1] M. Pasha Arifin Nusantara, "Kajian Penerapan Doktrin Piercing The Corporate Veil Pada Perseroan Perorangan," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 4 (2025),

The issue becomes particularly significant when a company is declared bankrupt under Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations and its assets are insufficient to satisfy creditors' claims. In such circumstances, Law Number 40 of 2007 concerning Limited Liability Companies establishes specific rules concerning the personal liability of directors and commissioners.[2] Article 104 addresses directors' liability, while Article 115 extends liability to commissioners where bankruptcy results from their fault or negligence in performing their supervisory duties.

The application of Article 115 raises important legal questions because commissioners perform a supervisory rather than managerial function. Determining whether their conduct constitutes legally relevant fault or negligence may therefore be difficult, particularly when individual commissioners have different levels of involvement and knowledge concerning corporate decisions.[3] The provision also raises questions concerning the application of joint and several liability and the appropriate boundaries between directors' managerial responsibility and commissioners' supervisory responsibility.[4]

Previous studies have examined corporate liability, limited liability, directors' duties, and creditor protection in bankruptcy. However, the specific implications of Article 115 concerning the relationship between commissioners' supervisory duties, negligence, and personal liability remain insufficiently examined. This study therefore analyzes the legal consequences of Article 115 for directors' and commissioners' liability in corporate bankruptcy, with particular attention to the limits of personal responsibility and the need to balance creditor protection with legal certainty and fairness.

Methods

This study employs a normative juridical research method to examine the legal implications of Article 115 of Law Number 40 of 2007 concerning

https://doi.org/10.38035/jihhp.v5i4.3868; Sri Redjeki Slamet, Anatomi Muliawan, and Heddy Kandou, "Pembaharuan Hukum Jaminan Indonesia," *Pembaharuan Hukum Jaminan Indonesia Lex Jurnalica*, vol. 19, 2022.

[2] Suwinto Johan, "The Function of Commissioner Based on the Principles of Good Corporate Governance," *Journal of Private and Commercial Law* 6, no. 1 (2022), https://doi.org/10.15294/jpcl.v6i1.36356; Zilmi Haridhi et al., "Judicial Review of the Application of Corporate Legal Veil in Malaysia and Indonesia: A Legal Comparison," *Recht Studiosum Law Review* 3, no. 1 (2024), https://doi.org/10.32734/rslr.v3i1.16331.

[3] Imastian Chairandy Siregar et al., "Tanggung Jawab Dan Tata Kelola Perseroan Perorangan Sebagai Badan Hukum Baru Di Indonesia," *Locus Journal of Academic Literature Review*, 2022, https://doi.org/10.56128/ljoalr.v1i1.49.

[4] Nusantara, "Kajian Penerapan Doktrin Piercing The Corporate Veil Pada Perseroan Perorangan."

Limited Liability Companies in relation to the liability of directors and commissioners in corporate bankruptcy. The research uses a statutory approach to analyze the relevant provisions of the Company Law and Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, and a conceptual approach to examine the principles of limited liability, fiduciary duty, supervisory responsibility, and creditor protection.[5] The legal materials consist of primary and secondary legal sources obtained through library research and are analyzed qualitatively and descriptively through legal interpretation. The analysis focuses on determining the legal requirements for imposing personal liability on directors and commissioners and establishing the appropriate boundaries of such liability when the company's bankruptcy estate is insufficient to satisfy its obligations.

Results and Discussion

1. The Scope of Directors' and Commissioners' Liability in Bankruptcy and PKPU

Directors and commissioners occupy different but complementary positions within a limited liability company. The directors are responsible for managing the company and representing it both inside and outside the court, while the Board of Commissioners performs a supervisory and advisory function over the management conducted by the directors.[6] These different functions also determine the respective scope of responsibility when the company experiences financial difficulties, enters PKPU proceedings, or is declared bankrupt. Therefore, corporate bankruptcy does not automatically transfer the company's obligations to its directors or commissioners.

The liability of directors and commissioners may arise when their conduct constitutes fault or negligence in performing their respective duties. In bankruptcy, personal liability becomes relevant when the company's assets are insufficient to satisfy its obligations and the bankruptcy is connected to the improper performance of corporate duties. For directors, the assessment

[5] Altan Fahri Gülerci, "Reflections on the Reform of Company Law in Georgia and the New Law on Entrepreneurs," *Juridical Tribune - Review of Comparative and International Law* 15, no. 1 (2025), https://doi.org/10.62768/TBJ/2025/15/1/05; Jonathan Hardman and Guillem Ramírez Santos, "Empirical Evidence for the Continuing Need to 'Think Small First' in UK Company Law," *European Business Organization Law Review* 24, no. 1 (2023), https://doi.org/10.1007/s40804-022-00258-y.

[6] Viator Harlen Sinaga et al., "Responsibilities of the Board of Directors in Limited Liability Companies," *Justice Voice* 3, no. 1 (2025), https://doi.org/10.37893/jv.v3i1.1134; Tore Bråthen and Stine Winger Minde, "To What Extent Must, and Can, the Boards of Norwegian Limited Liability Companies and Public Limited Liability Companies Consider Sustainability?," *Oslo Law Review*, 2024, https://doi.org/10.18261/olr.10.2.8; Sudarno Sudarno, "Juridical Review Of A Limited Company If Acting As A Limited Liability Company In A Commanditare Vennootschap Company," *Justicia Journal* 12, no. 2 (2023), https://doi.org/10.32492/jj.v12i2.12208.

focuses primarily on their management decisions and actions, whereas for commissioners, the assessment concerns whether they adequately exercised their supervisory responsibilities. The distinction is important because commissioners should not be held personally liable merely because they occupy a supervisory position within a company.

Accordingly, the limits of personal liability must be determined by examining the individual conduct, duties, and circumstances of each corporate organ. The existence of bankruptcy or PKPU alone cannot be regarded as sufficient grounds for imposing personal liability. Such liability requires a legal basis and an assessment of whether the relevant organ failed to perform its duties with the required degree of care and responsibility. This approach is necessary to maintain the principle of limited liability while ensuring that directors and commissioners cannot use the separate legal personality of the company to avoid responsibility for conduct that has contributed to the company's failure.[7]

2. Legal Implications of Article 115 of the Company Law for Directors' and Commissioners' Liability

Article 115 of Law Number 40 of 2007 concerning Limited Liability Companies provides an important legal basis for determining the responsibility of commissioners in corporate bankruptcy.[8] The provision essentially establishes that members of the Board of Commissioners may be held jointly and severally liable for the company's obligations when bankruptcy occurs due to their fault or negligence in carrying out their supervisory duties and the bankruptcy estate is insufficient to satisfy those obligations. The provision therefore creates an exception to the general principle of limited liability while maintaining a requirement to establish fault or negligence.

The application of Article 115 must be distinguished from the responsibility of directors because the functions of the two organs are

[7] Eva Micheler, "Separate Legal Personality–an Explanation and a Defence," *Journal of Corporate Law Studies* 24, no. 1 (2024), https://doi.org/10.1080/14735970.2024.2365170; Yasmine Budustour and Leen Budustour, "The Doctrine of Separate Legal Personality and It's Significance in International Business," *SSRN Electronic Journal*, 2023, https://doi.org/10.2139/ssrn.4384050.

[8] Shafira Andiena Qoyyumi Permadi and Ariawan Ariawan, "Tanggung Jawab Komisaris Perusahaan Perseroan BUMN Ditinjau Dari UU No 40 Tahun 2007 Tentang Perseroan Terbatas," *Cakrawala Repositori IMWI* 6, no. 2 (2023), https://doi.org/10.52851/cakrawala.v6i2.279; Razhez Akbar Wildan Utama and Budi Santoso, "Analisis Yuridis Tanggung Jawab Direksi Terhadap Kepailitan Perseroan Terbatas Menurut Undang-Undang Nomor 40 Tahun 2007," *Notarius* 15, no. 2 (2022), https://doi.org/10.14710/nts.v15i2.37014; Ahmad Zaini et al., "Penerapan Tanggung Jawab Sosial Perusahaan Pasal 74 UU No.40 Tahun 2007," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 4 (2025), https://doi.org/10.38035/jihhp.v5i4.4516.

different. Directors exercise managerial authority and make decisions concerning the company's business activities, whereas commissioners supervise and provide advice regarding such management. Consequently, the liability of commissioners should be based on evidence that their failure to exercise adequate supervision contributed to the circumstances leading to bankruptcy. Joint and several liability should not be interpreted as automatic liability for every commissioner simply because the company has been declared bankrupt.

The findings demonstrate that Article 115 strengthens creditor protection by providing a legal avenue to pursue the personal liability of commissioners when the statutory requirements are fulfilled.[9] At the same time, its application requires clear and proportional standards for determining fault or negligence to prevent excessive extension of corporate liability. A balanced interpretation of Article 115 should therefore protect creditors' legitimate interests while preserving legal certainty for directors and commissioners and maintaining the fundamental principle that the company's obligations are generally separated from the personal assets of its corporate organs.

Conclusions

This study concludes that the liability of directors and commissioners in corporate bankruptcy is not automatically transferred to their personal assets merely because the company has been declared bankrupt. Such liability is conditional upon the existence of fault or negligence and the insufficiency of the bankruptcy estate to satisfy the company's obligations. Directors are primarily assessed based on their management functions, while commissioners are assessed based on the adequacy of their supervisory duties. Article 115 of Law Number 40 of 2007 concerning Limited Liability Companies strengthens creditor protection by allowing commissioners to be held jointly and severally liable where their supervisory failure contributes to the company's bankruptcy. However, the provision also creates legal uncertainty because the statutory standard of adequate supervision remains insufficiently specific and may result in inconsistent judicial interpretation. Therefore, the application of Article 115 should maintain a balance between creditor protection, proportional corporate accountability, and legal certainty by establishing clearer standards for assessing fault, negligence, causation, and the individual role of each commissioner. Active supervision, proper

[9] Yapiter Marpi, Jamal Wiwoho, and . Pujiyono, "Legal Protection of Creditors Constitutional Rights as Citizens Due to Debtor Insolvency," *KnE Social Sciences*, 2024, https://doi.org/10.18502/kss.v8i21.14776.

documentation of corporate decisions and recommendations, and timely corporate restructuring are consequently essential to strengthen accountability while preserving the principle of limited liability.

Acknowledgments

The author would like to express sincere gratitude to all parties who contributed to the completion of this research. Special appreciation is extended to the academic supervisors and colleagues for their valuable guidance, constructive feedback, and support throughout the research process. The author also acknowledges the institutions and individuals who provided access to relevant legal materials and information. Their contributions were essential to the completion of this study and the preparation of this article.

Funding (optional)

No funding was received for this study.

Reference

Bråthen, Tore, and Stine Winger Minde. "To What Extent Must, and Can, the Boards of Norwegian Limited Liability Companies and Public Limited Liability Companies Consider Sustainability?" *Oslo Law Review*, 2024. https://doi.org/10.18261/olr.10.2.8.

Budustour, Yasmine, and Leen Budustour. "The Doctrine of Separate Legal Personality and It's Significance in International Business." *SSRN Electronic Journal*, 2023. https://doi.org/10.2139/ssrn.4384050.

Gülerci, Altan Fahri. "Reflections on the Reform of Company Law in Georgia and the New Law on Entrepreneurs." *Juridical Tribune - Review of Comparative and International Law* 15, no. 1 (2025). https://doi.org/10.62768/TBJ/2025/15/1/05.

Hardman, Jonathan, and Guillem Ramírez Santos. "Empirical Evidence for the Continuing Need to 'Think Small First' in UK Company Law." *European Business Organization Law Review* 24, no. 1 (2023). https://doi.org/10.1007/s40804-022-00258-y.

Johan, Suwinto. "The Function of Commissioner Based on the Principles of Good Corporate Governance." *Journal of Private and Commercial Law* 6, no. 1 (2022). https://doi.org/10.15294/jpcl.v6i1.36356.

Marpi, Yapiter, Jamal Wiwoho, and . Pujiyono. "Legal Protection of Creditors Constitutional Rights as Citizens Due to Debtor Insolvency." *KnE Social Sciences*, 2024. https://doi.org/10.18502/kss.v8i21.14776.

Micheler, Eva. "Separate Legal Personality–an Explanation and a Defence."

Journal of Corporate Law Studies 24, no. 1 (2024). https://doi.org/10.1080/14735970.2024.2365170.

Nusantara, M. Pasha Arifin. "Kajian Penerapan Doktrin Piercing The Corporate Veil Pada Perseroan Perorangan." *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 4 (2025). https://doi.org/10.38035/jihhp.v5i4.3868.

Qoyyumi Permadi, Shafira Andiena, and Ariawan Ariawan. "Tanggung Jawab Komisaris Perusahaan Perseroan BUMN Ditinjau Dari UU No 40 Tahun 2007 Tentang Perseroan Terbatas." *Cakrawala Repositori IMWI* 6, no. 2 (2023). https://doi.org/10.52851/cakrawala.v6i2.279.

Sinaga, Viator Harlen, T. Gayus Lumbuun, Abdul Latief, and Anwar Budiman. "Responsibilities of the Board of Directors in Limited Liability Companies." *Justice Voice* 3, no. 1 (2025). https://doi.org/10.37893/jv.v3i1.1134.

Siregar, Imastian Chairandy, Sunarmi Sunarmi, Mahmul Siregar, and Detania Sukarja. "Tanggung Jawab Dan Tata Kelola Perseroan Perorangan Sebagai Badan Hukum Baru Di Indonesia." *Locus Journal of Academic Literature Review*, 2022. https://doi.org/10.56128/ljoalr.v1i1.49.

Slamet, Sri Redjeki, Anatomi Muliawan, and Heddy Kandou. "Pembaharuan Hukum Jaminan Indonesia." *Pembaharuan Hukum Jaminan Indonesia Lex Jurnalica*. Vol. 19, 2022.

Sudarno, Sudarno. "Juridical Review Of A Limited Company If Acting As A Limited Liability Company In A Commanditare Vennootschap Company." *Justicia Journal* 12, no. 2 (2023). https://doi.org/10.32492/jj.v12i2.12208.

Utama, Razhez Akbar Wildan, and Budi Santoso. "Analisis Yuridis Tanggung Jawab Direksi Terhadap Kepailitan Perseroan Terbatas Menurut Undang-Undang Nomor 40 Tahun 2007." *Notarius* 15, no. 2 (2022). https://doi.org/10.14710/nts.v15i2.37014.

Zaini, Ahmad, Faisal Sadat Soaduon Harahap, Khairun Na'im, and Donny Setha. "Penerapan Tanggung Jawab Sosial Perusahaan Pasal 74 UU No.40 Tahun 2007." *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 4 (2025). https://doi.org/10.38035/jihhp.v5i4.4516.

Zilmi Haridhi, Adam Afiz, Samuel Buha Raja Nadeak, Muhammad Fadil, and Muhammad Hakeem. "Judicial Review of the Application of Corporate Legal Veil in Malaysia and Indonesia: A Legal Comparison." *Recht Studiosum Law Review* 3, no. 1 (2024). https://doi.org/10.32734/rslr.v3i1.16331.