

## **Board of Directors' Responsibility for Activities of A Limited Liability which Having No Legal Entity Status**

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**Abstract.** *The aim of this study is to find and analyzes the responsibility of Board of Directors of a Limited Liability Company (PT) operated the company and entered into legal relationship with third parties on behalf of the company when the company has not legally obtained the status of a legal entity. The focus study since business practice is always encountered with competition among entrepreneurs in the effort to gain profit in various unhealthy ways, thus it results in violations of laws and regulations. The research method was used was a normative legal study with a statutory, conceptual and analytical approach. The results of the study show that legal actions on behalf of the Company that has not obtained the status of a legal entity may only be carried out by all members of the Board of Directors together with the founders and members of Board of Commissioners of the Company. The novelty showed that every company need responsible for the company's damages or losses suffered by third parties having legal relationship with the company. Included for unlimited and mutual responsibility (jointly and severally). The actions of board of directors having exceeded their authority specified in the articles of association of the company, resulting in losses for the company shall not be considered as an action of the company. This loss will be the full responsibility of Board of Directors, as the limited liability company will turn into an unlimited liability.*

*Keywords: Company; Directors; Entity; Responsibility; Status.*

### **1. INTRODUCTION**

The sense of the limited liability company is a legal entity to be able to run a business that has a capital consisting of a share, which its owners have lots of stock. Because it is composed of capital over shares that can be traded, and changes to the ownership of the company can be done without the need for a dissolution of a company. Limited liability company is a business entity and the magnitude of the capital company which are poured in a basic budget. The wealth of the company separate from the personal wealth of the owners of the company so that it can have its own treasures. Each person can have more than one stock which can be a proof of ownership of a company. The owner of the stock itself has a limited liability, i.e. as much as their shares. In the establishment of limited liability company also required permission and also some important documents that should be owned by a limited liability company to be its

foundation<sup>1</sup>.

Theoretically, business entities can be divided into two groups, namely business entities that are legal entities and business entities that are not legal entities. At glance, it seems to be no difference between the two groups of business entities, but from a company legal perspective, there is a fairly basic difference, namely the issue of responsibility. In other words, if there is a claim from a third party against a business entity, if the business entity shall be fully responsible or there is personal responsibility from the owner of the business entity. In the event that the business entity operates after the business entity complies with the provisions of laws and regulations, there will be no legal problems, but if the business entity has carried out operations and entered into legal relationship with third parties before having a clear status, then legal problems will inevitably arise.

In the event of a loss due to the company's operational performance prior obtaining a clear status, then this claim is unavoidable, considering that business world is always competition amongst entrepreneurs to gain profits, either in a healthy way or in various ways that are not healthy/fraudulent. Operating a company having no a legal entity identifies that the founders of the company have committed a business conspiracy to make profits in fraudulent ways that are detrimental to third parties, because of conspiracy according to Act No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition constitutes a prohibited business activity<sup>2</sup>. Business entities as producers are at the same time as business perpetrators are obliged to provide legal protection to consumers.

Business perpetrators ignoring consumers' rights, and even cause losses can be ascertained that the business perpetrators have breached laws and regulations. The author said that business perpetrators have conspired to commit acts against the law. In the case of a business entity operating its business after having the status of a legal entity, then its responsibilities will be clear pursuant to the applicable laws and regulations and rules which have been stipulated in the company's articles of association, unless the board of directors have *ultra vires* (actions beyond their authority) as governed under the laws and articles of association.

The government in each country sets different requirements in order to establish a limited liability company in their country. For example, the order to establish a limited liability company in Indonesia and Singapore, both private company and public company, and further analyze which countries' requirements are easier. The requirement to establish a company is easier in Singapore in terms of shareholders and capital requirements, and easier in Indonesia in terms of directors and company secretary<sup>3</sup>.

Entrepreneurs are often tempted to get big profits in an easy way by ignoring consumer rights, often take advantage of the circumstances and naivety of the consumer community by entering into transactions on behalf of a business entity that already have a legal entity such as a Limited Liability Company (PT), in reality, however, the legal

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<sup>1</sup> Lasnita, F. A., & Utama, M. A. R. (2020). Authorized Failure: How is Company Status?. *Indonesian Journal of Advocacy and Legal Services*, 2(2), 223-242.

<sup>2</sup> Susanti Adi Nugroho, (2014), *Business Competition Law in Indonesia in Theory and Practice and the Application of the Law*, Kencana Prenadamedia Group, Second Edition, Jakarta, p.267.

<sup>3</sup> Maria, F., & Prisandani, U. (2021). ESTABLISHING A LIMITED LIABILITY COMPANY: A COMPARATIVE ANALYSIS ON SINGAPOREAN AND INDONESIAN LAW. *The Lawpreneurship Journal*, 1(1), 43-57.

entity has not actually obtained the status of a legal entity. In relation to the legal issues, the focus of the study in this article is the responsibility of board of directors of a limited liability company (PT) operated the company and entered into legal relationship with third parties on behalf of the company when the company has not legally obtained the status of a legal entity.

## **2. RESEARCH METHODS**

The research method used in this research was normative legal study which analyzed the responsibilities of board of directors of a limited liability company who having carried out the company activities prior it has a legal entity status. According to Irwansyah<sup>4</sup>, normative legal research was often conceptualized as what was written in the legislation or a rule or norm which was a benchmark for human behavior considered appropriate. Thus research also used statutory, conceptual, and analytical. The technique of collecting legal materials used is a literature study technique.<sup>5</sup>

## **3. RESULT AND DISCUSSION**

The juridical basis for the existence of a limited liability company, hereinafter referred to as the Company, is Act No. 40 of 2007 concerning Limited Liability Companies. Where in the provisions of Article 1 point 1 it is stated that:

"Limited Liability Company, hereinafter referred to as a company, is a legal entity constituting a capital partnership, established based on an agreement, conducting business activities with authorized capital entirely divided into shares, and complying with the requirements stipulated in this law and its implementing regulations."

Along with the promulgation of Act No. 11 of 2020 concerning Job Creation, the definition of Limited Liability Company has been amended as stipulated in Article 109 Paragraph 1 stating that:

"Limited Liability Company, hereinafter referred to as a company, is a legal entity constituting a capital partnership, established based on an agreement, conducting business activities with authorized capital entirely divided into shares or individual legal entities complying with the criteria for Micro and Small Businesses as stipulated in the legislation regarding Micro and Small Enterprises."

Taking into account that it is permissible to establish an individual limited liability company under the Job Creation Law, it is necessary to carefully understand the time when the company is established as a legal entity. Seeing the amendment of the provisions of Article 7 paragraph (4) on the Job Creation Law that:

"The company obtains the legal entity status after being registered at the Minister and obtaining registration evidence".

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<sup>4</sup> Irwansyah, (2021), *Choice of Legal Research Methods & Practice of Article Writing*, Revised Edition, 4th Edition, Mirra Buana Media, Yogyakarta, p.100.

<sup>5</sup> I Made Pasek Diantha, (2016), *Normative Legal Research Methodology in Justifying Legal Theory*, Prenadamedia Group, Jakarta, p. 30

Taking into account the legal entity requirements of an individual company as stipulated in article 7 paragraph (4), it seems that there is a facility to establish a limited liability company, namely "only based on registration evidence". This phrase has created ambiguity in determining the responsibility of board of directors for losses suffered by a company. Moreover, the company has been operating or has had a legal relationship with a third-party prior becoming a legal entity. When a company has not yet had a legal entity, such as a limited liability company having performed its business operations prior officially obtaining evidence of registration as referred to in Article 7 paragraph (4) of the Job Creation Law, the author sees there is legal aspect in the company where there is no separation of properties constituting properties of the company. The existing properties are only the properties of the company owner. Therefore, legally the legal responsibility is also inseparable between the company's responsibility and the personal responsibility of the company owner. Thus, if an activity is performed by or on behalf of the company (which does not have a legal entity) and a loss occurs to a third party, said third party may ask the owner of the company to be legally responsible, including requesting the personal property of the owner to be confiscated and auctioned off. This is a juridical consequence of the provisions of Article 1131 of Civil Code which stipulates that:

"All debtor's objects, both movable and immovable, both existing and new in the future, shall be used as the security of all individual engagements"

In recent years, businesses in many states have been given the opportunity to select a new form in which to conduct business called the limited liability company. This form provides the advantage of the personal liability protection of a corporation, while being taxed as a partnership. If most states create the limited liability company and current issues of uncertainty are favorably resolved, the limited liability company should become the most advantageous business form for most small and medium sized businesses<sup>6</sup>.

The focus of the study in this article is the responsibility of board of directors of a limited liability company (PT) operated the company and entered into legal relationship with third parties on behalf of the company while the company has not obtained the status of a legal entity status legally. Based on the theory of corporate legal entity proposed by Mayson, Stephen W as cited by Munir Fuady,<sup>7</sup> the company is considered as a contract between its shareholders. The company is only considered as "*nexus of contract*". Coercive corporate law cannot be justified because it interferes the freedom of contract to do business in a company. The Limited Liability Company Law explicitly recognizes this contract theory by stating that basically as a legal entity, a company is formed based on an agreement. Since the company is not yet a legal entity, then legally there is no separation of assets between the assets of the founders and the assets of the company, so automatically it may be able to change the characteristics of a limited liability company having limited liability into unlimited liability similarly as the company in the form of Firms (Fa) or trading companies. Sentosa Sembiring stated that a firm is a civil partnership organizing a company on a joint name, where each member of the firm that is not excluded from one another can bind the firm to a third party and they are jointly and

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<sup>6</sup> Wells, W. and Yoshimoto, G. (1993), "The Limited Liability Company: An Analysis", *American Journal of Business*, Vol. 8 No. 2, p. 37-44.

<sup>7</sup> Munir Fuady, (2014), *Modern Doctrines in Corporate Law and Their Existence in Indonesian Law*, PT. Citra Aditya Bakti, Bandung, p.5

severally responsible for the entire debt of the firm.<sup>8</sup>

Because the company has not officially obtained the status of a legal entity, the Board of Directors, however, has carried out the company's operations by conducting various transactions with third parties, to obtain personal benefits from their positions and duties. The profit gain may be legally obtained, but it can also be gained in a way against the law or ethical norms, such as running a company in the form of a Limited Liability Company, but in fact the company does not have the status of a legal entity.

According to Article 97 paragraph (2) of the Company Law, each member of the Board of Directors is personally responsible for the loss of the Company if the person concerned is guilty or negligent in carrying out his duties. If the Board of Directors consists of 2 (two) or more members of the Board of Directors, the responsibility as referred to above, applies jointly and severally to each member of the Board of Directors. Based on Article 97 paragraph (3) of the Company Law, members of the Board of Directors cannot be held responsible for the losses referred to above, if they can prove: 1) The loss is not due to his fault or negligence, 2) Have carried out management in good faith and prudence for the benefit and in accordance with the aims and objectives of the Company, 3) Does not have a conflict of interest, either directly or indirectly, over management actions that result in losses; and 4) Have taken action to prevent the arising or subsequent loss.

In the event that bankruptcy occurs due to the fault or negligence of the Board of Directors and the bankruptcy assets are not sufficient to pay all of the Company's obligations in the bankruptcy, then Article 104 paragraph (2) of the Company Law stipulates that each member of the Board of Directors is jointly and severally responsible for all outstanding obligations from the bankruptcy assets. The responsibilities referred to above also apply to the wrong or negligent Directors who have served as members of the Board of Directors within a period of 5 (five) years prior to the declaration of bankruptcy.

The recent Omnibus Law provides significant changing in the company legal order since the issuance of Government Regulation No. 8 of 2021. Under this GR, the sole proprietorship became a limited liability company. However, the liability construction of this newly born has not been regulated clearly and firmly and creates legal uncertainty. The appropriate liabilities of SPLLC (Sole Proprietorship as Limited Liability Company) and its founder, and second, to review and develop the legal mechanism for government to provide legal certainty. Furthermore, three models of liability construction of the business owner are offered, including SPLLC with unlimited liability, SPLLC with limited liability, and SPLLC with certain liability<sup>9</sup>.

The Board of Directors in this position has clearly taken actions exceeding their legal authority as regulated under the Law and the Company's Articles of Association. The action of Board of Directors is referred to as *Ultravires*. Shall there be any losses to certain parties due to *ultra vires* actions, the directors or parties to the company who

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<sup>8</sup> Sentosa Sembiring, (2017), *Commercial Law*, Fifth Edition, PT. Citra Aditya Bakti, Bandung, p.41

<sup>9</sup> Ratna Januarita. THE NEWLY SOLE PROPRIETORSHIP AS LIMITED LIABILITY COMPANY IN RECENT INDONESIAN COMPANY LAW. *Jurnal Sosial dan Pembangunan*, Volume 37, No. 1, 2021,

are responsible for the *ultra vires* actions bears the personal responsibility. In addition, the actions of board of directors who have intentionally carried out the company's operations before the company obtained the status of a legal entity can also be categorized as having committed an unlawful act as referred to in the provisions of Article 1365 of Civil Code. The existence of an intentional operation of a company that has not yet had a legal entity status causing losses to the company or to a third party, in the author's opinion is an unlawful act that can be sued for compensation. Considering that the basis of a company's establishment is based on the existence of an agreement, in this case it is clear that those who are responsible for the loss are the parties entering into the agreement, namely those who have agreed to establish a company and operate it before having the status of a legal entity. This act is based on the legal principle that all agreements legally drawn up apply as a law for those drawing it up. In this case, it is necessary to prove the aggrieved party, and the burden of proof is on the party suffering from the aggrieve due to the existence of a company having not yet a status of legal entity, but recognizing it as a company having a legal entity status. It is meant by burden of proof is a determination by law as to who have to prove a fact being disputes before a court, to prove and convince any parties that the fact really exists as stated. The intentional element is considered to exist in a human action when it complies with the following elements:

- There is awareness (*state of mind*) to do;
- There are consequences of actions. So, it is not merely actions.
- Awareness to do, not only to cause consequences, but also the belief that with these actions, "definitely" will cause these consequences.

Related to this *ultra vires* action, it is certainly very difficult for third parties having legal relations with the company to be able to know whether the company is already a legal entity or not. This can only be found out if the cause of loss has been revealed by tracing in depth by uncovering the things causing it. Based on the doctrine *piercing the corporate veil* will be able to know the actual facts whether board of directors in operating the company is already a legal entity or not; as well as whether the board of directors has violated the limits specified under the Law and the Articles of Association. Paraphrasing within the limits specified in this Law and/or the Articles of Association implies that there is a prohibition against taking actions beyond the limits specified in the Limited Liability Company Law and/or the Company's Articles of Association, so as to assess whether board of Directors has exceeded the authority or not, it can be seen on several sources of authority, namely the Law, Articles of Association, Resolution of GMS , and *Best Practices* (practices carried out by the company's organs, especially the Board of Directors, for the best interest of the company).

The Articles of Association have compelling and binding nature for all members of Shareholders, all members of the Board of Commissioners, and all members of the Board of Directors. Members of Shareholders are an organ owned by Limited Liability Company whose authority owned by all members of the Board of Commissioners and all members of the Board of Directors. One of the authorities possessed by the members of Shareholders is to appoint the members of the Board of Commissioners and members of the Board of Directors. The position of the shareholders is not higher

than and even equal to the position of the Board of Commissioners and Board of Directors. Whereas in the Indonesian Commercial Code, it stipulates that the position of shareholders is the highest in a Limited Liability Company<sup>10</sup>.

The new legislation increased flexibility of the Limited Liability Company and removed limitations that presented a barrier to establishing a company and its activities. The most important changes include waiving the statutory limit of registered capital and decreasing the minimum amount of the deposit, the option of creating various types of shares and the option of expressing the share by a security. It thus expands the practical use of this form of company, which can approach a Public Business Company and even a Joint-stock Company, but retains limited liability of partners towards company obligations and a simple internal structure<sup>11</sup>.

Article 1 number (5) of the Limited Liability Company Law confirms that board of directors is the organ that is fully responsible for the management in accordance with the purpose and objectives and is authorized to represent the company, both inside and outside, in accordance with the provisions of the Articles of Association. Based on this provisions, board of directors has two functions, namely the management function within the company and the second function is external representation with third parties. Board of Directors in carrying out these two functions have to adhere to the purpose and objectives as the basis for the operation of the company. Directors acting inconsistently with the purpose and objectives of the company are categorized as having exceeded the limits of authority or known as an act by *ultra vires* doctrine. *Ultra vires* can occur because board of directors takes actions beyond their power or authority as stipulated in the articles of association of a company by seeking or taking advantage of opportunities to take actions that benefit personally or others (*vested interest*), but can also occur due to negligence in "interpreting" the contents of the articles of association and *Business Guideline Objective* (BGO) in the form of a limited liability company policy guided by the articles of association.

As a company is a legal entity constituting a capital partnership, established based on an agreement, conducting business activities with authorized capital entirely divided into shares, and complying with the requirements stipulated under this law and its implementing regulations." In the event of a dispute between a company and a third party being harmed, then the company is responsible for the loss as a legal subject, since it has already been a legal entity. The doctrine generally requires criteria to determine the existence of a position as a legal entity, namely:

- The existence of separate assets;
- Have a specific purpose;
- Have its own interests;

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<sup>10</sup> Prasasti Dyah Nugraheni. Legal Analysis of Shareholders as an Organ of The Company Viewed From Commercial Code. *Law and Justice Journal*, Vol. 5, No. 2, 2020, p.119-133.

<sup>11</sup> Jarmila Pokorná, Eva Večerková. The Limited Liability Company as a Universal Legal Form of Business. *Procedia Economics and Finance*, ELSEVIER, Volume 12, 2014, Pages 533-538.

- There is an organized organization.

In the opposite case, if the business entity being operated does not meet the criteria as a legal entity, but the board of directors of the company has conducted transactions with third parties on behalf of the company when the company has not yet been a legal entity, then the legal liability will refer to in the provisions of Article 14 paragraph (2) of the Limited Liability Company Law which stipulates that:

"In the event that the legal action as referred to in paragraph (1) is carried out by a founder on behalf of the Company which has not obtained the status of a legal entity, the legal action shall be the responsibility of the founder concerned and shall not bind the Company".

Based on the provisions of the article, it is clear that the founders together with the board of directors have the same authority over the operation of company. So, in the event of a loss to the company or it has harmed a third party, then they jointly become the party with unlimited responsibility jointly or severally for each other. This is confirmed by the provisions of Article 14 paragraph (1) of the Limited Liability Company Law which states that:

"Legal actions on behalf of a company that has not obtained a legal entity, may only be carried out by all members of the board of directors together with all founders and all members of the board of commissioners of the Company and they are all jointly and severally responsible for such legal actions."

For any discussion many companies experienced bankruptcy lawsuits during the Covid-19 pandemic in 2020. This was so when the companies' asset cannot afford their obligations upon their creditors, especially banks and other financial institutions. The creditors demanded compensation to avoid losses due to the companies' failure in repaying their loans. The question is who should be held liable if the companies are of limited liability companies. The liability of corporation for creditors' losses. So they are demanding compensation through bankruptcy lawsuit is not an easy task for the creditors. In fact, a separate lawsuit is required rather than incorporating it in a bankruptcy lawsuit. Even, it is not only a matter of civil case but also criminal case. Therefore, the companies may be subjected to both civil and criminal liability<sup>12</sup>.

For the sake of fulfilling the losses due to the legal action, the party being harmed may sue the perpetrator personally; the legal action is carried out personally and not in a limited liability company where the actions of board of directors are carried out in the name of the limited liability company. Based on this elaboration, it is clear that the responsibility for the occurrence of losses in legal actions lies on the Directors. The Board of Directors is responsible for the company's operations.<sup>13</sup> The nature of the personal responsibility of the Board of Directors becomes very relevant in the event that the Board of Directors deviates from the power and orders of the company for the benefit of the Company. Taking into account that the company is established on the

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<sup>12</sup> Suwinto Johan, Ariawan Ariawan. Corporate Liability for Creditors' Losses during the Covid-19 Pandemic, *Jurnal Media Hukum*, Volume 28, Number 1, June 2021.

<sup>13</sup> Hasbullah F. Sjawie, "Responsibility of the Board of Directors of a Limited Liability Company for Ultra Vires Actions", *Prioris Law Journal*, Vol.6 No. 1 of 2017, p. 13.



basis of an agreement between the founders, the responsibility for legal actions carried out by the board of directors carrying out the business activities of a limited liability company having no legal entity remains lawful and valid as a law for its makers. This is in accordance with the legal principle which states that an agreement results in a legal obligation and the parties are bound to carry out the contractual agreement, as well as that an agreement must be fulfilled is considered to have been given and we will never question it again. For this reason, since the company has not yet had a status of legal entity, in carrying out legal actions, the board of directors does not obtain approval from the first GMS, after the limited liability company is a legal entity so the responsibility becomes the personal responsibility of board of directors together with the other founders including the board of commissioners by way of joint responsibility, and will not be limited only to the capital that has been deposited in the Company, but the responsibility for such losses until personal assets. The loss of the limited liability company can only be submitted to the board of directors not to the limited liability company due to the legal actions of the founders, because the board of directors did so before the limited company became a legal entity.

The corporation has a number of exceptional features that emanate from its legal architecture: it is legally recognised as a separate entity from its shareholders -it is its own person; the ownership of its shares are transferable and unlimitedly divisible; its owners have limited liability; and the corporation has an undefined continuity of existence -it is immortal<sup>14</sup>.

In the event of bankruptcy, which releases Members of the Board of Directors from being jointly and severally liable for the Bankruptcy of the Company, the responsibilities of the members of the Board of Directors are not absolute. Depending on whether or not there is an error or negligence in the bankruptcy of the Company. This can be seen in the provisions of Article 104 paragraph (4) which stipulates that:

"Members of board of directors are not responsible for the bankruptcy of the Company as referred to in Paragraph (2) if they can prove:

- The bankruptcy is not due to their fault or negligence;
- Having carried out management in good faith which can relieve members of board of directors from joint responsibility for the bankruptcy of the Company;
- Having no conflict of interests, either directly or indirectly, over the management actions taken; and
- Having taken action to prevent bankruptcy.

Pursuant to the provisions of this article, it means that the company is an entity created under a law as if it were a human being (*artificial person*) who can be burdened with rights and obligations like natural humans (*natural person*). Simply, this is one of the existing similarities, where the law has outlined those humans and legal entities are equal in position as legal subjects in the sense that both have the ability to act under the law and both have the position as the holders of their own rights and obligations; therefore, both are responsible for their own actions. Of all the actions and cause and effect above, one should not be forgotten and constitutes a means for preventing the occurrence of

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<sup>14</sup> Ireland, Paddy. (1984). The Rise of the Limited Liability Company. *International Journal of the Sociology of Law*, p. 239-260.

acts of board of directors beyond the limits of their authority or taking *ultra vires* actions is supervision aspect. And this supervision obligation is on the organs of board of commissioners. It is an important organ in the Company, where pursuant to Article 108 of Act No. 40 of 2007 concerning limited liability companies it is stated that:

"Board of commissioners supervises management policies, general course of management, both regarding the company and the company's business, and provides advice to board of directors."

In the event that a company has not yet had the status of a legal entity, if any losses are suffered by the company, the shareholders either individually or collectively who own shares in the company reserve the rights on behalf of the limited liability company to sue the directors and commissioners, in which due to their actions or decisions have caused losses to the company. With regard to losses suffered by minority shareholders or losses experienced by third parties having legal relations with the company, board of commissioners is one of the important organs that must share responsibility together with the other founders including the board of directors. Minority shareholders need protecting in a limited liability company. The forms of legal protection for minority shareholders are:

- Personal rights (rights of individuals);
- Appraisal Right (right to assess share price);
- Pre-Emptive Right (Primary rights);
- Derivative Rights;
- Enqueterecht (Examination Rights).

The board of commissioners as the supervisory organ of a company must supervise the management policies, general course of management, both regarding the company or the company's business and provide advice or input to the board of directors. Supervision and advice provision to board of directors here is carried out for the sake of the interest of a company and in accordance with the purpose and objectives of the establishment of a company. Under normal circumstances, each function of a company's organs will run normally in accordance with their duties and functions, where the supervision carried out by board of commissioners aims at ensuring that the company and board of directors as drivers running the company's wheels do not commit violations that can harm the company. And third party or other *stakeholders*, including acting beyond the limits of their authority or *ultra vires* actions.

According to the Minister of Justice of the Republic of Indonesia No. M.01-PR.08.01 1996 on Procedures for Submission of Application and Approval of Deed of Establishment of the Limited Liability Company, that establishment of PT may be made by the founders together or proxies, can also by a notary, so there is no necessity notaries as public officials who approve their establishment of limited liability companies, but these roles can be carried out by the founder of the company. Barriers faced delay problems often arise. For the notary, will make the process inefficient. Probes for the ongoing process

difficult because of the lack of an online system that can monitor the manufacturing process. Solutions to overcome the obstacles faced by the notary in the legalization of the establishment a Limited Liability Company in the legalization of the establishment can be overcome with the Legal Entity Administration System electronically, as a matter of time and efficiency in monitoring the rights to this process<sup>15</sup>.

The board of commissioners supervises, but if during its supervision it turns out that the company has suffered losses, has gone bankrupt and/or even a third party has been harmed by the company's operations, the board of commissioners should also be responsible for the company's losses, moreover, it turns out that the company has not yet been a legal entity. In the event of bankruptcy of a company that has not yet had the status of a legal entity, the board of commissioners cannot hide behind the limited liability of the company only. In this case, the characteristics of limited liability in a limited liability company will be able to change into unlimited liability as in a firm (Fa), a company of which partners are jointly and severally responsible for the founders and members of a company, the directors and board of commissioners.

#### **4. CONCLUSION**

A limited liability company that has been active before having a legal entity status has juridical implications for the "limited liability" of the company to be "unlimited responsibility" to all founders of the company, board of directors and all members of the company's board of commissioners. The actions of the founders of a company, board of directors and board of commissioners are jointly considered to have committed the unlawful act. The company's damages or losses experienced by third parties having legal relationship with the company will be borne jointly by all of them and without limitation. The actions of board of directors that are detrimental to the company as what they do is beyond the limits of the authority granted to them under the articles of association, then the consequences of the actions of the directors are not considered as actions of the company.

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<sup>15</sup> Iqbal Rino Akta Pratama, Asep Suherdin, Gunarto. Notary Role In The Process Of Establishment Limited Liability Company (PT), *Jurnal AKTA*, Vol 6, No 3, 2019.

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