

# The Function of Commissioner Based on the Principles of Good Corporate Governance

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## Abstract

The organs and functions of a limited liability company are controlled by Company Law No. 40 of 2007 Governing Limited Liability Companies (UU PT). The tasks of executing and supervising have been distinguished. The board of directors is in charge of the company's day-to-day operations, while the board of commissioners oversees the board of directors. In reality, however, the board of commissioners participates in the board of director activities or performs board of director tasks. This study aims to analyze the functions of commissioners and how they should be carried out in compliance with the laws and regulations governing corporate governance. Primary, secondary, and additional data are used in this study. The study found that the board of commissioners' role should be based on the Limited Liability Company Act. The board of commissioners serves as the board of directors' supervisor. Because shareholders also serve on the board of commissioners, the board of commissioners is involved in the operation of the board of directors. The Board of Commissioners' involvement in the Board of Directors' activities must be severely limited by the Board of Directors. If it turns out that the commissioners' activities are detrimental to the shareholders, the Board of Directors can bring this to a general meeting of shareholders and hold them accountable.

**KEYWORDS** Board of Commissioners, Good Corporate Governance, Limited Liability Company



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## Introduction

A corporation, according to Law No. 40 of 2007 (UU PT), has three principal organs: the general meeting of shareholders (GMS), the board of commissioners (BoC), and the board of directors.<sup>1</sup> The general meeting of shareholders appoints the board of commissioners (BoC) and directors.<sup>2</sup> Directors are in charge of the company's day-to-day operations.<sup>3</sup> The board of commissioners oversees the functions of the directors in running the corporation. The commissioner is a corporate organ that performs general and specific supervision per the company's articles of organization, according to Article 5 of the Limited Liability Company Law.<sup>4</sup>

However, the board of commissioners is not doing as it should. Several commissioners have been named as suspects in judicial cases. MPT, the Commissioner of PT. Wilmar Nabati Indonesia has been named a suspect in granting export privileges for crude palm oil (CPO) or cooking oil raw materials.<sup>5</sup> PT. Wahana Auto Ekamarga (WAE) President Commissioner was charged with bribing a tax official worth Rp. 1.8 billion.<sup>6</sup>

Several retired police generals, on the other hand, have been appointed as commissioners of State-Owned Enterprises (SOE). When a high-ranking National Police officer with the rank of general assumes the

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<sup>1</sup> Suwinto Johan and Ariawan Ariawan, "Pertanggungjawaban Direksi Setelah Pemberian Acquit and Discharge," *Acta Comitatus* 5, no. 3 (2020): 586–600.

<sup>2</sup> Yusron Muhammad Yuwono, "Perkembangan Kewenangan Rapat Umum Pemegang Saham (RUPS) Perseroan Terbatas Di Indonesia," *Notarius* 8, no. 2 (2015): 207–235.

<sup>3</sup> Erikson Sihotang, "Pertanggungjawaban Direksi Atas Tindakan Komisaris Melampaui Wewenang," *Ilmu Raad Kertha* 4, no. 2 (2021): 1–10.

<sup>4</sup> Hasnati, Sandra Dewi, and Andrew Shandy Utama Utama, "Pemisahan Kekayaan Perseroan Terbatas Dari Kekayaan Pemegang Saham, Dewan Komisaris Dan Dewan Direksi," *Ensiklopedia Social Review* 1, no. 1 (2019): 50–55.

<sup>5</sup> Aulia Damayanti, "Komisaris Jadi Tersangka Kasus Minyak Goreng, Wilmar Nabati Buka Suara," *Detik.Com*, 2022.

<sup>6</sup> M. Iqbal Al Machmudi, "Darwin Didakwa Menyuaup Petugas Pajak," *Media Indonesia*, 2020.

role of commissioner of SOE, this is a typical occurrence.<sup>7</sup> In the matter of alleged corruption in PT. Garuda Indonesia, Tbk's procurement from 2011 to 2021. The Department of Justice investigated two past commissioners of PT. Garuda Indonesia, Tbk.<sup>8</sup>

The president commissioner, and controlling shareholder of PT. Sunprima Nusantara Finance (SNP) is a suspect. A bogus debt guarantee is involved 14 banks engaged in this transaction, with a total loss of Rp. 14 trillion.<sup>9</sup>

The commissioners have been listed as suspects in past investigations involving bribery, fraudulent transactions, and other issues. The commissioner has a supervisory role rather than an executive role. Under the PT Law, commissioners should not be involved in day-to-day transactions as directors. On the other hand, commissioners are actively engaged in daily business operations. Because he behaves like a director, President Commissioner of PT. Pertamina is in the spotlight.<sup>10</sup>

This study aims to discuss the commissioners' proper function in light of the principles of good corporate governance outlined in the PT Law. The study is expected to give businesspeople, particularly shareholders, commissioners, and directors, a better understanding of the proper function of commissioners. It will be able to reestablish the commissioners' supervisory function, allowing for the implementation of good corporate governance norms.

<sup>11</sup> Good corporate governance is a procedure for managing a bank that applies the principles of transparency, accountability, independence,

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<sup>7</sup> Muhammad Idris, "Deretan Pensiunan Jenderal Polisi Yang Jadi Komisaris BUMN Halaman All - Kompas," *Kompas.Com*, 2021.

<sup>8</sup> Wilda Hayatun Nufus, "Jaksa Periksa 2 Eks Komisaris Garuda Indonesia Terkait Kasus Pengadaan Pesawat," *Detiknews*, 2022.

<sup>9</sup> Ferrika Sari, "Komisaris SNP Finance Leo Chandra Serahkan Diri Ke Bareskrim," *Kontan.Co.Id*, 2018.

<sup>10</sup> Yuli Yanna Fauzie, "Ahok, Komisaris Rasa Dirut Dan 'Something Wrong' Pengawasan Di BUMN," *CNN Indonesia*, 2021.

<sup>11</sup> Christania Vanessa Sengkey, Roosje Lasut, and Godlieb N Mamahit, "Kajian Hukum Terhadap Penerapan Good Corporate Governance Berdasarkan Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," *Lex Administratum* 6, no. 1 (2018): 144–151.

and fairness, according to the Financial Services Authority Regulation (POJK) Number 55/POJK.03.2016 concerning the Implementation of Governance for Commercial Banks (TARIF). Good corporate governance will restore or enhance people's economic conditions, foster healthy business competition, boost the quantity and quality of investment, and remove corrupt practices, collusion and nepotism, and unethical commercial practices.<sup>12</sup>

The board of commissioners plays a crucial role in ensuring that strong corporate governance is implemented. The board of directors' control function and the principle of good faith and oversight play a vital role in sustaining the company's health.<sup>13</sup> The board of commissioners has the responsibility of providing general supervision of the company's management by the board of directors per the articles of association, giving advice to the directors who carry out the duties of managing the company, and giving approval to the directors in taking action based on the company's articles of association, as well as managing the company in an emergency, according to the Limited Liability Company Law.<sup>14</sup> In addition, if the board of directors willfully commits an unlawful act in administering the company or inspecting the firm's records for supervision, the board of commissioners might temporarily suspend the board of directors from serving. The board of commissioners represents the shareholders' interests.<sup>15</sup> The board of

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<sup>12</sup> Suwinto Johan and Ariawan Ariawan, "Governance of Family Dynasties in Financial Institutions and Public Listed Companies," *3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities* 655, no. Ticash 2021 (2021): 1–6.

<sup>13</sup> Ni Ketut Supasti Dharmawan and I Gede Agus Kurniawan, "Fungsi Pengawasan Komisaris Terkait Kesehatan Bank Perkreditan Rakyat: Pendekatan Good Corporate Governance Dan Asas Itikad Baik," *Law Reform* 14, no. 2 (2018): 236–247.

<sup>14</sup> Olivia Triany Manurung, "Tugas Dan Tanggungjawab Dewan Komisaris Sebagai Organ Perseroan Terbatas Menurut Undang Undang Nomor 40 Tahun 2007," *Lex Privatum* 6, no. 7 (2016): 54–60.

<sup>15</sup> Claudia Brigita Kilis, "Tanggung Jawab Dewan Komisaris PT Dalam Melaksanakan Pengawasan Terhadap Direksi Menurut Undang Undang Nomor 40 Tahun 2007," *Lex Privatum* 3, no. 3 (2015): 61–69.

commissioners' monitoring outcomes will be presented to shareholders at the annual meeting (GMS).<sup>16</sup>

The board of commissioners can be held liable for the failing corporation and its supervisory role. Article 114 of the PT Law regulates the board of commissioners' responsibility limits.<sup>17</sup> If the board of commissioners is shown to be irresponsible in carrying out its duties, accountability might be demanded.<sup>18</sup> Article 108, paragraph (2) of the PT Law outlines the commissioner's role.<sup>19</sup> However, proving the board of commissioners' request for accountability is difficult.<sup>20</sup> The board of commissioners' responsibilities can arise when the board of directors is fired, and the board of commissioners takes over the functions of the board of directors. The board of commissioners' responsibility can be a personal responsibility.<sup>21</sup> The board of commissioners' duties is divided among the members.<sup>22</sup> Suppose a commissioner can demonstrate that he behaved in good faith and with complete prudence for the company's interest in conformity with the company's articles of association. In that case, he may be excused from liability.<sup>23</sup> This second job must be transient and limited in

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<sup>16</sup> Suwinto Johan, "Financial Institution and Public Listed Companies: How the Supervision Regulated Under the Indonesian Law?," *Varia Justicia* 17, no. 2 (2021): 171–183.

<sup>17</sup> Naga Suyanto, "Tanggung Jawab Komisaris Dalam Mengelola Perusahaan Sesuai Undang-Undang Perseroan Terbatas," *Jurnal of Law and Policy Transformation* 2, no. 2 (2017): 170–182.

<sup>18</sup> N N D Triantini and IGND Laksana, "Tanggung Jawab Dewan Komisaris Terkait Kepailitan Perseroan Terbatas," *Kertha Semaya: Journal Ilmu Hukum* 8, no. 6 (2020): 954–966.

<sup>19</sup> Atika Wulan Dari et al., "Tinjauan Normatif Tentang Tanggungjawab Dewan Komisaris Dalam Menjalankan Fungsi Pengawasannya Pada Suatu Perseroan Terbatas," *JUSTITIA: Jurnal Ilmu Hukum dan Humaniora* 7, no. 3 (2020): 666–671.

<sup>20</sup> Suwinto Johan and Ariawan, "Corporate Liability for Creditors' Losses during the Covid-19 Pandemic," *Media Hukum* 28, no. 1 (2021): 15–28.

<sup>21</sup> Shenti Agustini, "Pertanggung Jawaban Dalam Perseroan Terbatas Yang Pengurusannya Dilakukan Oleh Anggota Dewan Komisaris Pasca UU Cipta Kerja," *Supremasi, Jurnal Ilmiah Ilmu Hukum* 12, no. 1 (2022): 86–96.

<sup>22</sup> Irwan Saleh Indrapradja, "Kajian Yuridis Terhadap Tanggung Jawab Direksi Dan Dewan Komisaris Pada Struktur Organisasi Perseroan Terbatas Yang Bersifat Kolegialitas Menurut Undang Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," *Jurnal Ilmiah Magister Ilmu Administrasi (JIMIA)* 12, no. 1 (2018): 123–149.

<sup>23</sup> Rosida Diani, "Tanggung Jawab Komisaris Dalam Hal Perseroan Terbatas Mengalami Kerugian," *Simbur Cahaya* 25, no. 1 (2018): 30–46.

scope. This dual role can lead to fraud and violate corporate governance norms.<sup>24</sup>

The following are the research topics for this study: what are the functions of the commissioners and the board of commissioners based on the PT Law's principles of good governance? Why are the commissioners and the board of commissioners engaged in a limited liability company's operation? What steps may the board of directors take against commissioners who interfere with day-to-day operations?

## Method

The subject of excellent good corporate governance is the focus of this study. The functions of the board of commissioners are discussed in terms of legal principles and standards based on the Company Law. This study used a normative legal procedure, as stated in the study's background.<sup>25</sup> Three sorts of research material sources are used in this study. Primary, secondary, and additional research materials make up research materials.<sup>26</sup>

This study analyzes data obtained from various sources with existing laws and regulations as well as legal norms and principles and previous studies. The results of this analysis are presented in the form of a discussion in this article. This discussion considers the results of previous studies.

Laws and regulations relevant to the research topic are primary research resources. The Republic of Indonesia's Constitution of 1945 is the major source of primary research material. Scientific publications in journals, seminar proceedings, or conferences are secondary research

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<sup>24</sup> Putu Samawati, "Argumen Hukum Mengenai Larangan Jabatan Rangkap Komisaris Dan Direktur Dalam Sebuah Perseroan Terbatas," *Majalah Ilmiah Fakultas Hukum Universitas Sriwijaya* mana XXIV, no. 3 (2017): 4851–4864.

<sup>25</sup> Suwinto Johan and Ariawan Ariawan, "Information-Conneted Approach in Identifying Capital Market Crime at Information Technology Era," *Proceedings of the International Conference on Economics, Business, Social, and Humanities (ICEBSH 2021)* 570, no. Icebsh (2021): 217–221.

<sup>26</sup> Mahmud Peter Marzuki, *Penelitian Hukum: Edisi Revisi*, Revisi. (Jakarta: Kencana Prenada Media Grup, 2017).

sources. Other research materials include internet information or news. This news content is taken from a reputable website's publishing.<sup>27</sup>

## **Result and Discussions**

### **A. The Commissioner's position is based on the Limited Liability Company Law**

In the Limited Liability Company Law, the commissioner's function is an assembly or collegial in the form of a board of commissioners. Each member of the commissioner cannot act alone, according to Article 108 of the Limited Liability Company Law. As a result, the commissioner's activity is in the shape of an assembly rather than a person's actions. The board of commissioners supervises the board of directors on behalf of the community, not on behalf of individuals. One or more commissioners make up the board of commissioners. According to Article 110 of the Limited Liability Company Law, a person who can be appointed to the board of commissioners must be capable of carrying out legal actions unless he has been declared bankrupt, found guilty, and caused the company to be declared bankrupt, or sentenced to criminal acts that are detrimental to state finances or related to the financial sector in the previous five years. The GMS appoints members of the board of commissioners.

Commissioners serve as supervisors of the company's activities and shareholders' representatives under the Limited Liability Company Law. If the board of directors fails to carry out its duties in line with the company's articles of organization, the commissioner might take over their duties. The commissioner is the first to provide the board of directors' recommendations when it comes to making decisions. The commissioner is also the first to discover whether the corporation is operating in accordance with its articles of incorporation. If the Board of Directors does something

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<sup>27</sup> Suwinto Johan and Ariawan Ariawan, "Juridicial Overview Of The Syndication Financing Agreement Between Customers And Financial Institutions," *Kanun Jurnal Ilmu Hukum* 23, no. 3 (2021): 445-458.

wrong, the Board of Commissioners must issue warnings to the Board of Directors and notify shareholders.

According to Article 41 of the Limited Liability Company Law, the GMS has granted the Board of Commissioners the right to approve the implementation of GMS decisions, such as deciding the Board of Directors' remuneration, auditor fees, and other matters. The board of directors' work plan must first be approved by the board of commissioners before being submitted to the GMS, according to Article 63 of the Limited Liability Company Law. The board of commissioners must approve the board of directors' decision to disburse interim dividends, according to Article 72 of the Limited Liability Company Law. The board of commissioners approves company mergers, consolidations, takeovers, and spin-off per sections 122-125 of the Limited Liability Company Law.

The board of commissioners is obligated to disclose their shareholdings and those of their families. The board of commissioners must present a supervisory report to the board of directors, according to Article 66 of the Limited Liability Company Law. The annual report must be signed by the board of commissioners, according to Article 67 of the Limited Liability Company Law. The board of commissioners is also required by Article 75 to request information from shareholders at the GMS. The board of commissioners may convene a GMS, according to Articles 79-81 of the Limited Liability Company Law. At the time of voting during the GMS, the board of commissioners is forbidden from acting on the proxies of the shareholders. According to Article 106 of the Limited Liability Company Law, the board of commissioners has the authority to temporarily fire a member of the board of directors for various reasons.

## **B. Background Commissioners' involvement in a limited liability company's day-to-day operation**

Shareholders are frequently involved in day-to-day business decisions in business activity. The division of powers between shareholders,

directors, and the board of commissioners is hazy, especially in businesses where controlling shareholders still have sway. There are situations when the shareholders act as commissioners as well.

There are times when stockholders occupy the status of founder or chairman but are not members of the board of commissioners or directors. These stockholders are not only involved in the company's day-to-day operations but also supervise it. The board of directors is the party whose name appears in the deed in some situations, although the shareholders always decide. The shareholders do not trust the directors to govern the company. Even when the controlling shareholder manages the company, shareholders do not wish to serve as official directors for the company to appear professional. Because they were afraid that it would be stopped, the Board of Directors and the Board of Commissioners did not dare to mention it. Although the company is a limited liability company, the management operates as if it were a sole proprietorship. This organizational culture is prevalent among the company's initial founders, who are still actively involved in its management. As founders or owners of the company, the founding generation would intervene in everyday business activities. This pattern of meddling is becoming less and less typical among future generations who have learned about effective governance, even if this violates the norms of good governance.

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### **C. Actions that directors can take against commissioners who interfere with day-to-day company operations**

The Board of Directors is in charge of the company's day-to-day operations. The loss or negligence of the board of directors that results in the company's loss is the board's responsibility. If other parties interfere with the everyday operations of activities, the Board of Directors might claim a violation of corporate governance under the Limited Liability Company Law. If there is any interference, the Board of Directors shall expressly inform the Board of Commissioners or submit this to the GMS. If the parties do not react, the board of directors can present this as a meeting note.

As a result, the board of directors can demonstrate that specific parties interfere with the board of directors' ability to govern the company. The board of directors may be exempt from liability due to this breach as

long as this is officially communicated and becomes part of the meeting's notes, particularly the GMS. If there is more than one commissioner, the commissioners' activities will constitute a record for all shareholders and other commissioners. Figure 1 depicts several types of interference. In this situation, shareholders intervene in the company's management through linked parties. Shareholder intervention can be in several ways:

1. Shareholders hold positions as main commissioners or commissioners, so that the commissioners can intervene to the directors.
2. Shareholders appoint their families as directors. Shareholders intervene by influencing the decisions of the board of directors through their families.
3. Shareholders appoint commissioners and directors with people who are known and can influence them. Directors and commissioners are appointed by the shareholders.

This intervention pattern can be seen in Figure 1.

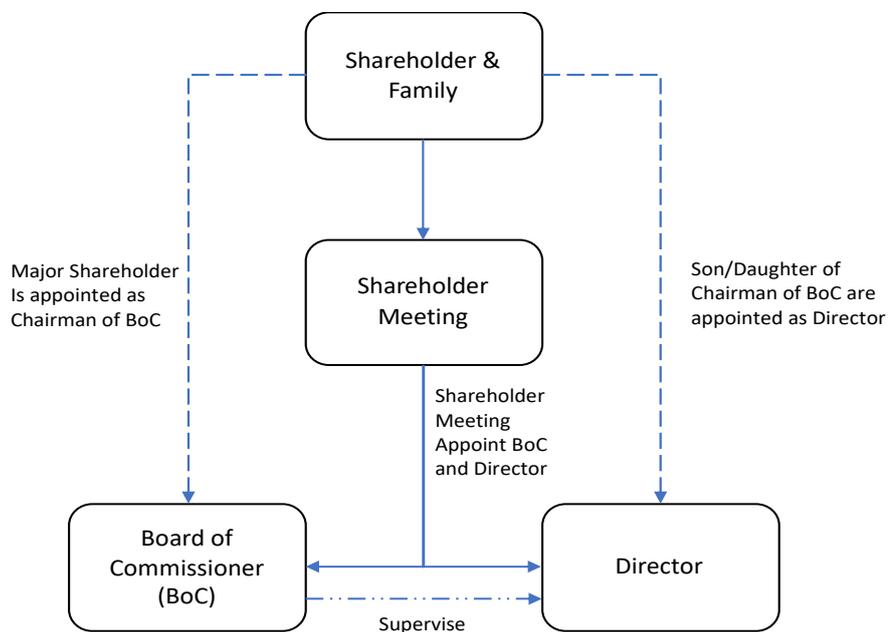


FIGURE 1 Limited Liability Company Structure

Source: Johan & Ariawan <sup>28</sup>

<sup>28</sup> Suwinto Johan and Ariawan Ariawan, "Governance of Family Dynasties in Financial Institutions and Public Listed Companies," 3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities 3 (2021): 1–6.

## Conclusion

In a limited liability business, the board of commissioners is an essential organ. As a kind of assembly, the board of commissioners follows collegial ideals. The board of commissioners serves as the board of directors' supervisor. Commissioners may only have concurrent directorships under particular circumstances and for a limited period. The board of commissioners is likewise prohibited from interfering with the board of directors' power to administer the corporation. If any commissioner interferes with the board of directors' authority, the board of directors may refer this subject to the commissioners as meeting material. Commissioners tend to meddle with the power of shareholders who are also commissioners. The board of directors investigates the concurrent positions of commissioners by shareholders and simultaneous positions of directors.

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