

## ABSTRAK

Doktrin *fiduciary duty* sebagai doktrin tugas kepercayaan yang merupakan kewajiban direksi untuk berlaku mewakili kepentingan/keuntungan pihak lain yang pada saat bersamaan mementingkan kepentingan pribadi pihak lain daripada kepentingan pribadi. Seseorang direksi dikatakan memiliki tugas kepercayaan (*fiduciary duty*) manakala memiliki kapasitas fidusia atau jika usaha yang dikelola bukan miliknya/kepentingannya melainkan milik/kepentingan pihak lain.

Berdasar hal tersebut, penulis melakukan penelitian mengenai bagaimana batasan lingkup kewenangan dan tanggung jawab direksi perseroan menurut doktrin *fiduciary duty* ini sehingga apabila terjadi pelanggaran doktrin *fiduciary duty* oleh direksi atau karena kelalaian direksi yang berakibat perseroan menjadi pailit dapat berkonsekuensi timbulnya pertanggung jawaban tidak terbatas kepada direksi. Penelitian ini merupakan penelitian hukum normatif yang mencakup penelitian asas hukum-hukum yang dilakukan secara kualitatif. Bahan hukum primer yang digunakan dalam penelitian ini meliputi Kitab Undang-Undang Hukum Perdata, Undang-Undang No. 40 Tahun 2007 tentang Perseroan Terbatas, Undang-Undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, serta Putusan Pengadilan Niaga pada Pengadilan Negeri Surabaya No.14/Pdt.Sus Gugatan Lain Lain/2017/PN.Niaga.Sby jo. No.24/Pdt.SusPKPU/2017/PN.Niaga.Sby, tanggal 15 Januari 2018. Analisis bahan hukum dilakukan secara deskriptif kualitatif.

Hasil menunjukkan bahwa doktrin *fiduciary duty* melingkupi kewenangan dan tanggung jawab direksi baik dalam hal direksi melakukan fungsi representasi maupun fungsi pengurusan perseroan. Lingkup kewenangann dan tanggung jawab direksi menurut doktrin *fiduciary duty* tersebut timbul karena adanya hubungan direksi dan perseroan yang mana direksi merupakan wali perseroan (*as a trustee*) dan juga direksi merupakan agen perseroan (*as an agent*). Lebih lanjut pelanggaran doktrin *fiduciary duty* oleh direksi dalam menjalankan kewenangan dan tanggung jawabnya, dianggap merupakan kelalaian dan apabila kelalaian tersebut mengakibatkan perseroan menjadi pailit maka direksi harus bertanggung jawab secara pribadi.

**Kata Kunci: Perseroan Terbatas, Direksi, *Fiduciary Duty*, Tanggung Jawab, Kepailitan**

## ABSTRACT

The fiduciary duty doctrine is a doctrine of trust duty which is the obligation of the board of directors to act on behalf of the interests/benefits of other parties who at the same time prioritize the personal interests of other parties rather than personal interests. A director is said to have a fiduciary duty when he has a fiduciary capacity or if the business being managed is not his/her interests but belongs to/another party's interest.

Based on this, the authors conducted research on how the scope of authority and responsibility of the company's directors is limited according to the fiduciary duty doctrine so that if there is a violation of the fiduciary duty doctrine by the board of directors or due to the negligence of the board of directors which results in the company going bankrupt, it can result in unlimited liability to the board of directors. This research is normative legal research which includes qualitative research on the principles of the law. The primary legal materials used in this research include the Civil Code, Law no. 40 of 2007 concerning Limited Liability Companies, Law no. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, as well as the Decision of the Commercial Court at the Surabaya State Court No.14/Pdt.Sus Gugatan Lain Lain/2017/PN.Niaga.Sby *jo.* No.24/Pdt.SusPKPU/2017/PN.Niaga.Sby, dated January 15, 2018. Analysis of legal materials was carried out in a qualitative descriptive manner.

The results show that the fiduciary duty doctrine covers the authority and responsibility of the board of directors, both in terms of the board of directors performing the representation function and the management function of the company. The scope of authority and responsibility of the board of directors according to the fiduciary duty doctrine arises because of the relationship between the directors and the company in which the directors are the company's trustees (as a trustee) and the directors are also the company's agents (as an agent). Furthermore, the violation of the fiduciary duty doctrine by the board of directors in carrying out its authorities and responsibilities is considered a negligence and if the negligence causes the company to go bankrupt, the board of directors must be personally responsible.

**Keywords: Limited Liability Company, Directors, Fiduciary Duty, Responsibility, Bankruptcy**