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DIRECTORS' AND COMMISSIONERS' LIABILITY IN CORPORATE INSOLVENCY: A COMPARATIVE JURISPRUDENTIAL STUDY

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Abstract *- The board of directors and commissioners play a strategic role in corporate governance, particularly in addressing insolvency risks. This study aims to analyze the liabilities of directors and commissioners in corporate insolvency cases under Indonesian statutory law and to compare these duties with legal frameworks in several other jurisdictions, including Germany, Japan, and the United Kingdom. The research employs a normative legal method with statutory and comparative approaches. Findings indicate that, in Indonesia, directors' liabilities are governed by Law No. 40 of 2007 concerning Limited Liability Companies, which prescribes personal liability where negligence results in losses to the company or third parties. Although commissioners function as supervisory officers, their obligations are more limited than those of directors. In developed jurisdictions, application of the doctrine of piercing the corporate veil tends to strengthen accountability for directors and commissioners, including within insolvency law. The study recommends that Indonesia fortify its regulatory framework and enforcement mechanisms to strike a better balance between stakeholder protection and responsible corporate management. This research contributes both academically and practically to the development of a more transparent and accountable corporate law regime, particularly in the context of insolvency challenges.Keywords: directors' liability; commissioners' liability; insolvency; good corporate governance; piercing the corporate veil; limited liability company; comparative law.*

INTRODUCTION

Rapid developments in the business world have increased the complexity of risks faced by companies in Indonesia. Corporate insolvency has become a crucial issue that often captures public attention and significantly impacts a nation's economy. In Indonesia, insolvency is regulated under Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which aims to provide legal certainty for both creditors and debtors. However, problems arise due to the lack of specific regulation regarding the responsibilities of directors and commissioners in cases of insolvency, leading to legal uncertainty in practice (Fuady, 2005).

In addition to regulatory aspects, corporate governance is also a vital factor in preventing insolvency issues. One major challenge is the weak supervisory mechanism over the actions of directors and commissioners, particularly in managing company assets on the brink of insolvency. For instance, cases involving the abuse of authority by directors are often hard to uncover due to limited regulations mandating an active supervisory role for commissioners to prevent such practices (Gunadi & Krisnawati, 2017). Within Indonesia's legal system, commissioners' responsibilities tend to be passive, in contrast to countries such as Germany, where commissioners are required to take an active role in corporate oversight (Maria, 2023).

Furthermore, creditor protection heavily depends on the implementation of clear principles of accountability within company law. The doctrine of piercing the corporate veil, which allows directors or commissioners to be held personally liable for their actions that harm third parties, remains rarely applied in Indonesia. This is in stark contrast to practices in developed countries such as the United States and France, where the doctrine is employed to protect creditors from losses caused by directors' unlawful acts (Sugandi et al., 2024). This situation indicates a legal vacuum that requires urgent attention.

The protection of stakeholders in insolvency cases is a crucial focus within the corporate legal system. Furthermore, corporate insolvency not only impacts creditors but also affects employees and other parties with an interest in the company. In Indonesia, employees often constitute the party most disadvantaged in insolvency proceedings, as their rights are not optimally protected during the legal process (Novianto, 2023). In some cases, employees' rights are even subordinated to those of major creditors (Curry & Schorer, 2016).

An international comparative perspective can provide valuable insights into ideal practices for managing companies during insolvency. When considering international practice, there are fundamental differences in the application of directors' and commissioners' responsibilities. In the United Kingdom, for example, directors are required to act in the best interests of the company, even when facing insolvency (Rajak, 2008). This contrasts with the situation in Indonesia, where directors often prioritize their own interests or those of majority shareholders, thus resulting in conflicts of interest.

The principle of good corporate governance forms the bedrock for ensuring accountability of corporate organs in times of crisis. Cases of insolvency in Indonesia also frequently illustrate the lack of adherence to good corporate governance principles (Labesi, 2013). Directors and commissioners often do not understand their roles and responsibilities, especially when facing crisis situations such as impending insolvency (Hanafi, 2021). As a consequence, decisions are often reactionary and poorly planned.

Insufficient understanding of legal aspects remains a major challenge in corporate governance in Indonesia. This problem is exacerbated by a lack of legal education among business actors, including directors and commissioners, who frequently do not comprehend the legal implications of their actions (Falah, 2015). Many are unaware that negligence or abuse of authority may have serious legal consequences, including personal liability for losses suffered by third parties (Sa'adah, 2017).

Learning from international best practices can provide inspiration for the development of Indonesian corporate law. Comparative studies with other jurisdictions illustrate that Indonesia needs to adopt best practices in corporate management, particularly concerning supervisory mechanisms by commissioners and the imposition of sanctions on directors found negligent or acting unlawfully (Rajak, 2008). This is essential to ensure insolvency does not become a tool for directors to evade legal responsibilities.

Legal clarity is crucial to uphold justice for all parties involved in corporate insolvency. More explicit and stringent regulation regarding the responsibilities of directors and commissioners in insolvency proceedings is also required to offer better protection to creditors, employees, and other affected parties (Curry & Schorer, 2016). In this respect, Indonesia can learn from more advanced legal systems in regulating corporate liability.

A critical review of the existing literature indicates the need for a more comprehensive legal analysis. Previous research tends to focus only on local legal aspects and does not compare Indonesia's approach to directors' and commissioners' liability in insolvency with those adopted in other countries. Moreover, the doctrine of piercing the corporate veil remains under-discussed within the context of Indonesian law.

Adopting new approaches in the legal study of insolvency will create opportunities for reforms that are more relevant to contemporary needs. This research presents a comparative approach that remains relatively unexplored by examining the liabilities of directors and commissioners in corporate insolvency in Indonesia and several other jurisdictions, such as Germany and France. It also explores the potential application of the doctrine of piercing the corporate veil to enhance the accountability of directors and commissioners.

Through comparative analysis and critical evaluation, this study is expected to make a significant contribution to the development of insolvency law. The research aims to analyze the responsibilities of directors and commissioners in Indonesian corporate insolvency cases, compare them with those in other countries, and provide recommendations for strengthening relevant regulations.

RESEARCH METHODS

The selection of an appropriate research methodology is essential to ensure objective and systematic analytical results. This thesis employs a normative juridical research method. Normative juridical research focuses on the study of law grounded in primary, secondary, and tertiary legal sources. This approach is particularly relevant, as the study aims to analyze the legal norms regulating the liability of directors and commissioners in corporate insolvency, and to compare these norms across different legal systems.

The legal framework and regulations serving as the basis for analysis constitute a principal aspect of legal research. This study refers to various relevant statutory provisions, such as 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 corporate legal regulations from comparator countries, including Germany and France. The research also incorporates the principles of good corporate governance as stipulated in guidelines issued by the Financial Services Authority (OJK).

The availability and accuracy of legal data sources greatly determine the quality of normative legal research. The sources used in this study comprise primary legal materials—such as statutes, court decisions, and related regulations; secondary legal materials—including books, scholarly journals, and legal articles; as well as tertiary legal materials like law dictionaries and legal encyclopedias. All of these materials were collected through a comprehensive literature review.

The validity of research findings is strongly influenced by the data verification methods employed. The reliability of data in this study is ensured through triangulation, namely by cross-referencing information from various sources to obtain valid and consistent conclusions. This approach ensures that the data utilized is both relevant and dependable.

Data analysis techniques are a decisive factor in generating constructive interpretations and recommendations. Data analysis in this research is conducted qualitatively. Collected data is organized according to specific categories, such as types of regulation, insolvency cases, and legal responsibilities. The data is then analyzed to identify gaps, similarities, and differences in the implementation of directors' and commissioners' liabilities across jurisdictions. This analytical process aims to yield conclusions that can serve as recommendations for regulatory reforms in Indonesia.

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RESULTS AND DISCUSSIONS

The Liability of Directors in Corporate Bankruptcy

It is indisputable that the transformation of the business world has profoundly affected all sectors of industry, both in Indonesia and globally. In recent years, businesses have faced increasingly complex and dynamic challenges (Arifin & Darmawan, 2022). Rapid technological advances, shifts in consumer behavior, and the impacts of globalization compel companies to continuously adapt in order to remain relevant (Abdullah et al., 2021; Mardikaningsih & Darmawan, 2021). Macroeconomic fluctuations further constrain the operational space for business actors, leaving only those companies that are capable of innovating and implementing strategic decisions able to survive and thrive (Irfan & Al Hakim, 2022). As markets become more open, opportunities and risks coexist, demanding heightened resilience from every business entity (da Silva et al., 2022).

The contemporary reality demonstrates that business competition has reached an exceedingly competitive level. Intensified business rivalry compels companies to compete in offering added value and operational efficiency (Wibowo et al., 2021). In this high-pressure environment, management's ability to confront uncertainty and manage risk becomes a decisive factor in corporate success (Firmansyah et al., 2023). Companies are required not only to focus on growth, but also to uphold good corporate governance practices to maintain the confidence of investors, creditors, and all stakeholders (Indarto et al., 2023; Nurhadi et al., 2023). These challenges constitute a true test of a corporation's resilience and credibility before ultimately confronting deeper legal issues, such as directors' liability in situations of insolvency (Priyanto et al., 2023; Sahid et al., 2023).

The study of directors' liability provides the primary foundation for understanding the legal dynamics of corporate insolvency (Sudiruddin et al., 2023). The enforcement of accountability principles with respect to the board of directors is absolutely essential to safeguard public trust and business stability (Saputra et al., 2021). Enhanced awareness of legal consequences also plays a critical role in preventing reckless corporate management practices. Directors' liability in the context of corporate insolvency is a central issue in corporate law. In Indonesia, Article 97(3) of Law No. 40 of 2007 concerning Limited Liability Companies (the Company Law) stipulates that members of the board of directors bear full liability for losses suffered by the company if found to have acted unlawfully or negligently in carrying out their duties. This concept, as articulated by Fuady (2005), underlines the necessity of imposing individual liability on directors who fail to manage the company prudently.

The principle of directors' full liability as regulated in Article 97(3) of the Company Law is a fundamental pillar in constructing an integrity-based corporate governance system. This provision emphasizes that any action or omission by the board of directors that results in corporate loss—particularly where law, propriety, or fiduciary standards are breached—may entail individual accountability. Accordingly, directors cannot shield themselves behind the corporate entity to evade the consequences of their reckless decisions or actions. This reaffirms that a directorship is not merely a strategic position, but also entails significant moral and legal responsibilities.

Moreover, such individual liability has significant implications for evidentiary matters in litigation. Directors accused of causing losses must be able to demonstrate that all actions undertaken were in good faith and with due care in the interest of the company. If they are unable to satisfy this evidentiary burden, personal liability—whether in the form of damages or other statutory sanctions—may be imposed. Fuady (2005) asserts that this regime serves as a preventive mechanism against the abuse of authority and the making of reckless decisions, thereby protecting the interests of shareholders and stakeholders alike.

Nevertheless, the implementation of full liability also necessitates an effective internal audit and management control system. Directors require robust supervisory and transparent reporting mechanisms in order to detect and address potential risks or errors promptly. Harmonious collaboration between the board of directors and the board of commissioners in regularly reviewing company policies further strengthens mutual accountability. Thus, the application of the liability principle is not merely retroactive—assigning blame after losses arise—but also preventive, by improving governance from the outset of the decision-making process.

The affirmation of directors' liability under Article 97(3) of the Company Law (UUPT) serves as a crucial instrument to enhance investor and business community confidence in the Indonesian capital market. Directors who comprehend and adhere to this principle tend to exercise greater caution, professionalism, and receptiveness to input and criticism. This, in turn, fosters a healthy and competitive business environment capable of meeting global challenges responsibly, without neglecting legal, ethical, and stakeholder interests.

The application of legal protection principles for directors has become a focal point in modern corporate policy. The existence of the business judgment rule serves as a primary safeguard, enabling directors to make decisions without fear of criminalization, provided such decisions are made in good faith. Legal certainty for directors improves the quality of managerial decision-making and reduces the risk of corporate stagnation due to apprehension of legal sanctions. The business judgment rule forms the foundational basis for the protection of directors who act in good faith and in the interest of the company. However, the implementation of this principle often encounters interpretive challenges in Indonesian courts. For instance, in cases of ultra vires acts—namely, actions beyond the authority of directors that result in losses to

the company or its creditors—directors may be personally liable (Nugraha, 2022). This matter becomes even more complex when such actions involve encumbering corporate assets without board of commissioners' consent, as required under Article 115 of the Company Law (Hadi, 2011).

Ultra vires acts by directors, particularly involving company assets, constitute a serious breach of prudence within the framework of corporate governance. When directors act beyond the scope of their authority—such as pledging company assets for personal interests or entering into significant agreements without consultation and approval from the board of commissioners—the resultant financial risk is borne not only by the company but also threatens the confidence of external stakeholders including creditors and investors. In this context, the imposition of personal liability on directors functions as a vital mechanism for upholding corporate discipline and protecting stakeholder interests.

The complexity increases when vital corporate assets are used as collateral without adherence to proper internal procedures, as regulated under Article 115 of the Company Law. This article expressly requires that granting security over all or a substantial part of the company's assets mandates approval from the board of commissioners. Violation of this provision not only renders the security arrangement legally defective, but also exposes the directors to potential civil actions from shareholders or other aggrieved parties. Such circumstances may also provide grounds for courts to assign personal liability to directors for resulting losses.

Beyond personal legal liability, directors undertaking ultra vires actions may also face administrative sanctions and reputational harm within the business community. In some instances, such conduct could result in the revocation of business licenses, disqualification from holding office, or counterclaims from creditors suffering losses. Therefore, integrity and compliance with internal corporate procedures—particularly the active involvement of the board of commissioners in strategic decisions—are vital to ensuring business continuity and legal protection for all interested parties.

The application of personal liability in ultra vires cases ultimately reinforces the necessity for a balance of power between directors and commissioners, as well as the need to enhance transparency in all corporate transactions. Systematic supervision, regular internal audits, and strengthened commissioner involvement in major policy decisions help minimize the risk of abuse of authority by directors. Such practices do not only shield the company from losses, but also safeguard public trust and the integrity of Indonesia's capital markets.

Comparative legal studies demonstrate that each country adopts a distinctive approach to the issue of directors' liability. Comparative insights enable a deeper understanding of the strengths and weaknesses of national systems, providing a foundation for legal reform. The integration of best practices from foreign legal systems can further facilitate the development of adaptable and globally competitive corporate regulations. For instance, a comparison with Germany reveals a more stringent stance regarding directors' liability. In Germany, the doctrine of piercing the corporate veil is applied to break through the limitations of corporate liability and pursue directors' personal assets in specific circumstances (Sugandi et al., 2024). In contrast, French law places greater emphasis on evidence of fraud or abuse of power by directors as a prerequisite for imposing personal liability (Rajak, 2008).

The internal supervisory and transparency systems of corporations play a significant role in mitigating insolvency risks. Strengthening internal controls is a vital measure to prevent managerial misconduct and irresponsible asset management. Institutionalized control mechanisms and consistent financial reporting obligations fortify a corporation's resilience in the face of economic or internal pressures. In Indonesia, weaknesses in internal supervisory systems frequently exacerbate the risk of insolvency stemming from directors' negligence. In numerous instances, directors have failed to demonstrate transparency in financial management, resulting in a company's inability to meet its financial obligations. This situation underscores the need for enhanced regulation and supervisory mechanisms to ensure directors' compliance with principles of good corporate governance (Labesi, 2013).

Corporate governance models across jurisdictions can serve as valuable references for improving the national legal framework. Cross-country studies open new perspectives on effective mechanisms of corporate accountability and governance. The adaptation of proven communication and reporting models from abroad may improve the quality of domestic corporate governance. Japanese law, for example, offers an alternative model relevant to Indonesia's circumstances. In Japan, directors are required to submit regular reports to shareholders on the company's financial status, thereby establishing a more transparent oversight mechanism (Novianto, 2023). This practice highlights that directors' responsibility extends beyond decision-making, encompassing the obligation to provide stakeholders with accurate and timely information.

Sociological aspects and divergent judicial approaches across countries also influence the enforcement of corporate law. Understanding the scope of national legal culture is essential for identifying appropriate solutions to enhance directors' accountability practices. Harmonization of legal systems from various countries should take into account societal characteristics and the specific needs of national business sectors. Furthermore, legal culture factors impact the enforcement of directors' liability in insolvency situations. In developed countries such as the United States, courts tend to focus on the validity of business decisions, whereas in Indonesia, judicial authorities often concentrate more on the consequences of those decisions. These differing approaches reflect the need for legal system harmonization to enhance legal certainty for directors (Curry & Schorer, 2016).

Commissioners' Liability in Corporate Bankruptcy

The strategic role of the board of commissioners serves as the front line in realizing credible and sustainable corporate governance. Strengthening the capacity and accountability of commissioners constitutes a fundamental pillar in safeguarding corporate integrity amidst the complexities of modern business dynamics. The commissioners' function as a vital corporate organ has become increasingly relevant to ensuring the continuity and integrity of corporate governance. The supervisory role of commissioners is explicitly stipulated in Article 108 of the Indonesian Company Law (UUPT). However, the implementation of this function in Indonesia is often suboptimal, primarily due to a lack of understanding concerning the legal obligations of commissioners. Gunadi and Krisnawati (2017) emphasize that commissioners who fail to fulfill their supervisory duties may be held liable, either civilly or criminally, depending on the degree of proven negligence.

The enforcement of commissioners' liability requires a clear demarcation between individual and collective responsibilities. Collegial oversight practices sometimes create gaps that diminish accountability in the event of supervisory failures. The debate over individual versus collective responsibility within the board of commissioners is a recurrent issue in corporate practice. In practice, commissioners are often considered to possess only collective responsibility, which complicates the attribution of personal liability in cases of corporate insolvency. This situation contrasts with that in Japan, where commissioners are required to issue early warning reports to the board of directors if potential legal violations are identified (Novianto, 2023). Such a system demonstrates that commissioners in Japan have a more significant preventative role compared to their counterparts in Indonesia.

The effectiveness of commissioners' supervision is greatly influenced by the quality of good corporate governance principles in practice. Strengthening both sanction and reward mechanisms serves as a critical instrument in optimizing the role of commissioners. The supervisory function of commissioners is intrinsically linked to ensuring the effectiveness of good corporate governance. Commissioners also play an essential role in ensuring the board of directors' compliance with sound governance principles. However, in Indonesia, regulations governing commissioners' liability often lack the necessary stringency, which can allow for violations to occur without adequate sanctions. Hermanto and Prananingtyas (2017) note that, in several cases, commissioners have failed to provide sufficient oversight over directors' actions involving corporate assets for personal gain.

Insufficient supervision by commissioners facilitates opportunities for directors to misuse company assets, ultimately causing harm to the corporation and its shareholders. In many instances, deficiencies in internal supervisory systems and lack of proactive initiatives from commissioners have permitted directors' actions—actions which might otherwise have been prevented—to escape notice. This situation is often aggravated by internal conflicts of interest, wherein commissioners may be reluctant or unwilling to take firm action against directors' breaches, especially when personal or business relationships exist among them.

Moreover, the phenomenon of weak supervision underscores the necessity for strengthening both the role and independence of commissioners through more robust regulations and transparent control mechanisms. The enforcement of governance standards and enhanced accountability literacy among commissioners are key to preventing the misappropriation of corporate assets by directors. By instituting clear reporting systems, periodic audits, and well-defined sanctions for violations, the board of commissioners can more effectively perform their supervisory function and maintain the integrity of the company's governance framework.

Comparative studies constitute a fundamental instrument for evaluating the direction of corporate legal policy in Indonesia. Benchmarking against global best practices provides a crucial foundation for strengthening the legal standing of the board of commissioners. Comparing legal systems across jurisdictions is essential for identifying standards and best practices that may be adopted. Comparisons with legal systems in developed countries indicate that Indonesia needs to adopt a stricter approach regarding commissioners' liability. In countries such as the United Kingdom, commissioners (directors) who fail to perform their supervisory functions may be subject to criminal sanctions, particularly when such negligence directly contributes to the company's insolvency (Falah, 2015). This approach offers stronger protection for creditors and other stakeholders.

The imposition of criminal sanctions against commissioners in the UK aims to create a deterrent effect and to enhance the accountability of individuals holding strategic positions within corporations. Regulations such as the Insolvency Act and the Company Directors Disqualification Act provide a robust legal basis for prosecuting commissioners found to be negligent or derelict in their supervisory duties. This concerns not only financial losses, but also the public's trust in corporate governance and the legal certainty afforded to creditors. The possibility of criminal liability encourages each commissioner to exercise greater prudence, engage in active supervision, and ensure that board decisions prioritize the interests of the company and its stakeholders.

In addition to bolstering creditor protection, this mechanism reinforces the position of other stakeholders, such as employees and suppliers, when facing the risk of corporate insolvency. The potential for criminal sanctions serves as an important instrument to ensure that commissioners do not merely play a symbolic role, but truly function as independent overseers who can prevent detrimental practices, including asset misappropriation or high-risk decision-making without proper consideration. Consequently, the stringent legal approach adopted in the UK not only addresses insolvency cases post facto, but also serves as a preventive measure to establish sound, fair, and sustainable corporate governance.

Enhancement of the professionalism and accountability of commissioners can only be achieved if their performance is evaluated objectively, measurably, and transparently. Periodic performance assessments provide a foundation for compliance enforcement and for the imposition of sanctions. Objective evaluation of commissioners' performance is a critical aspect of the modern corporate governance system. Maria (2023) notes that one of the principal weaknesses of the Indonesian legal framework is the absence of mechanisms for objective commissioner performance assessment. This stands in contrast to Germany, where regular evaluation mechanisms are implemented to ensure that commissioners fulfill their duties in accordance with legal and ethical standards.

The accountability of the commissioners' supervision in strategic decision-making is a key factor in preventing corporate governance deviations. Their active involvement should be promoted as a concrete form of responsibility within the company's organizational structure. The effectiveness of the commissioners' supervisory function is largely determined by their active participation in strategic decision-making. Another notable weakness is the low level of commissioner participation in strategic corporate decisions. Tewu (2023) observes that in many Indonesian companies, commissioners often function merely as symbolic figures, lacking active supervisory involvement in operational matters. This highlights the need for organizational reform to ensure commissioners have full access to relevant information and can participate actively in oversight functions.

The urgency of strengthening the responsibility and role of commissioners becomes even more pronounced in the context of protecting the interests of various parties during insolvency proceedings. Overall, the liability of commissioners in corporate insolvency encompasses not only oversight of the board of directors, but also the protection of shareholders' and creditors' interests. Accordingly, there is a need to strengthen both regulatory frameworks and supervisory mechanisms to ensure that commissioners fulfill their duties properly and responsibly.

Legal Protection of Creditors and Other Stakeholders in Corporate Insolvency Proceedings

The insolvency of a company not only impacts shareholders and management, but also significantly affects the legal and economic positions of creditors and other stakeholders, including employees, suppliers, and even the state. Legal protection for creditors constitutes a central aspect in ensuring that insolvency proceedings are conducted fairly, transparently, and without prejudice to any interested parties. Under Indonesian insolvency law, the protection of creditors is governed by Law No. 37 of 2004, which regulates the categorization of creditors as well as the order of debt repayment through the principle of pari passu pro rata parte. This regulation remains the principal legal foundation for insolvency and debt restructuring processes. Nevertheless, in practice, certain creditor rights are frequently neglected due to weak supervisory mechanisms and issues of moral hazard during the execution of the insolvent company's assets (Ramadhanti, 2022).

The principle of pari passu pro rata parte, as stipulated in Law No. 37 of 2004, is intended to guarantee equity among all creditors in insolvency proceedings. This means that every creditor is entitled to proportional repayment according to their classification and the value of their claims, without unjustified preferential treatment. The categorization of creditors—namely, secured (separatis), preferred (preferen), and unsecured (concurrent) creditors—significantly influences the priority of debt repayment from the estate of the bankrupt company. This principle is expected to provide legal certainty and to prevent discrimination in the distribution of the debtor's assets.

However, in practice, there are several issues that can undermine the effectiveness of creditor protection. Weak supervisory mechanisms—whether from the supervisory judge or the curator—often permit deviations such as asset transfers or reductions in asset value without the approval of the creditors' committee. Ineffective oversight also creates opportunities for moral hazard, whereby parties involved in the bankruptcy (such as insiders of the debtor company or unscrupulous curators) may manipulate the process of asset inventory and execution, resulting in some creditors incurring losses or failing to recover their rights entirely.

Additionally, the complexity of debt restructuring within insolvency proceedings often culminates in non-transparent negotiations between the debtor and certain major creditors. Smaller creditors, possessing relatively weaker bargaining power, are frequently sacrificed in order to reach restructuring agreements that benefit only selected parties. As a result, the collective interests of all creditors—as envisaged by the pari passu pro rata parte principle—are distorted. On the other hand, the effectiveness of the regulations is highly dependent on the integrity and professionalism of the parties involved in the insolvency process.

To strengthen creditor protection, it is essential to enhance both the supervisory and enforcement aspects of insolvency law, not only at the regulatory level but also in practical implementation. Transparency in asset reporting, open access to information for all creditors, and strict measures against abuse of authority are of critical importance. Additionally, improving the quality and oversight of insolvency administrators (curators) as well as supervisory judges constitutes a pivotal step to ensure that asset execution and distribution processes are carried out in accordance with principles of justice and prevailing legal provisions. If issues of moral hazard and dysfunctional oversight can be minimized, legal protection for creditors in Indonesian insolvency proceedings will become more effective and credible.

In insolvency proceedings, the establishment of a fair priority among secured creditors (separatis), preferred creditors (preferen), and unsecured creditors (concurrent) is crucial to ensure justice and prevent conflicts of interest.

Disparities in information access and enforcement rights—especially for secured creditors holding security interests—often create imbalance, as they may exercise their rights first, whereas other creditors bear the risk associated with residual assets. Law No. 37 of 2004, particularly Article 55, indeed confers privilege to secured creditors, yet this potential imbalance must be mitigated through rigorous supervisory mechanisms. Pursuant to Articles 56 and 57, the execution of security interests by secured creditors may be suspended for up to 90 days following a bankruptcy verdict, allowing curators and the court to oversee and ensure the prevention of abuses and the protection of other creditors' interests. Furthermore, Articles 70–72 underscore the importance of creditors' meetings as a collective forum for claim verification and collective decision-making, thereby ensuring substantive transparency and equity. Legal practices in countries such as Germany and Japan also demonstrate that the active role of courts, curators, and creditors' committees is effective in supervising the execution of collateral assets and ensuring that the interests of all creditors are represented proportionally. Thus, legal protection in insolvency requires synergistic oversight, information transparency, and creditor participation through open and accountable mechanisms to ensure the principle of fairness in debt settlement is genuinely upheld (Afni, 2022).

The concept of legal protection in insolvency also extends to employee rights. In Indonesia, the right to wages is given normative priority in payment. However, in practice, there are frequent instances where the assets of a bankrupt company are insufficient to cover all employee entitlements, resulting in protracted labor disputes. By comparison, Japan and Germany have implemented employment guarantee schemes whereby, even if the bankrupt estate is deficient, workers' rights can still be satisfied. Institutional reform and social security guarantees are recommended for the future development of Indonesia's insolvency law system.

On the other hand, the protection of non-creditor stakeholders, such as suppliers, customers, and government entities, must also be considered. These stakeholders sometimes forfeit their interests due to the subordinate position of their claims or as a result of rigid verification mechanisms. The optimization of transparent access to information regarding liquidation proceedings should be provided not only to primary creditors, but also to all stakeholders, in order to prevent asset concealment or unlawful transfer by debtors, directors, or commissioners before or during insolvency proceedings (He, 2022).

Reform of the institutional structure of insolvency proceedings is urgently needed, particularly through the strengthening of the role of curators and the supervision of commercial court judges. Curators are required to work independently and transparently, being accountable to both the court and the creditors, while commercial judges must proactively supervise the entire execution process and creditor meetings, as well as deliver fair adjudication of claim disputes. In many Anglo-Saxon jurisdictions, an ombudsman-level oversight mechanism is specifically implemented to prevent potential collusion or corruption in the execution of debtor assets (Balz, 2017).

Modernization of the insolvency system necessitates a robust foundation of openness and transparency. Information disclosure and process transparency are vital to ensuring that all parties receive justice during insolvency proceedings, as reflected in the principle of judicial transparency. The utilization of information technology—such as e-courts, e-auctions, and online asset listing portals—forms an integral part of insolvency systems in many European and East Asian jurisdictions. Indonesia still requires significant technical reforms to achieve such transparency, which will also serve to reduce corruption, reporting manipulation, and conflicts of interest during insolvency proceedings (Aprita & Qosim, 2022).

Collaboration between regulators and supervisory institutions constitutes a fundamental prerequisite for the effective protection of stakeholders. The government, through regulatory bodies such as the Financial Services Authority (OJK) and other supervisory agencies, should be accorded a more strategic role in stakeholder protection through the issuance of sectoral regulations, facilitation of mediation, and provision of legal assistance for small-scale debtors and micro, small, and medium enterprises (MSMEs). Strengthening social mitigation instruments in response to the risk of mass layoffs resulting from bankruptcy must also be addressed, including the simplification of claims procedures for affected employees or suppliers. Best practices in several Eastern European countries include the establishment of dedicated buffer or insurance funds for small creditors and suppliers with limited bargaining power against major debtors.

Integrity in legal processes is essential to prevent the abuse of insolvency proceedings. Good faith and the doctrine of abuse of process must remain central throughout all phases of insolvency, from the filing of bankruptcy petitions and asset management to the distribution of repayments. Courts should reject bankruptcy petitions that are manifestly filed in bad faith—such as those used as mere business strategies or attempts to evade tax or debt obligations on behalf of business rivals or shadow directors. Strengthening judicial precedent (jurisprudence) should be employed to affirm that bankruptcy is not a tool for misuse, but rather a means for fair resolution for all parties involved.

In practice, the reinforcement of jurisprudence can provide legal certainty while narrowing the space for parties seeking to manipulate insolvency procedures for ulterior motives. The existence of clear precedents affirming that bankruptcy filings lacking a sound legal basis or filed in bad faith must be dismissed by the courts ensures the realization of substantive justice. Consistent judicial decisions will establish an objective pattern of law enforcement, minimizing opportunities for both creditors and debtors to misuse insolvency mechanisms as negotiation tools or strategies to avoid legitimate obligations.

Furthermore, the existence of robust jurisprudence strengthens the legitimacy of commercial courts in adjudicating insolvency cases. Judges may refer to precedents to evaluate the motives behind petitions, patterns of asset management, or methods of distribution, thus orienting decisions towards the protection of all stakeholders. In this way, insolvency remains within the proper legal framework as a last-resort solution, not as an instrument for abuse of power or legal engineering. The practice of consistent precedent strengthens public trust in the judicial system and cultivates a responsible business climate in Indonesia.

By reserving insolvency as a solution of last resort, the principle of prudence becomes a paramount value throughout the process. The Supreme Court and commercial courts are expected to uphold the principles of legal certainty and justice in all insolvency-related decisions, thereby precluding manipulative actions by irresponsible debtors or creditors. Consistent application of judicial precedent prevents disparities in judgments that could engender legal uncertainty for business actors and other stakeholders. Thus, all parties are encouraged to resolve debt disputes amicably before resorting to insolvency proceedings.

The preservation of insolvency within the bounds of the law is also heavily dependent on the integrity of law enforcement officers, particularly judges, curators, and court supervisors. Continuous training and internal oversight of their professionalism are crucial to ensure that insolvency proceedings are not exploited as tools of coercion, business criminalization, or for the engineering of specific interests. With a solid oversight mechanism, instances of bribery, collusion, and abuse of authority can be minimized, ensuring that all insolvency processes are conducted transparently and accountably.

Consistency in precedent from prior insolvency decisions not only bolsters public confidence in the judicial system, but also provides guidance and certainty for business actors in conducting economic activities. When court rulings are predictable and based on uniform principles of justice, business actors feel secure and protected from the risks of manipulative legal practices. As a result, investment and business growth in Indonesia may flourish, as investors and business partners perceive a strong commitment to the enforcement of fair and consistent legal standards.

The enforcement of legal boundaries and the consistent application of precedent in insolvency cases serve as the foundation for fostering a healthy, responsible, and competitive business climate at both national and international levels. Entrepreneurs and business actors will be more confident in making well-considered business decisions, supported by robust and transparent legal protection. In turn, this will drive sustainable economic growth and reinforce Indonesia's position as a jurisdiction with a credible business law system in the global arena.

Comprehensive and integrated regulatory reform is imperative to strengthen the insolvency framework. In the context of potential reforms, the harmonization of insolvency law across sectors should cover state-supervised asset audits, mandatory pre-notification for all stakeholders, and the enhancement of class action mechanisms in cases of suspected fraud or abuse of power during insolvency proceedings. Such measures are in line with the experiences of Scandinavian countries, which emphasize collective protection for victims of insolvency rather than promoting the dominance of shareholders or secured creditors.

The professionalism and accountability of key actors play a decisive role in ensuring fair and credible insolvency proceedings. Comparative assessments underscore the need for the professional accountability of insolvency administrators and notaries at every procedural stage. The establishment of professional codes of ethics and the imposition of stringent sanctions for violations are fundamental prerequisites for effective stakeholder protection, as practiced in jurisdictions such as England and the Netherlands. Independent recruitment, national certification, and multi-level oversight serve as important benchmarks to minimize practices such as fee sharing, conflicts of interest, or fictitious claims.

The enforcement of rigorous and robust professional ethics has proven to foster healthier business ecosystems in developed countries. In England and the Netherlands, the regulation and enforcement of professional codes of ethics are not regarded as mere formalities but are truly internalized in every professional conduct. This has a positive impact on the integrity of the profession and strengthens stakeholder trust, including clients, the general public, and financial institutions. Sanctions imposed are not limited to administrative measures, but can extend to the revocation of practice licenses and the initiation of civil or criminal lawsuits if significant violations are detected (Terry, 2022).

Independent recruitment processes for strategic positions—including insolvency administrators, auditors, and legal consultants—are crucial instruments to preserve objectivity and prevent nepotism. Moreover, nationally standardized certifications in line with international standards ensure that only highly competent and ethical individuals may practice in these professions. Such certification systems also serve as clear benchmarks for performance evaluation and professional discipline enforcement, thereby mitigating the risk of systemic moral hazard (Fox, 2013).

Multi-level oversight represents an additional foundation for safeguarding professional integrity. Supervision should not only be conducted internally by professional associations but must also involve external mechanisms, establishing effective checks and balances. In many jurisdictions, independent oversight bodies, courts, and industry stakeholders are actively involved in monitoring and evaluating professional compliance with codes of ethics and governance standards (Virkar, 2016). As a result, practices such as unsubstantiated fee sharing, undisclosed conflicts of interest, or the recording of fictitious claims can be minimized or even prevented before causing harm to stakeholders.

The implementation of these global benchmarks is undoubtedly challenging, but they are necessary for improving the quality of stakeholder protection in Indonesia. Adopting best practices from England and the Netherlands should be accompanied by adaptations that address local needs and circumstances, as well as continuous legal education for related professionals. Looking ahead, consistency and firmness in upholding codes of ethics, along with synergistic supervision by regulators, professional associations, and the public, will be key to creating a business environment that is more transparent, accountable, and highly competitive (Virkar, 2016).

In conclusion, the legal protection of creditors and other stakeholders in insolvency must be understood as an inseparable part of the broader corporate legal protection system. Regulatory refinement, enhanced oversight, and the optimal role of legal institutions will advance the national insolvency system towards responsible, humane, and equitable corporate governance, in accordance with international best practices. The balance between effective resolution of indebtedness and adequate protection of the rights of insolvent stakeholders forms the basic prerequisite for achieving legal certainty and long-term business confidence in Indonesia.

CONCLUSIONS

The responsibilities of directors and commissioners in the context of corporate bankruptcy underscore the importance of implementing the principles of good corporate governance. The board of directors bears the primary obligation to manage the company prudently in accordance with the prevailing laws and regulations, as stipulated under Article 97 paragraph (3) of Law Number 40 of 2007 concerning Limited Liability Companies (the Indonesian Company Law). In instances of negligence or legal violations, directors may be held personally liable, including for losses incurred by the company or third parties. Comparative analysis with legal systems in countries such as Germany and Japan reveals that Indonesia must strengthen its legal protection and oversight mechanisms concerning directors' actions.

Commissioners, on the other hand, are tasked with supervising company policies and the overall management as regulated under Article 108 of the Indonesian Company Law. However, the lack of effective internal evaluation and supervisory mechanisms often leads to commissioners failing to carry out their duties optimally. Lessons drawn from the legal systems of developed countries, such as the United Kingdom and Germany, emphasize the necessity for more explicit responsibilities to be imposed on commissioners, including the obligation to provide early warnings of potential violations.

A combination of regulatory weaknesses and shortcomings in legal implementation in Indonesia highlights the need for stronger harmonization of rules to ensure the protection of stakeholders, including shareholders and creditors. This research affirms that legal reform in Indonesian corporate law is essential for ensuring legal certainty and preventing greater losses in bankruptcy cases.

In order to reinforce the responsibilities of directors and commissioners in bankruptcy cases, several strategic measures must be undertaken. First, an amendment to the laws and regulations governing directors' and commissioners' responsibilities is required to align with international best practices, such as the adoption of the doctrine of piercing the corporate veil. This step may afford stronger protection for creditors and shareholders.

Second, the performance evaluation mechanisms for commissioners and directors must be fortified through the implementation of mandatory, periodic independent audits. Such a system will ensure that those holding office within the company fulfill their duties in accordance with legal and ethical standards.

Third, the imposition of stricter sanctions for negligence by directors and commissioners should be enforced to enhance their accountability towards the continuity of the company. The regulatory model implemented in the United Kingdom may serve as a useful reference in this regard.

Finally, mandatory and continuous education and training for directors and commissioners should be instituted in order to enhance their understanding of legal responsibilities and the importance of good corporate governance. Through these measures, it is expected that a legal environment supporting transparency, accountability, and corporate sustainability can be established.

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