WIDYA YURIDIKA: JURNAL HUKUM
P-ISSN: 2615-7586, E-ISSN: 2620-5556
Volume 6, (1), 2023

http://publishing-widyagama.ac.id/ejournal-v2/index.php/yuridika/

Application Of Acquit Et De Charge In Removal Of Liability Of The Board Of Directors Of A Limited Company

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ABSTRACT

The Indonesian people demand the form of a Limited Liability Company because of legal certainty in the form of limited liability, providing convenience for the owner (shareholder) to transfer his company by selling all the shares he owns in the company. Where there is a clear separation between ownership and management (power); therefore, to be able to run the company, there is management called the Company Organ, and it is divided into 3 (three) parts: the Board of Directors, the Board of Commissioners, and the General Meeting of Shareholders. The Board of Directors has dominant authority in the management and representation of the company inside and outside the court. With great authority, there is also significant risk. The Board of Directors is very vulnerable to being sued and prosecuted in court; this condition makes the Board of Directors worry about taking steps. The doctrine of acquit et de charge, which is implicit in Law Number 40 of 2007 concerning Limited Liability Companies (Perseroan Terbatas/PT), still does not provide adequate protection for the personnel of the Board of Directors. This study aims to describe legal certainty in the application of acquit et de charge as an effort to protect the Company's Board of Directors. This research is descriptive of the type of juridical-normative research. The type of approach used is the statutory approach and the conceptual approach. However, in reality, there is no legal certainty in Indonesia applying to acquit et de charge.

MANUSCRIPT INFO

Manuscript History:
Received:
2022-08-30

Accepted:
2022-11-07

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***Keywords*:**
Directors; Limited Liability Company; Legal Protection

Cite this paper Sudirman, L. (2023). Application Of Acquit Et De Charge In Removal Of Liability Of The Board Of Directors Of A Limited Company. *Widya Yuridika: Jurnal Hukum, 6*(1). doi: 10.31328/wy.v6i1.4000

Layout Version:
v.6.2023

PRELIMINARY

A limited Liability Company (from now on referred to as the Company) is a legal entity that is an *artificial person* that cannot carry out its activities; for this reason, the Company in carrying out business activities is represented by an organ called the Company Organ. The Company's organs within the Company's structure consist of shareholders, Directors, and Commissioners. The Company, as a form of economic business, has specific organs (Utami & Sudiarawan, 2021). The first organ is called the General Meeting of Shareholders (GMS), which generally has the task of determining all general policies of the Company. The second organ is the Commissioner, who acts as a supervisor for and on behalf of the shareholders. The third is the Board of Directors, responsible for carrying out the determined policies by the General Meeting of Shareholders, managing and representing the Company inside and outside the court (Dewi, 2019).

The existence of a Board of Directors in the Company is a must, or the Company must have a Board of Directors because the Company as an *artificial person* cannot do anything without the assistance of members of the Board of Directors as *natural persons*. The Company's Board of Directors is like the Company's life. It is impossible for a company without a Board of Directors (Akbar, 2016). On the other hand, there cannot be a Board of Directors without a Company. Therefore, the existence of the Board of Directors for the Company is essential. Even though the Company is a legal entity that has assets separate from the Directors, this is only based on legal fiction, that the Company is considered as if it were a legal subject just like humans (Widiyono, 2004). Directors carry out daily activities under the supervision of the Board of Commissioners. The Company as a legal entity is considered the same as individuals who can take legal actions, and legal actions carried out by the Company's Organs, in this case, the Board of Directors, will have legal consequences that are binding on the Company (Ridwan, Barkah & Bachri, 2021).

The issue of responsibility relates to the obligations of an individual, in this case, the Board of Directors, to carry out the business activities assigned to him in his capacity. However, the issue of legal protection arises regarding the guarantee of the protection of the Board of Directors in carrying out the authority they have received (Wardhana, 2019). The Board of Directors managing the Company is an essential and strategic Company Organ. The Board of Directors manage for and on behalf of the Company; represent the Company inside and outside the Court. It shows that the Company's operational activities, including the consequences related to profit or loss for the Company, will largely depend on and be determined by the performance of the Board of Directors (Subagiyo, 2015). Concerning the essential and strategic role of the Board of Directors as the management of a Limited Liability Company, Law Number 40 of 2007 concerning Limited Liability Companies (Ltd. Lawa) expressly stipulates that the Board of Directors must be responsible for the management carried out. Concerning this responsibility, each member of the Board of Directors is personally responsible for the Company's loss if the person concerned is guilty or negligent in carrying out his duties by applicable regulations (Normayunita & Darmadi, 2018). Suppose the Company's Board of Directors consists of more than two members or more. In that case, the responsibility for the Company's loss becomes a burden that must be jointly and severally borne by each member of the Board of Directors.

The authority of the Board of Directors granted by law, Limited Liability Company and General Meeting of Shareholders (GMS), is a high-risk authority. It is because errors or inaccuracies in the actions taken by the Board of Directors can be sued civilly or even face criminal charges (Wardhana, 2019). It has been experienced empirically in several cases, including (Raffles, 2020): the case of former Pertamina's director Karen Agustiawan, the case of Benjamin Widjaja and Sianna Kusuma Widjaja (both shareholders of *PT. Necis Indah Cemerlang*) against Julius Widjaja (Director of *PT. Necis Indah Cemerlang*), Heryati Suryaman (Commissioner of *PT. Necis Indah Cemerlang* and *PT. Danamon Indonesia, Tbk.*) also, a criminal case against the former President Director of *PT. Merpati Nusantara Airline*, Hotas D.P. Nababan, and former Chief Executive Officer (CEO), who is now the Minister of Education, Culture, Research and Technology of the Republic of Indonesia Nadiem Makariem. Of course, several cases above indicate a high risk of lawsuits from the position of the Board of Directors even though they are not holding positions. Law Number 40 of 2007 concerning Limited Liability Companies (Ltd. Law) have adopted the principle of *acquit et de charge* on a limited basis, which teaches that the Board of Directors cannot be accounted for after he has submitted an annual report that the GMS has approved. Therefore, all actions and decisions of the Board of Directors are *mutatis mutandis* ratified by the Limited Liability Company (Ramadhan, 2019). Then the legal problem is that there is practically no legal certainty in applying *acquit et de charge* protection, so the Board of Directors continues to be overshadowed by fear.

METHOD

This research is descriptive of the type of juridical-normative research (Marzuki, 2009). The type of approach used is the statutory approach and the conceptual approach (Marzuki, 2009). A *statutory approach* is an approach that refers to the provisions of laws and regulations such as Law Number 40 of 2007 concerning Limited Liability Companies (Ltd. Law) and other relevant laws and regulations. This research uses the conceptual approach to understanding the theories and concepts. This study uses three secondary data: primary legal materials, secondary legal materials, and tertiary legal materials, and through library research collection techniques, which then analyze the data qualitatively to obtain the secondary data (Ibrahim, 2007).

RESULT AND DISCUSSION

1. Regulation of the Authority and Responsibilities of the Board of Directors Based on Law Number 40 of 2007 concerning Limited Liability Companies

When carrying out business activities or operations, the Company as a legal subject that is artificial (*kumsmatig*, *artificial*) certainly requires people who run it. The people in it must have an organization or management structure to help represent the Company's interests; that is called a Company Organ (Harahap, 2017). The Ltd. Law divides the Company's Organ into 3 (three): the Board of Directors, the Commissioner, and the GMS. Definitively as explained in Limited Liability Company Law Chapter 1 point 5, (*Direksi adalah Organ Perseroan yang berwenang dan bertanggung jawab penuh atas pengurusan Perseroan untuk kepentingan Perseroan, sesuai dengan maksud dan tujuan Perseroan serta mewakili Perseroan, baik di dalam maupun di luar Pengadilan sesuai dengan ketentuan Anggaran Dasar)* the Board of Directors is the Company's Organ which is authorized and entirely responsible for the Company's management for the Company's benefit, by the purposes and objectives, and represents the Company, both inside and outside the Court by the provisions of the Articles of Association (Prasetya, 2022).

Judging from the above definition, the Board of Directors has full responsibility as the Company's management, which must be by the Company's aims and objectives. On the other hand, the Board of Directors act as the Company's representative inside and outside the Court by the Company's Association Articles (Sjawie, 2017). To carry out the entire management of the Company by the purposes and objectives of the Company, this is because the Board of Directors has obtained a relationship of trust or referred to as a *fiducia relation* which requires them to carry out their *fiduciary duty* (Yusro, Shaleh & Disemadi, 2020). To carry out the entire management of the Company by the purposes and objectives of the Company, this is because the Board of Directors have obtained a relationship of trust or referred to as a *fiducia relation* which requires them to carry out their *fiduciary duty* (Yusro, Shaleh & Disemadi, 2020). The Board of Directors are given powers as stipulated in the Ltd. Law. These powers include the following (Kusumawardani, 2013): 1) The Board of Directors have the authority to carry out the Company's management in the interest of the Company's benefit, which is by the aims and Company's objectives (as regulated in Chapter 92 Verse (1) of the Ltd. Law); 2) The Board of Directors have the authority to carry out the Company's management as referred to in Limited Liability Company Law Verse (1) based on policies deemed appropriate, within limits specified in this Law and/or the Company's Articles of Association (as regulated in Article 92 Paragraph (2) of the Company Law); 3) GMS stipulates and decides the Board of Director's duties and responsibilities (as stipulated in Chapter 92 Verse (5) of the Law on PT); 4) Suppose the GMS does not stipulate the division of tasks and authorities among members of Board of Directors. Therefore, the duties and charges are assigned based on the decision of the Company's Board of Directors (as regulated in Chapter 92 Verse (6) of the Ltd. Law); 5) The Board of Directors have responsibility for the management of the Company (as stipulated in Chapter 92 Verse (1) and Chapter 97 Verse (1) of the Ltd. Law); 6) The Board of Directors and members must carry out management in good faith and with full responsibility (as stipulated in Chapter 97 Verse (2) of the Company

Law); 7) The Board of Directors as the Company's representatives inside and outside the court (as stipulated in Ltd. Law Chapter 98 Verse (1)); 8) If the Board of Directors consist of more than 1 (one) person, each member of the Board of Directors who authorized to represent on behalf of the Company unless otherwise stipulated in the Company's Articles of Association (as regulated in Chapter 98 Verse (2) of the Company Law); and 9)The responsibilities of the Board of Directors as regulated are unlimited responsibilities, which the Board of Directors cannot deny.

The points above describe that the Company relies on the Board of Directors as the organ entrusted to manage the Company and carry out the Board of Directors' duties; the Board of Directors must be equipped with sufficient authority. The delegation of considerable authority reflects that the board of directors is an organ of trust for the Company that represents the Company to take all kinds of legal actions to achieve its goals and interests (Khairandy, 2007). In addition to being responsible for the Company's authority granted by the shareholders, the Board of Directors must be committed to social and environmental responsibilities to participate in sustainable economic development. It aims to improve the quality of life and the beneficial environment for the Company itself, the local community, and society in general (Utama, 2018).

The Company relies on the Board of Directors as an organ entrusted to manage the Company and carry out their duties; the Board of Directors must be equipped with sufficient authority. The delegation of considerable authority reflects that the Board of Directors is an organ of trust for the Company that represents the Company to take all kinds of legal actions to achieve its goals and interests (Khairandy, 2007). The GMS forum carries the procedure for the appointment of the Board of Directors. At the establishment time, the Company founder makes the appointment and is included in the deed of establishment. Ltd. AoA can arrange in the case of appointment, replacement, or dismissal. If not determined, the appointment, replacement, and dismissal of members of the Board of Directors shall take effect as of the closing of the GMS (Harahap, 2017).

The appointment, replacement, and dismissal of members of the Board of Directors must be notified to the Minister of Law and Human Rights (HAM) within 30 days. If not notified, the Minister may reject the application or notification submitted by the new Board of Directors that has not been registered in the Company register (Harahap, 2017). The division of Board of Directors' duties and authorities can also be determined based on the decision of the GMS. If the GMS does not determine the division of the Board of Directors' members' duties and authorities, the division of duties and authorities is determined based on the decision of the Board of Directors. The division of tasks is the internal governance of the company's organization that binds to and does not bind third parties. Each member of the Board of Directors is personally responsible if he is guilty or negligent in carrying out his duties, as well as opening the possibility of joint responsibility among members of the Board of Directors (Sjawie, 2013). Violation of the provisions stipulated in the Ltd. AoA and Ltd. Law which is detrimental to the Company or third parties, will result in the Board of Directors being subject to responsibility ranging from the Board of Directors' assets. So that there is no longer limited liability for errors or omissions that the Board has made of Board of Directors (Fuady, 2002). The Company's management by the Board of Directors has many risks, so legal certainty is needed for legal protection in the release of the responsibilities of the position of the Company.

2. Legal Certainty in the Implementation of *Acquit Et De Charge* in Liability Exemption of the Board of Directors of a Limited Liability Company

About the essential and strategic role of the Board of Directors as the management of a limited liability company, Chapter 97 Verse (1) of the Limited Liability Company Law expressly stipulates that the Board of Directors must be responsible for the management carried out. Furthermore, in Chapter 97 Verse (3) of the Limited Liability Company Law, (*setiap anggota Direksi bertanggung jawab secara pribadi atas kerugian perseroan apabila*

yang bersangkutan bersalah atau lalai menjalankan tugasnya sesuai dengan ketentuan sebagaimana dimaksud pada ayat 2) each member of the Board of Directors is personally responsible for the company's loss if the person concerned is guilty or negligent in carrying out his duties following the applicable provisions. Whereas Article 97 Paragraph (4) of the Ltd. Law (*apabila Direksi perseroan terdiri lebih dari dua anggota atau lebih, maka tanggung jawab atas kerugian perseroan menjadi beban yang harus ditanggung secara renteng*) if the Board of Directors of a company consists of more than two members or more, then the responsibility for the loss of the company becomes a burden that must be borne jointly by each member of the Board of Directors (Harris, 2017).

The consequences of business decisions have a risk of loss, which could be as great an opportunity as the expected profit. In business, there is no guarantee that the decisions will be fully profitable. The responsibility and legal protection of the Board of Directors in managing the Company itself are not new. Moreover, in Indonesia, the regulation has existed for a long time, both in the Limited Liability Company Law in 2007 and the Limited Liability Company Law in 1995. Of course, the uncertainty of the legal protection of the Board of Directors has implications for the shadow of fear of the problem of personal accountability bias (Wardhana, 2019). The issue of responsibility cannot be separated from the issue of awareness and freedom. The existence of responsibility here stems from the existence of awareness and freedom in humans, giving rise to responsibility. In the view of existentialism, humans are understood to exist with consciousness as themselves. Human consciousness is always accompanied by freedom because, without freedom, human consciousness and even its existence become absurd (Siswanto, 1997). In shaping themselves, humans can choose what is good and what is not for themselves. Therefore, for every choice, there is a responsibility attached as a consequence (Siswanto, 1997). That way, it can be said that awareness and responsibility are related to human attitudes and actions in filling the space of freedom they have. Attitudes and actions taken by every human do not stand in space but must be held accountable for their values, duties, and obligations.

In correlation with the Company management, this description of awareness and freedom would like to convey that the Company management by the Board of Directors means it must be accompanied by an awareness of the Board of Directors regarding their duties and obligations as the Board of Directors in managing the Company (Yanuarsi, 2020). Such awareness is essential so that the actions he takes are in line with his duties and obligations. On the other hand, freedom means that the actions of the Board of Directors in managing the Company, which are part of economic activity, will be impossible if they do not have the freedom to choose various alternative actions. However, this freedom must also be in line with the signs in a company's management, generally contained in an Ltd. AoA, as well as signs in the laws and regulations. For this reason, it is necessary to elaborate further on the duties, obligations, and limitations of managing the Company (Yusuf, 2020).

The Directors' position, known in the management of the Company, is crucial. The Directors is the Company's Organ that carries out the management. It means that the Company's operational activities, including its consequences, whether it brings profit or loss, will largely be determined by the performance of the Board of Directors (Setyarini, Mahendrawati, & Arini, 2020). Therefore, the Board of Directors are given demands and expectations to carry out their duties professionally and based on good faith and responsibility. The form of responsibility of the Board of Directors in managing can be realized by carrying out several obligations. There are obligations that the Board of Directors must carry out in the Company, which are contained in several articles in the Ltd. Law. First, the obligations of the Board of Directors contained in Chapter 100 Verse (1) of the Company Law are as follows: 1) The Board of Directors is required to make a register of shareholders, a special register, and minutes of the GMS; 2) The Board of Directors is required to make annual reports and financial documents of the Company; 3) The Board of Directors must maintain all Company registers, minutes, and financial documents. Second, the obligations of the Board of Directors contained in Chapter 101 Verse (1) and Chapter (2) of the Limited

Liability Company Law are as follows: "(*Direksi wajib melaporkan saham yang dimilikinya dan anggota keluarganya dalam Perseroan dan Perseroan lain untuk selanjutnya dicatat dalam daftar khusus. Anggota Direksi yang tidak melaksanakan kewajiban sehingga menyebabkan kerugian terhadap Perseroan wajib bertanggung jawab secara pribadi atas kerugian tersebut*) The Board of Directors must report the shares they own and their family members in the Company and other companies to be further recorded in a special register. Members of the Board of Directors who do not carry out their obligations to cause losses to the Company must be personally responsible for such losses".

In addition to not violating the obligations of the Board of Directors described above, the Board of Directors must also not conflict with the applicable laws, Ltd. AoA, and other statutory provisions, as contained in Verse 4 of the Ltd. Law. This provision describes the critical position of Ltd. AoA as the pivot of the Board of Directors to carry out their obligations by adhering to the applicable laws and the GMS (Graziano, 2016). One of the obligations of the Board of Directors is to make an annual report. Provisions regarding the annual report are contained in Chapters 66 to 69 of the 2007 Company Law. So, the annual report's function is a source of documentation and company information about the company's achievements during the year (Kuswiratmo & Aji, 2016). An annual report contains losses and gains due to the actions of the Board of Directors for one financial year. After the Board of Directors makes an annual report, the Board of Directors submits the report to the Board of Commissioners for further review; after the review is complete, it will then be submitted to the GMS; this mechanism is in Chapter 66 Verse (1) of the Ltd. Law. This provision relates to the doctrine of *acquit et de cherge* often (Gunatri & Sukihana, 2019).

Release and discharge of responsibility (*acquit et de charge*) as contained in the "Black's Law Dictionary" states that *acquit*, which is translated as "to clear (a person) of criminal charge" (Black, Garner, McDaniel, & Schultz, 1999), can be interpreted that a person will be free from criminal prosecution. Meanwhile, the Dictionary of Law states that "in discharge of his duties as director meaning carrying out his duties as director" (Collin, 1999). The doctrine of *acquit et de charge* is an acquittal or discharge of responsibility to the Board of Directors from all responsibilities that may exist in the future for legal actions committed in the year the Board of Directors is granted *acquit et de charge*. The Company Law does not explicitly regulate the conditions for granting release and discharge of responsibilities (*acquit et de charge*). This situation causes the Directors involved in it not to understand when the implementation of *acquit et de charge* (Ramadhan, 2019). The growing understanding of the Board of Directors states that if they are responsible for their management at the GMS, then the *accquit et de charge* will automatically be given to the Board of Directors so that they can fully discharge their responsibilities during management. It is a mistake that must be rectified with strict regulations. The requirements for granting *acquit et de charge* are not explicitly regulated in the Ltd. Law. However, several provisions can be used generally as guidelines in obtaining *acquitet de charge*, including Chapter 97, 100, and 101 of the Ltd. Law and annual reports that comply with Chapter 66 up to Chapter 69 of the Ltd. Law and do not violate the provisions of the Ltd. AoA and GMS. The legal actions of the Board of Directors that have complied with the provisions of this article will receive *acquit et de charge* (Samosir, 2020).

The provision regarding the release and discharge of responsibility (*acquit et de charge*) is given because the report of the Board of Directors is by the facts and performance that has met the requirements and, most importantly, contains the profits and losses in one financial year. Suppose the actions of the Board of Directors are outside the annual legal report or the submitted annual report is incorrect and misleading. In that case, the Board of Directors may be jointly and severally held accountable by the injured party and cannot escape from such responsibility (*acquit et de charge*) (Kartika, 2019).

The legal consequences if the Board of Directors obtains an *acquit et de charge* are not explicitly regulated in the Ltd. Law. However, there are references in several provisions of articles in the Ltd. Law (Waluyo & Prasetyo, 2019). *First,* if the Board of Directors has fulfilled

its responsibilities and obligations in managing the Company as mandated in several provisions such as Chapter 97, 100, and 101 of the Ltd. Law and annual reports that meet Chapter 66 to 69 of the Company Law and do not violate the provisions of the Articles of Association and the GMS. The Board of Directors can be said to have successfully carried out their obligations and responsibilities properly so that the Board of Directors has the right to obtain *acquit et de charge*. The success of the Board of Directors has resulted in legal consequences that the Board of Directors cannot be sued later for their actions with some exceptions. *Secondly,* uppose the Board of Directors is unable to fulfill its responsibilities and obligations in managing the Company as mandated in several provisions such as Chapter 97, 100, and 101 of the Ltd. Law and annual reports that comply with Chapter 66 to 69 of the Company Law and are proven to have violated the provisions of the Articles of Association and GMS, so the Board of Directors is said to be unable to carry out its obligations and responsibilities appropriately, causing the Company to suffer losses due to errors and omissions, which may result in the following legal consequences (Yusro, 2022): 1) Shareholders may sue the Board of Directors because they have made mistakes and omissions that have caused losses to the Company as stipulated in Chapter 97 Verse (6) of the Ltd. Law; 2) The GMS as the holder of the highest authority in the Company has the power to supervise the Company management's actions. If according to the GMS, the management action taken by the Board of Directors has harmed the Company, the GMS may dismiss the relevant Board of Directors based on Chapter 105 Verse (1) of the Ltd. Law.

Referring to the description above, there are high responsibilities and risks in exercising the authority to manage and represent the Company to fulfill its obligations. One of the obligations of the Company's Board of Directors is to provide an annual report at the GMS containing an accountability report for one year and must have been audited by an independent auditor. At the GMS, shareholders stated that they received accountability reports from the directors and commissioners in the form of an *acquit and discharge* statement on the previous year's financial statements. His statement sentences at the GMS generally read as follows (Johan & Ariawan, 2020): "*Approved the Annual Report, including the Financial Statements for the Financial Year xxx ending on xxx, which was audited by a public accountant, as stated in his report, "It is reasonable, in all material respects, that the financial position as of date xxx, as well as its activities and cash flows for the year then ended in accordance with the Financial Accounting Standards for Entities Without Public Accountability in Indonesia" which ends on that date by the Financial Accounting Standards for Entities Without Public Accountability in Indonesia," as well as providing full discharge and release of responsibility (volledig acquit et de charge) to the directors and the board of commissioners for the management and supervisory actions that have been carried out during the Financial Year xxx, as long as it is not a criminal act and/or violates the applicable legal provisions and procedures in the Republic of Indonesia and is recorded in the Annual Report and does not conflict with the applicable laws and regulations*".

With this exemption, the conclusion is that the Board of Directors and the Board of Commissioners are free from all demands by the company and shareholders as long as they are not criminal acts or violate applicable laws. The quorum requirement at an Annual GMS is valid if attended by at least more than half of the total shares issued with voting rights who are present or represented. GMS resolutions are approved by more than half of the shares and the number of votes cast. The law and/or the company's articles of association may stipulate different matters.

Granting *acquit et de charge*, the Board of Directors who obtains *acquit et de charge* will be completely free from all responsibilities. However, *acquit et de charge* is only given for reflected actions in the approved annual report and the GMS. The granting of a formal release and discharge of responsibilities has formal legal force but does not have material legal force (Ramadhanti, Syaifuddin & Afrilia, 2020). The Board of Directors is granted an acquittal (acquit et de charge) by the Annual General Meeting of Shareholders. The General Meeting of Shareholders of the Limited Liability Company stated this explicitly and in the

meeting minutes. Due to the Exemption of Liability (acquit et de charge) given by the GMS, which is the highest power holder in the Limited Liability Company to the Company's Board of Directors, the resolutions of the GMS bound the Company.

As a juridical consequence, the Company's Board of Directors, who is granted an acquittal (acquit et de charge), can no longer be sued in the future for their actions with some exceptions. The Limited Liability Company Law does not explicitly regulate the provisions regarding the granting of release and settlement of the responsibility (management) of the Board of Directors for one financial year, better known as (acquit et de charge). As a consequence of Chapter 66 of the Limited Liability Company Law, which states: that the board of directors, within six months after the company's financial year closes, must prepare an annual report to be submitted to the General Meeting of Shareholders, then that is when the release of the responsibility of the Board of Directors is granted.

The release of responsibility (acquit et de charge) granted by the Company to the Board of Directors is limited to civil law actions. At the same time, it can be held accountable for actions and management outside the authority of the GMS. Therefore, the Board of Directors of a Limited Liability Company has never been given an acquittal (acquit et de charge) who is suspected or suspected of having committed acts outside their authority against the Company. Such as doing something without the approval of the General Meeting of Shareholders and not by the Company's Articles of Association; all of these acts are determined to be personal, so they cannot be represented or transferred (Ramadhanti, Syaifuddin & Afrilia, 2020). If the Board of Directors has done so with careful consideration, they are full of responsibility for making a decision. Considering the business atmosphere, which is full of uncertainty, if it turns out to be a decision in the future, it causes losses or does not match expectations (Fitriani, 2020). Therefore, the Board of Directors should receive protection because the Shareholders have approved the decision through the GMS, and the doctrine of *acquit et de charge* applies.

The doctrine of *acquit et de charge* can only be given to the reported legal actions of the Board of Directors and contained in the ratified annual report at the GMS. If legal action is not reflected in the annual report and unratified at the GMS, then *acquit et de charge* does not apply. In this situation, the Board of Directors must be personally responsible for their actions (Setyarini, Mahendrawati & Arini, 2020). Based on this provision, *acquit et de charge* is not explicitly regulated in the Ltd. Law, resulting in uncertainty or ambiguity of vague norms. Norms are statements that emphasize aspects that should be (ideal) or commonly referred to as *Das Sollen*, by including some rules of what to do (Tanya, Siamjuntak & Hage, 2006). Laws are general rules guiding every individual to behave in society, both about fellow individuals and the broader community. The existence of these rules and the implementation of these rules give rise to legal certainty (Marzuki, 2008).

Based on the paradigm of legal goals by Gustav Radbruch, that law must contain 3 (three) values of identity or purpose, namely as follows (Julyano & Sulistyawan, 2019): 1. The principle of legal certainty (rechmatigheid), reviewed from a juridical law purpose; 2. The principle of legal justice (gerectigheid), reviewed from a philosophical point of view, where justice is equal rights for all people before the law; dan 3. The principle of legal finality (zwechmatigheid), refers to a goal to promote goodness in human life, reviewing law from a sociological point of view, namely the benefits of the law. This legal certainty comes from Positivism or Positivist, which tends to see the law as autonomous because the law aims to ensure the realization of general laws unfluenced by external factors. The law rule's general nature proves that the law which aims to create certainty will also fulfill the name of justice and the benefits of the created law (Syahrani, 1999).

According to Lon Fuller in his book *The Morality of Law*, there are 8 (eight) principles that must be fulfilled by legal norms, which, if not fulfilled, the law will fail to be called the rule of law. In other words, there is no legal certainty in these regulations. According to Lon Fuller, eight things that do not meet legal certainty are as follows (Fuller, 1969): a. Failure to achieve the rule of law itself, so that every problem requires a decision based on ad hoc; b.

Failure to publish or fail to publish to relevant parties who are expected to understand the regulation; c. The application of retroactively applied regulations; d. Failure to make rules that are easy to understand; e. Enforcement of rules that conflict with each other (*conflict of norm*); f. Regulations that provide conditions for something that is not appropriate or beyond the limits of ability; g. Changes in regulations are dynamic and make it difficult to adapt to existing regulations; h. Failure to harmonize and adapt to existing regulations with implementation in everyday life.

The existence of legal certainty provides clarity for the community of human rights and obligations according to the law to create a structured and systematic life order. Without legal certainty, people will not know what to do, do not know whether their actions are right or wrong, prohibited or not prohibited by law. This legal certainty can be realized through excellent and clear normalization in statutory regulation, and its implementation will be straightforward (Ali, 2002). Legal certainty agrees that there are efforts to establish law in legislation made by authorized and authoritative parties so that these rules have a juridical aspect that can guarantee certainty that the law has a function as a set of regulations that must be obeyed (Nasriyan, 2019). Therefore, to ensure legal certainty. There is a need for strict norms regarding the acquit et de charge of the Board of Directors, which can later become the central norm in the initial examination regarding the immunity and legal position of the Board of Directors of the Company when sued in court.

CLOSING

Based on the description above, implementing the doctrine of *acquit et de charge* as the norm to grant immunity and release the responsibility of the Board of Directors does not yet have legal certainty. Chapter 97, 100, and 101 of the Ltd. Law and annual reports that comply with Chapters 66 to 69 of the Ltd. Law and are proven to have violated the provisions of the Articles of Association and GMS are often considered manifestations of the doctrine of *acquit et de charge*. However, in reality, no one can guarantee the protection and release of their responsibilities when they are sued in court.

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