

Acquit Et De Charge to the Responsibilities of the Management of Limited Liability Companies

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Abstract

The form of a limited liability company is the most widely used form of economic activity today. In the General Meeting of Shareholders, the Managements and Commissioners in realizing the accountability for what they have done in one financial year, are obliged to submit an annual report. With the approval of the annual report responsibilities from the Board of Directors, the Managements gets "acquit et de charge" (release and settlement). This research uses the statutory approach method and the conceptual approach method with data collection by means of literature study, namely studying and systematically analyzing, books, scientific works, and legislation. The result of this research is that the principle of acquit et de charge does not eliminate the Managements from criminal responsibility. This can be seen from Article 155 of the Limited Liability Company Law and there is no guarantee that this principle can free oneself from criminal responsibility against the Board of Directors. However, with the Business Judgment Rule (BJR) as a legal protection which has the condition that as long as the Managements prioritizes the principle of prudence, good faith and full responsibility.

Keywords

Acquit et de charge; criminal responsibility; management of a limited liability company



I. Introduction

The form of a limited liability company is one of the most widely used economic activities. According to W.L.P.A. Molengraff, based on an economic perspective, a company or company is made for all actions that are carried out continuously, acting out to earn income through delivering goods, trading various goods, and making agreements. A Limited Liability Company is established on the basis of an agreement from a group of people who agree to establish/build a Limited Liability Company business entity. The basis for the establishment of a limited liability company is an agreement, so that its establishment cannot be separated from various conditions for the validity of an agreement. (Binoto., 2009, p.5)

Based on Article 1 point 2 jo, article 1 number 5 of Law no. 40 of 2007 concerning Limited Liability Companies states that the Company consists of three organs, including: 1. The Board of Commissioners, whose duties are to carry out supervision of various policies regarding management, ongoing management both related to the business of the Company or the Company and provide advice to the Managements 2. The Managements, is fully responsible and authorized in the management of the Company in accordance with the goals and objectives of the Company and also becomes a representative of the Company, either outside or inside the court in accordance with the provisions of the existing articles of association. General Meeting of Shareholders (GMS) is authorized in which the authority is not granted by the Board of Commissioners or the Managements with the limits set out in the

articles of association and the Company Law. In his understanding, it means that the Managements is obliged and has great responsibility for the company. Some of the structures in the form of a Limited Liability Company are established by several people who have collaborated both in doing business or doing business, or it can be with family and it can be with other close relatives who are already more acquainted with the person who is invited to do business. The holding of the GMS, the Commissioners, and the Managements In order to realize the responsibilities for what they have done in one financial year, they are obliged to submit an annual report. The annual report must obtain prior approval at the AGMS. Approval of accountability-answer to the annual report of the Board of Directors, therefore, the Managements obtained a "acquit et de charge" (repayment or exemption) Acquit means "to clear (a person) of a criminal charge" means that to acquit et decharge, making the directors freed from their responsibilities, obligations and duties towards activities that have been carried out in one book year. (Binoto, 2020, p. 109)

Acquit et decharge is widely used in the practice of annual report accountability, which contains reports on company activities in the previous financial year that have been carried out by the Managements and have been approved by the Board of Commissioners at the Annual GMS as required in Article 66 of the Limited Liability Company Law. Articles 66 and 69 of the Limited Liability Company Law indicate that the GMS has the authority to approve or reject the annual report submitted by the Managements after the Board of Commissioners has reviewed the report. By being accepted by the GMS, the GMS will provide a statement of release and discharge of responsibility (acquit et decharge) to the Managements and board of commissioners for the management and also what has been carried out as long as the annual book has been audited.(Handoyo, 2017, p.147)

However, on the other side of this, there is a weakness that does not explicitly regulate the acquit et de charge in the GMS so that not a few things in business such as lack of accuracy in regulating the company so that business crimes can occur. Criminal acts in the form of fraud and fraud will be increasingly difficult to detect if there is no binding legal force between roles in doing business. The forms of white collar crime from corporations vary, but the form of crime is the use of operating income by one of the management organs of the company who utilizes the results of the company's activities. The problem of criminal acts committed by the Managements or Commissioners is one of the actual problems mentioned earlier, namely the main problem studied is corporate crime which is closely related to abuse of office or to authority. The form or type of liability as a matter of crime must be considered from the law enforced by law enforcers based on the interests of the victims and the facts involved in this criminal behavior.(Etty., 2011, p.7)

The Indonesian criminal law system contains the problem that corporations can be responsible for criminal acts of corporate management, which is still referred to as an exception, this is because only humans can commit criminal acts. A corporation can be said to have committed a crime if the corporate organ is for the benefit of the corporation has committed a criminal act, but the lack of approval in every meeting in the company or a report in the GMS can also make a criminal act in a business that is unlikely to be proven due to lack of clear facts because only based on conversation only. This is because the corporation is not an entity, corporation or company registered in the state register through a notarial deed, therefore criminal sanctions can be given to corporations not included in conventional criminal sanctions, unless the sanctions are related to fines.

The imposition of fines on corporations can be maximized, due to the easy execution of actions, if previously there has been confiscation of corporate assets related to the facts of criminal acts that have been committed. Acts that are not in accordance with criminal law, usually referred to as corporate crimes when carrying out business activities, namely

crimes that cause huge losses to the people who organize and build lives.(Hasbulah, 2015, p.91). Within the scope of the law, if someone commits a crime, then that person must comply with the positive legal procedures (Tumanggor, 2019). Social problems are plaguing our society. It is undesirable and it disrupts and damages the growth of communities (Phillips, 2020).

So from this, the researcher is interested in conducting research on how the principle of acquit et de charge is on the responsibility of the directors of a limited liability company in terms of the aspect of criminal responsibility. The researcher will look for the problem formulation first namely, how is the criminal responsibility of the directors of a limited liability company related to acquit et de charge based on the Limited Liability Company Law? Second, namely, how the directors of a limited liability company can absolve themselves of criminal responsibility because of the acquit et de charge. In this study, the author wants to find answers based on the problems that make a form of business crime possible, but whether by giving acquit et de charge this can really protect from the risk of criminal prosecution for the crime that occurred. And what is the form of compliance of the Managements in the general meeting of shareholders that can prevent the occurrence of criminal acts that can result in the company going bankrupt. The author puts it in writing this law with the title "Acquit Et De charge against the Responsibilities of the Managements of a Limited Liability Company (Judging from the Legal Aspect Criminal).

II. Research Methods

The writing of this research is a juridical normative research with descriptive analysis. The method applied is a statutory approach (statue approach), (Aziz, et. al. 2021, p. 209) by analyzing the provisions and laws that are in accordance with the problem being studied. Researchers also conducted this research with methods of approach conceptual (conceptual approach) that is one kind of approach in the study of law by providing analysis point solving legal research which is known by various aspects of the legal concepts underlying, and is known based on the value that is in norms in regulations that have to do with the concepts used. The reason for using this approach can be done because of the legal vacuum that departs from the doctrines and views that exist in the science of law.

The method of collecting data is through library research, namely analyzing and systematically studying several scientific works, books, the Criminal Code, UU Limited Liability Companies, as well as other laws regarding corporate crimes. The legal materials used in this study are primary, secondary, and tertiary legal materials obtained from the process of being analyzed using a qualitative approach with the aim of understanding and understanding the problems studied. This study aims to explore the acquit et de charge regulations from the Limited Liability Company Law and analyze the forms of criminal responsibility of directors who have received acquit et de charge statements which make the directors acquittal from lawsuits on the company's faults.

III. Discussion

3.1 Acquit Et de Charge Principle in Limited Liability Companies

Accountability for the implementation of the company's business activities for 1 (one) financial year is reported by the Managements in the form of an annual report to the Company's Annual General Meeting of Shareholders. The annual report will then be evaluated by the shareholders and will obtain approval at the AGMS. The approval of the annual report accountability from the Managements, resulted in the Managements obtaining a

statement "acquit et de charge" (repayment and release). Acquit is defined as "to clear (a person) of a criminal charge" which means that if there is an acquit et de charge, the directors will be free from all their responsibilities, obligations, duties from various activities that have been carried out in one book of the financial year. (Binoto, 2020, p. 109)

The Limited Liability Company Law does not explicitly stipulate the terms of repayment or release of liability (acquit et de charge). This makes the Directors who participate in it do not understand about the implementation of acquit et de charge. The GMS contains an Acquit et de charge which confirms that the shareholders hold deliberation to reach a consensus to make an agreement regarding the release of responsibility to the management from the management that has been carried out. Acquit et decharge is widely used in the practice of accountability for annual reports containing business plans, company activity reports and others that have been reviewed and approved by the Board of Commissioners to the GMS as required in Article 66 of the Limited Liability Company Law. Articles 66 and 69 of the Limited Liability Company Law indicate that the GMS has the authority to approve or reject the annual report submitted by the Managements after the Board of Commissioners has reviewed the report. By being accepted by the GMS, the GMS will grant acquittal and full settlement (acquit et decharge) to the board of commissioners and directors for the supervisory and management actions that have been carried out as long as the yearbook has been audited. (Handoyo, 2017, p.150)

The granting of acquit et de charge at the GMS shows that the shareholders and their proxies by means of deliberation in order to reach a consensus have made a decision to approve the release of overall responsibility (acquit et de charge) to the management from various management activities that have been carried out for the Limited Liability Company. This means that if one day losses arise due to various policies of the Commissioners or directors during their tenure in the same year, the Commissioners and Directors cannot be prosecuted criminally for this matter.(Etty., 2011, p.7)

Exceptions from the acquittal of criminal responsibility can be viewed from two sides. First, from the side of the board of directors, (Fikriya, 2020, p. 592) where the financial statements made are misleading, so that the board of commissioners and directors are responsible for the injured party. This provision is regulated in Article 69 paragraph 3 of the Limited Liability Company Law. Second, in the event that the interests of the shareholders as reflected in the GMS are not in line with the interests of the corporation, in accordance with the aims and objectives of the establishment in the Articles of Association of the Corporation. In this case it can be said that the actions of the shareholders have been ultra vires (beyond their authority) and therefore such actions are unlawful acts and can be null and void by lawm. (Handoyo, 2017, p.148)

The concept of acquit et de charge is regulated in Article 45 of Law no. 23 of 1999 which contains about Bank Indonesia which has been amended many times, the most recent being amended by Law no. 6 of 2009, which reads:

"Senior Deputy Governors, Governors, Bank Indonesia officials, and Deputy Governors cannot be punished because they have made and taken policies or decisions that are in accordance with their authority and duties as contained in this law as long as their duties and authorities have been carried out in good faith".

Elucidation of Article 45 of Law no. 6 of 2009 states:

"This provision is intended to provide legal protection for personal liability for Bank Indonesia officials and members of the Board of Governors who have good faith in accordance with their authority to take policies and decisions that are not easy but are very much needed in carrying out their powers and duties".

The granting of acquit et de charge can be said to be inaccurate. Because in principle, the granting of acquit et de charge only provides settlement and release which is only

reported, while various other legal actions that are not reflected in the annual report, are fully accounted for by the Managements for the legal consequences that arise. Acquit et de charge only gives civil acquittals to shareholders, but criminal acts are completely beyond the authority of shareholders, because they have never been given acquit et de charge, this means that the Managements is still responsible for every criminal act committed by him and on behalf of the company. (Binoto, 2020, p. 112)

3.2 Granting of Acquit Et de Charge and Criminal Liability

The granting of acquit et de charge can free and settle from legal actions. However, in terms of criminal acts committed by the Managements and Commissioners, it can be seen from Article 155 of the Limited Liability Company Law which reads: "The provisions regarding the responsibility of the Managements and/or the Board of Commissioners for their mistakes and omissions as regulated in this Law do not reduce the provisions stipulated in this Law. in the law on Criminal Law".

In this case, acquit et de charge does not automatically guarantee that the Managements is free from criminal liability. The Limited Liability Company Law still gives authority to the criminal law apparatus to investigate criminal acts committed by the Managements even though the shareholders have given acquit et de charge to the Managements. This acquittal does not eliminate the right of criminal law enforcement officers to investigate criminal acts committed by the Managements either intentionally or by negligence, even though there has been anstatement acquit et de charge. Exemption from civil liability will not eliminate criminal liability. The understanding that this acquit et de charge does not absolve a member of the Managements from criminal prosecution in the future. In the event that acquit et de charge is used by the Managements as an excuse to prohibit or hinder investigations in the handling of alleged criminal cases in a Limited Liability Company, this can be interpreted as that the GMS has taken over the authority of investigators in handling criminal cases. (Binoto, 2020, p. 112)

So in this case, the problem of criminal acts committed by the corporation is one of the actual problems mentioned earlier, namely the main problem studied is corporate crime which is closely related to abuse of authority. The form or type of liability as a matter of criminal offense must be considered from the law enforced based on the interests of the victims and the facts involved in this criminal act. Corporate issues in Indonesia can be responsible for criminal acts committed by corporate management while in an exception, this is because only humans can commit criminal acts. A corporation can be called a criminal act if the corporate organ carries out a criminal act for the benefit of the corporation, but without approval at a company meeting or a report at the GMS it can also make a criminal act in a business less likely to be proven due to a lack of clear facts based on discussion only.

In terms of corporate criminal liability, according to Article 3 paragraph (1) of the Limited Liability Company Law, liability for legal actions of a limited liability company or corporation is not borne by shareholders, it can consist of the Managements and the Board of Commissioners. The wealth of the limited liability company is also not the wealth of the shareholders. The criminal provisions related to the shareholders of the corporation are: "that the shareholders may not use or own the company's assets arbitrarily. The perpetrators can be imprisoned for 5 years and fined for embezzlement."

Based on Article 1 of the Limited Liability Company Law, a limited liability company is a legal subject as well as a separate entity from people who are shareholders or from other organs. Based on Article 3 paragraph (1) of the Limited Liability Company Law and its explanation, the liability for legal actions of a limited liability company is not borne by the shareholders (Commissioners and Directors). If there is an act of the Managements that is not

Careful when managing the company and causes the company to lose, then the loss is a form of failure to exercise prudence (reasonable care). This makes the Director responsible for the losses suffered by the company. If the Management consists of many members, then they are collegially required to be responsible for the Company's losses.

3.3 Limitation of Criminal Liability to the Company at the GMS

From the point of view of criminal liability, the doctrine of *Acquit et de charge* will free the managements from criminal charges as long as they run the company in good faith, prudently (prudential principle) and carry out business judgment (Business Judgment Rule) in order to the interests of the company and in accordance with the goals and objectives of the company being established. The Business Judgment Rule (BJR) is a form of legal protection for the Board of Directors. This principle stipulates that the Managements in the Company is not responsible for losses that arise because the decision is based on good faith. As long as the Management runs the company in good faith, making decisions based on the interests of the company, based on adequate knowledge or data and not based on personal interests as well as financial statements that describe the condition of liabilities, assets, operating results, and capital obtained from the company, the Business Judgment Rule doctrine can be applied. However, if the Management does not do or does not fulfill the basis of good faith and financial statements that do not match the facts of the company's activities. Therefore, the Business Judgment Rule doctrine is inappropriate and cannot be applied to provide legal protection for the Board of Directors. And the Managements also cannot take refuge in the *acquit et de charge* that has been given. (Binoto, 2020, p. 188)

The implementation of the Business Judgment Rule for the benefit of the company is called *intra vires* or taking actions within the limits of authority. On the one hand, the obligation can provide a corporate veil of legal protection to the corporation or its management (corporate veil). This happens when in the GMS after receiving the annual report from the Managements, and approving, then issuing a statement for the grant of *Acquit et de charge*. On the other hand, if the Management does not act in good faith for the company, then this is included in the category *Ultra Vires* or is interpreted as being outside the authority of the Managements. So the GMS cannot provide *Acquit et de charge*. If the *ultra vires* condition is found at the end of the day, the granting of the doctrine *Acquit et de charge* can no longer be valid and can no longer protect the Managements which is called *Piercing the corporate veil*. So that each member of the Managements can be held criminally responsible. If a corporation carries out activities that can harm the public and is not in accordance with the morals and values that exist in society, then what was originally a corporate responsibility having a civil nature can turn into a violation of criminal law (*wederrechtelijkheid*) which is material or formal in nature. (Handoyo, 2017, p.131)

Therefore, to avoid and prevent the company from losing money and the consequences of criminal law that occur, it is necessary to have good communication, the use of a Memorandum of Understanding or referred to as an MoU agreement. The MoU is the basis for the contract. MoU is an explanation of transactions that have not been agreed upon so that from the MoU will be known about the responsibilities and transaction schemes. Another meaning of the MoU is the compliance of the Managements in the decision of the General Meeting of Shareholders, in this case the Management has the right not to implement or deviate from the decision of the GMS which according to the consideration of the Management is that the GMS decision is contrary to the law of interest or may harm the Company. If the lack of strength and real facts because the business can be applied from their respective desires, it can be feared that it will affect the progress of the company's development into chaos. And not a few deviant behavior or criminal acts can run such as

embezzlement in office, embezzlement of money that is carried out secretly and without concrete evidence.

Furthermore, that is, being able to comply with the articles of association that have been mutually agreed upon in the GMS and the need for good communication and socialization about businesses that organize criminal policies in order to overcome or prevent the existence of very vague criminal acts of corruption. Because learning about doing business is not only done by people who are going to start a business but is also mandatory for entrepreneurs who have long experience or have set up a company several times. This form of policy must be paired with non-judicial measures and judicial steps in the form of prevention in order to resolve problems within the company. Handling or overcoming corporate criminal acts is intended so that corporations can be held accountable for actions committed by their organs that cause victims to be harmed, namely what is called corporate criminal liability and so that business people can be more careful in starting a business to run their economy, both for themselves, family, and employees who work in the company.

IV. Conclusion

4.1 Conclusion

The conclusions obtained based on the discussion are: Acquit et de charge there are no clear rules in the Act No. 40 of 2007 concerning Limited Liability Companies, acquit et de charge has the principle that the Managements is freed from all responsibilities for the obligations and duties and activities carried out in one book of the financial year. But this principle does not eliminate the Managements from criminal responsibility. This can be seen in Article 155 of the Limited Liability Company Law which reads: "The provisions regarding the responsibility of the Board of Commissioners or the Managements for negligence or errors are regulated in this Law without prejudice to the provisions stipulated in the Law on Criminal Law".

Acquit et de charge does not guarantee that the Managements is free from criminal liability. UU no. 40 of 2007 which contains the Limited Liability Company still giving authority to the criminal law apparatus to investigate criminal acts that have been committed by the Managements even though the shareholders have given acquit et de charge to the Managements. This release does not eliminate the right of criminal law enforcement officers to investigate criminal acts committed by the Managements either intentionally or by negligence, even though there has been a statement of acquit et de charge. Exemption from civil liability will not eliminate criminal liability.

Article 155 of the Limited Liability Company Law explains that if acquit et de charge is still given to the Board of Directors, there is no guarantee that this principle can free oneself from criminal responsibility against the Board of Directors. However, there is a Business Judgment Rule (BJR) which functions for legal protection which has the condition that as long as the Managements has the principle of prudence, responsibility and good will, the decision-making process takes into account the interests of the company, based on adequate data and knowledge, and is not based on For personal interests, the process of making financial statements can describe the actual condition of liabilities, assets, operating results, and capital obtained from the Company, so the Business Judgment Rule can protect the Managements as long as the Managements adheres to these principles. However, if the financial statements made by the Managements are not true and do not carry out some of these principles, then the Managements cannot take refuge behind the doctrine Business Judgment Rule. This doctrine is not appropriate to be used to protect the Directors concerned from personal liability.

4.2 Suggestion

Considering the important function of the statement *acquit et de charge* in the company's activities, it is suggested that the statement *acquit et de charge* can be regulated as legal norms for a limited liability company, by improving and simultaneously updating Law no. 40 of 2007 which contains Limited Liability Companies which are currently not in accordance with technological advances, so that the understanding of settlement and release does not result in misunderstanding of criminal responsibility on the Managements because Article 155 of the Limited Liability Company Law stipulates that the errors and omissions of the Board of Commissioners or the Managements are not reduce in the provisions of criminal law. Therefore, implementing a healthy company is very important and fulfills good faith in the company because the doctrine Business Judgment Rule can provide legal protection to the Managements as long as the Managements carries out good faith and financial reports that are in accordance with the company's activities. It would be better to avoid the forms of legal consequences carried out by the company, namely the need for good communication, the use of a Memorandum of Understanding or referred to as an MoU agreement, and socializing about entrepreneurs to run a healthy business.

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