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Legal Liability of the Board of Directors for Errors in Withholding and Reporting of Employee Income Tax

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Abstract

This study analyzes the legal liability of the Board of Directors regarding the mismanagement of PPh 21 (Employee Income Tax) by subordinates, amidst the ongoing tension between the doctrine of limited liability under the Law on Limited Liability Companies and the concept of personal liability for corporate officers under Tax Law. Employing a normative legal research method with statutory, conceptual, and case-law approaches, this research examines the juridical qualification of delegated authority through the lens of fiduciary duty and the Business Judgment Rule (BJR). The findings indicate that the delegation of payroll management is a legally valid operational action. Following the Constitutional Court Decision Number 41/PUU-XVIII/2020, the paradigm of the Board of Directors' legal liability has shifted from strict liability to fault-based liability. The Directors are shielded from personal liability provided they can demonstrate the implementation of adequate internal control systems (due care) and the absence of criminal intent (mens rea). Liability for administrative tax sanctions rests upon corporate assets, while criminal liability for tax embezzlement committed by individual employees is personal and cannot be automatically imputed to the Directors.

INTRODUCTION

The existence of a Limited Liability Company as a legal entity is based on the doctrine of segregation of assets and the principle of limited liability (Lubis, 2018). As a legal construction (artificial person), a limited liability company cannot act physically without a human organ (natural person) that runs the management wheel (Budiono, 2011). Law Number 40 of 2007 concerning Limited Liability Companies stipulates the Board of Directors as an organ that has autonomous authority and is fully responsible for the management of the company for the benefit of the company, in accordance with the company's intentions and objectives, and represents the company both inside and outside the court (Rahmah, 2023).

Along with the development of the dynamics of the modern business world, the company's operational scale has grown to be very complex (Dewi, 2018). In large-scale corporate structures, the division of labor becomes an administrative necessity. It is physically impossible for the Board of Directors to carry out daily technical-operational calculations independently, including in the management of employee wages (payroll) and the fulfillment of Article 21 Income Tax obligations (PPh 21). Therefore, these technical tasks are delegated to various special work units such as the Payroll Division, Human Capital, Finance, Tax, Human Resource Information System (HRIS)-based computing systems, to the involvement of external professionals such as Tax Consultants (Setyarini, Mahendrawati, & Arini, 2020).

Although managerial delegation of authority is a common and legitimate practice, Indonesian tax law views the position of the Board of Directors in a different perspective. Article 32 paragraph (1) letter a of Law Number 6 of 1983 concerning General Provisions and Tax Procedures as last amended by Law Number 7 of 2021 concerning the Harmonization of Tax Regulations stipulates that in carrying out tax rights and obligations, corporate taxpayers are represented by administrators (Wiranti, 2023). Furthermore, Article 32 paragraph (2) of the KUP Law stipulates the norm that the Taxpayer's representative is personally and/or jointly responsible for the payment of taxes owed (Tobing, Nainggolan, & Siringoringo, 2023).

The provisions of the tax law trigger a theoretical clash (legal antinomy) with the doctrine of limited liability regulated in corporate law (Lubis, 2018). In the event of administrative failures or operational irregularities in the management of Income Tax 21 employees such as miscalculations, under-deposits, late deposits, misreporting, and acts of embezzlement of tax money by internal staff—the fiscal often collects tax debts and administrative sanctions directly from the Board of Directors to touch their personal assets (Tobing, Nainggolan, & Siringoringo, 2023).

This legal complication is reflected in various court cases, such as the Central Jakarta District Court Decision Number 285/Pdt.bth/2015/PN.Jkt.Pst, Decision Number 585/Pdt.G/2015/PN. JKT. PST, Jakarta High Court Decision Number 707/PDT/2016/PT. DKI, and Decision Number 40/PDT/2018/PT. DKI (Wiranti, 2023). These decisions are about the limitation of the personal liability of the management for the tax debts of the legal entity that he manages.

This juridical uncertainty finally prompted the constitutionality test of Article 32 paragraph (2) of the KUP Law which resulted in the Constitutional Court Decision Number 41/PUU-XVIII/2020 (Tobing, Nainggolan, & Siringoringo, 2023). This decision formulates a conditionally constitutional interpretation of the personal responsibility of the management, but its implementation in the context of errors arising from the delegation of operational authority still requires a comprehensive normative analysis. This scientific article will examine the limits of the legal responsibility of the Board of Directors for errors in withholding and reporting employee tax made by the company's subordinates.

Based on the description of the background of the problem above, the formulation of the problem in this legal research is: How is the juridical qualification of the delegation of authority to manage payroll and employee Income Tax 21 by the Board of Directors reviewed from the doctrine of fiduciary duty and civil law?; and what are the forms and limits of legal liability (administrative, civil, and criminal) of the Board of Directors for errors in withholding, depositing, reporting, and embezzlement of Income Tax Article 21 of employees committed by company employees after the Constitutional Court Decision Number 41/PUU-XVIII/2020?

METHODS

This legal research uses the normative legal research method, which is a scientific research method that lays down law as a written norm system (Marzuki, 2021). The study focuses on analyzing the alignment of principles, doctrines, laws and regulations, and court decisions related to the accountability of company organs in business law and tax law (Marzuki, 2021).

The approaches used in this study are the statute approach, the conceptual approach, and the case approach (Marzuki, 2021). The legislative approach is carried out by examining Law No. 40 of 2007 concerning Limited Liability Companies, Law No. 6 of 1983 concerning General

Provisions and Tax Procedures and its amending laws, the Civil Code, and Supreme Court Regulation No. 13 of 2016 (Sjawie, 2017). A conceptual approach is applied to dissect the doctrines of fiduciary duty, Business Judgment Rule, employer's liability, and vicarious liability (McMillan, 2013). The case approach is carried out by analyzing the Constitutional Court Decision Number 41/PUU-XVIII/2020 as well as several first-instance court decisions and appeals relevant to the company's management's tax debt dispute (Wiranti, 2023).

RESULTS AND DISCUSSION

Juridical Qualifications for Delegation of Authority for Payroll Management and Income Tax 21 Reviewed from the Doctrine *of Fiduciary Duty* and Civil Law

In corporate law, the position of the Board of Directors as an organ of the company is based on a fiduciary relationship (Fuady, 2002). This doctrine requires the Board of Directors to manage the company with very high standards of integrity, loyalty, and prudence for the benefit of the company (Lubis, 2018). The concept of management entrusted to the Board of Directors can be distinguished from the act of daily management (beheer) and the act of ownership or transfer of rights (beschickking) (Rahmah, 2023). The management of employee salaries (payroll) and its income tax deductions are theoretically classified as administrative and operational management acts (administrative-operational management acts) (Rahmah, 2023).

Due to its operational and administrative nature, management acts are a type of authority that can be delegated by the Board of Directors to the structure under it (Rahmah, 2023). This delegation does not eliminate the position of the Board of Directors as the main authority holder (attribution), but rather a form of giving a mandate or internal delegation for the effectiveness of corporate governance (Good Corporate Governance) (Wahyono & Cahyo, 2023).

When the Board of Directors delegates the calculation of Income Tax 21 to the Payroll Division, Human Capital, Finance, Tax, HRIS system, or Tax Consultant, the legal relationship formed civilly can be analyzed through several normative instruments as follows:

Employment Relations with Internal Employees (Payroll, Human Capital, Finance, Tax)

Employees work under the company's orders, leadership, and supervision by receiving wages based on Article 1603 of the Civil Code (Khairandy, 2007). This subordination relationship places employees as an extension of the Board of Directors in running the operational wheel (Khairandy, 2007).

Based on Article 1367 paragraph (3) of the Civil Code, employers are responsible for losses caused by their servants or subordinates in performing the work assigned to them (Putra, 2021). Civilly, the responsibility for technical errors committed by internal employees lies with the limited liability company (vicarious liability corporation), not with the Board of Directors personally, as long as the error occurred within the reasonable corridor of work instructions (Setyarini, Mahendrawati, & Arini, 2020).

Delegation to HRIS (Automation Technology) System

The HRIS system acts as a technological tool. If there is a calculation error due to a glitch, algorithm failure, or inaccuracy of the system formula, the error is classified as a company's operational risk, unless it is proven that there is negligence on the part of the management in updating the system periodically or allowing the system to be damaged (Sjawie, 2017).

Legal Relationship with External Tax Consultants

When tax handling is delegated to an external Tax Consultant, the legal relationship that arises is a power of attorney agreement and a professional work outsourcing agreement (Ester, 2022). Tax Consultants act independently based on their professional expertise (Ester, 2022).

If there is a misrepresentation or reporting error due to the consultant's negligence, the company can file a lawsuit for default or unlawful act (PMH) based on Article 1365 of the Civil Code to the consultant to request compensation for tax administrative fines imposed by the fiscal authorities (Utamy & Wahjuni, 2020). However, before the state (fiscus), the company remains the main taxpayer subject who is obliged to pay off arrears first (Tobing, Nainggolan, & Siringoringo, 2023).

The delegation of this authority is limited by the duty of care (duty of care or prudential duty) attached to the position of the Board of Directors (Rissy, 2020). Based on corporate law doctrine, delegation must not be absolute (absolute delegation) without supervision. The Board of Directors has the obligation to conduct periodic supervision (duty to oversee) and build an adequate internal control system (Fuady, 2002).

The prevailing legal assumption is that subordinates are considered to have performed their duties honestly and accurately (presumption of honest execution), unless there are indications or reports of irregularities that are known or should have been known by the Board of Directors based on reasonable managerial standards of prudence (Setyarini, Mahendrawati, & Arini, 2020). If the internal control system has been running well, but operational errors still occur unexpectedly, the Board of Directors is protected by the doctrine of Business Judgment Rule (BJR) because it does not have an element of personal fault (mens rea) (Rissy, 2020).

Limits of Legal Accountability of the Board of Directors after the Constitutional Court Decision Number 41/PUU-XVIII/2020

The birth of the Constitutional Court Decision Number 41/PUU-XVIII/2020 is a milestone that reconstructs the pattern of the relationship between the legal accountability of limited liability company management to corporate tax obligations (Tobing, Nainggolan, & Siringoringo, 2023). The Constitutional Court interpreted Article 32 paragraph (2) of the KUP Law conditionally constitutional (Tobing, Nainggolan, & Siringoringo, 2023).

In its consideration, the Constitutional Court stated that non-payment of company taxes is often caused by negligence or intentionality of the management, so it is natural for the management to be responsible (Tobing, Nainggolan, & Siringoringo, 2023). However, the Constitutional Court also affirmed that such personal and joint responsibilities should not be imposed if the administrators can prove that they in their position are absolutely impossible to be burdened with responsibility for the taxes owed (Tobing, Nainggolan, & Siringoringo, 2023). This fundamental shift affects three dimensions of the legal liability of the Board of Directors for the mismanagement of Income Tax 21 employees by their subordinates, which are described as follows:

Tax Administrative Accountability

Based on the KUP Law, in the event of an error in calculation (miscalculation of Income Tax 21), under-deposit, late deposit, or mis-reported by the Payroll or HRIS Division, the tax administrative sanctions that arise in the form of fines or interest fines are addressed to the company as a corporate taxpayer (Sjawie, 2017).

The mechanism for active tax collection is regulated in the Law on Tax Collection by Compulsory Letter (PPSP Law) and PMK No. 189/PMK.03/2020 (Rissy, 2020). Active collection actions begin with the submission of a Letter of Warning to the Board of Directors after 7 days have passed since the repayment due date (Rissy, 2020). If within 21 days since the Letter of Warning is issued, the tax debt has not been paid, the DGT will issue a Forced Letter (Rissy, 2020).

After the Constitutional Court's Decision No. 41/PUU-XVIII/2020, the Board of Directors cannot be directly held hostage (gijzeling) or forced to pay off the arrears with their personal property, unless the DGT can prove the existence of active negligence (commission) or passive negligence (omission) from the Board of Directors in the tax reporting system (Rissy, 2020). The Board of Directors has the right to submit an administrative defense to the Director General of Taxes by submitting supporting evidence (Tobing, Nainggolan, & Siringoringo, 2023). The evidence includes:

1. The existence of SOP for tax calculation that is signed and strictly implemented (Setyarini, Mahendrawati, & Arini, 2020).
2. Proof of appointment and delegation of formal duties to internal or external tax experts who have official competency certification (Ester, 2022).
3. Periodic supervision results report or independent internal audit that shows the good faith of the Board of Directors in mitigating errors (Wahyono & Cahyo, 2023).

If such evidence is met, then the absolute administrative responsibility lies with the corporate assets. If the company goes bankrupt, then based on the bankruptcy law (Law No. 37 of 2004) jo. KUP Law, the responsibility for managing the bankruptcy boedel along with the payment of taxes owed completely shifts to the Curator (Kusumaningtyas, 2022).

The Board of Directors is exempt from personal liability as long as the company's bankruptcy does not occur due to the mistakes or negligence of the management (Kusumaningtyas, 2022). If the bankruptcy settlement process has been completed and the company is dissolved, the remaining uncovered tax debt can be administratively written off by the DGT without being imposed on the former Board of Directors (Rissy, 2020).

Civil Liability (UUPT and Civil Law)

If the mistake in withholding Income Tax 21 results in direct financial losses for the company (for example, administrative sanctions in the form of interest in fines of 100% of the amount of tax underdeducted based on Article 13 paragraph (3) of the KUP Law), a limited liability company or shareholders representing at least 1/10 of the shares can file a derivative civil lawsuit against the members of the Board of Directors based on Article 97 paragraph (6) of the UUPT (Fuady, 2002). In order for the Board of Directors to be held personally liable in civil proceedings, the plaintiff must prove gross negligence or breach of fiduciary duty (Dewi, 2018).

On the other hand, legal protection in the form of Business Judgment Rule (BJR) immunity in Article 97 paragraph (5) of the Constitution will fully protect the Board of Directors if the Board of Directors can prove the following substantive criteria (Wahyono & Cahyo, 2023):

1. The decision to delegate tax management is based on good faith for business efficiency (Wahyono & Cahyo, 2023).

2. There is no conflict of interest that benefits the Board of Directors personally for the tax error or irregularity (Wahyono & Cahyo, 2023).
3. The Board of Directors has taken due care in selecting and monitoring the Payroll Division or HRIS (Rissy, 2020).

Criminal Liability of Taxation

The aspect of criminal tax liability is subject to the principle of criminal legality (lex stricta) and the principle of no crime without fault (Tobing, Nainggolan, & Siringoringo, 2023). Article 39 paragraph (1) of the KUP Law qualifies intentionality in submitting tax returns whose contents are incorrect, abusing NPWP, or not paying taxes that have been withheld as a criminal offense in the field of taxation (Wiranti, 2023).

If the reporting error or tax evasion is carried out unilaterally by the employee (for example, payroll staff deliberately embezzle the employee's tax deduction money for personal interests), then the criminal liability is individual (personal criminal liability) which is imposed directly on the employee (Sjawie, 2017).

Based on Supreme Court Regulation Number 13 of 2016, corporations can also be held criminally liable if the crime is committed for the benefit of the corporation or allowed to occur by management (Setyarini, Mahendrawati, & Arini, 2020). Corporations in this case may be subject to criminal fines (Tobing, Nainggolan, & Siringoringo, 2023). However, the Board of Directors personally cannot be sentenced to prison for tax crimes committed by their employees, unless the public prosecutor can prove the existence of one of the elements (Wahyono & Cahyo, 2023): The Board of Directors knows, approves, or enjoys the proceeds of the tax evasion for the efficiency of the corporation's cash flow (intentionality with a definite conviction or a conviction of possibility) (Wahyono & Cahyo, 2023). The Board of Directors clearly ignores systemic warnings (red flags), refuses to carry out supervision required by law, or deliberately does not design a tax supervision system with the intention of providing loopholes for tax irregularities (Wahyono & Cahyo, 2023).

If the Board of Directors has no mental involvement (mens rea) at all, and organizationally has made efforts to prevent tax crimes by complying with reasonable compliance instruments, then substitute criminal liability cannot be imposed on the Board of Directors personally (Tobing, Nainggolan, & Siringoringo, 2023). This is a form of substantive legal protection that separates the corporate responsibility, the responsibility of the technical implementer, and the personal responsibility of the Board of Directors (Rissy, 2020).

CONCLUSION

Based on all normative, doctrinal, and jurisprudential studies that have been described, this legal research formulates the conclusion, First, the delegation of *payroll management* authority and Income Tax 21 is a legally valid operational action. Through the doctrine *of the Business Judgment Rule*, the Board of Directors is protected from personal responsibility for subordinate technical errors, as long as the Board of Directors has fulfilled its *duty of care*, such as the preparation of adequate SOPs, the selection of competent personnel, and the implementation of reliable systems. Second, after the Constitutional Court's ruling, the paradigm of legal accountability of the Board of Directors has shifted from *strict liability* to *fault-based liability*. Administrative sanctions and tax fines must be imposed on the company's assets, so that the personal assets of the Board of Directors cannot be executed unless it is proven that there is gross negligence or active involvement. In addition, in the criminal realm, the Board of Directors cannot be convicted of the actions of subordinates as long as they are not proven to have malicious intent (*mens rea*) or intentional neglect. Criminal responsibility is inherent in individual employees, while corporations are responsible for administrative sanctions.

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