

Analysis Of Positive Legal Arrangements Against Minority Shareholders Suing The Company's Board Of Directors For Actions That Resulted In The Loss Of The Company's Funds

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Manuscripts received : 01/01/2026, Revision and Review : 05/01/2026, Approved 31/01/2026

Abstract

This study analyzes the regulation of minority shareholders' legal standing to sue company directors and examines the standards of directors' civil liability for corporate financial losses under Indonesian positive law. The research aims to clarify the scope of legal protection available to minority shareholders and to evaluate how fiduciary principles and the business judgment rule are applied in corporate governance disputes. This research employs a normative juridical method using statutory, analytical, case, and comparative approaches. The primary legal framework is based on Law No. 40 of 2007 on Limited Liability Companies and related governance regulations, supported by doctrinal and jurisprudential analysis. The findings show that Indonesian company law formally recognizes derivative and direct actions as mechanisms for minority shareholder protection, but their effectiveness is limited by procedural barriers, evidentiary burdens, and information asymmetry. Directors' civil liability is grounded in fiduciary duties, particularly the duty of care and duty of loyalty, while the statutory formulation of the business judgment rule provides conditional protection for good-faith managerial decisions. The study concludes that although the legal framework seeks to balance accountability and managerial discretion, clearer procedural standards and stronger enforcement mechanisms are needed to enhance minority shareholder protection and legal certainty.

Keywords: minority shareholders; directors' liability; fiduciary duty; business judgment rule; corporate governance.

A. Introduction

A limited liability company (Perseroan Terbatas) occupies a central position in Indonesia's economic system as a legal and institutional vehicle for capital formation, investment mobilization, and the conduct of large-scale commercial activities. As a

corporate entity recognized by law, the company possesses a separate legal personality distinct from its founders, shareholders, and managers. This separate legal personality is one of the defining features of modern corporate law: it enables the company to hold assets, enter into legal relations, and bear rights and obligations in its own name. However, the same feature also produces a complex juridical structure, particularly with respect to the separation between the ownership function attached to shareholders and the management function entrusted to the board of directors. While this separation is meant to increase managerial efficiency and allow professional corporate governance, it also raises persistent legal issues relating to the mechanisms of accountability, supervision, and remedies when directors' conduct or decisions result in corporate losses.

In the internal structure of a company, directors are entrusted with broad authority to manage and represent the company both inside and outside court proceedings. This authority often operates as an independent managerial power, allowing directors to make business judgments and execute corporate strategies without requiring constant prior approval from shareholders, except where the law or the articles of association mandate otherwise. Nevertheless, the directors' autonomy is not absolute. Corporate law imposes fiduciary obligations that function as normative limits on the exercise of managerial power. In essence, directors occupy a position of trust that requires them to prioritize the interests of the company above personal interests, the interests of particular shareholders, or the interests of affiliated parties. As a result, the relationship between shareholders and directors cannot be adequately explained by a simplistic principal-agent model under private law. Rather, it is better understood as a trust-based legal relationship governed by heightened standards of responsibility and ethical conduct.

This study employs the theory of legal protection in positive law as a foundational theoretical lens, particularly when interpreted through fiduciary principles. Legal protection in modern legal systems is generally intended to safeguard rights and prevent arbitrary or abusive exercises of power by other actors. In the Indonesian legal context, legal protection is commonly discussed as consisting of preventive and repressive dimensions. Preventive protection seeks to minimize the possibility of disputes and harms through institutional safeguards and internal governance mechanisms, while repressive protection provides remedial mechanisms primarily litigation when harm has already occurred. In corporate governance, preventive protection may be reflected in institutional checks and balances among corporate organs, such as supervisory functions of the board of commissioners, transparency obligations, shareholder participation rights in the General Meeting of Shareholders (RUPS), and access to certain corporate information. Repressive protection, on the other hand, materializes through legal remedies such as direct actions and derivative actions, allowing shareholders to enforce accountability when internal mechanisms fail.

Within this framework, fiduciary theory provides a conceptual basis for understanding why directors carry obligations beyond ordinary contractual duties. Directors, as

fiduciaries, are required to act with the level of prudence, diligence, and loyalty expected from those who hold corporate power and control over corporate assets. Fiduciary duty in corporate governance is generally articulated through two core dimensions: the duty of care and the duty of loyalty. The duty of care requires directors to act carefully, competently, and prudently in managing corporate affairs, particularly by ensuring that decisions are taken through rational processes, informed consideration, and reasonable evaluation of risks. This duty does not demand perfect outcomes or guarantee profitability, since business inherently involves uncertainty; rather, it emphasizes the integrity of the decision-making process. Meanwhile, the duty of loyalty obliges directors to prioritize the company's interests and avoid conflicts of interest, including self-dealing transactions, misuse of corporate opportunities, and the receipt of improper personal benefits derived from their managerial position. A breach of the duty of loyalty is frequently regarded as more severe because it constitutes a betrayal of the trust that forms the legal and moral foundation of corporate governance.

The relevance of fiduciary theory becomes particularly pronounced when corporate decision-making is characterized by information asymmetry. Minority shareholders often face structural disadvantages because they do not control the composition of RUPS, cannot unilaterally influence strategic corporate decisions, and may have limited practical access to internal information necessary to monitor directors' conduct. In concentrated ownership structures, which are common in many jurisdictions including Indonesia, majority shareholders can dominate corporate policy through voting power and may also exercise indirect control over directors. This dominance may manifest in practices detrimental to minority interests, such as conflicted transactions, opaque strategic restructuring, non-transparent financial decisions, or the weakening of good corporate governance principles. Consequently, minority shareholders may be exposed to economic harm through a decline in corporate value, reduced dividends, or the diversion of corporate resources for the benefit of controlling parties.

Corporate losses caused by directors may arise from various circumstances, ranging from negligence and poor risk assessment to conduct that deliberately disregards corporate interests. Indonesian positive law, particularly Law Number 40 of 2007 on Limited Liability Companies (UUPT), acknowledges the centrality of directors' responsibility by regulating directors' liability under Article 97. This provision emphasizes that directors bear responsibility for corporate management and may incur personal civil liability if corporate losses occur due to their fault or negligence. However, UUPT also introduces a limiting mechanism through a formulation akin to the business judgment rule. The business judgment rule, originating from common law traditions, is grounded in the rationale that courts should not second-guess business decisions merely because the outcome proves unfavorable. Business decisions are often made under uncertainty, and directors must be allowed managerial discretion to take calculated risks for corporate growth. Without protection from hindsight-based judicial review, directors may become

overly risk-averse, potentially undermining corporate competitiveness and innovation.

In the Indonesian context, the adoption of business judgment principles is reflected in the directors' exculpation provisions, which generally require directors to demonstrate that corporate losses were not caused by their fault or negligence, that they acted in good faith and with prudence for the company's benefit, that no conflict of interest was involved, and that they took steps to prevent the loss from occurring or continuing. Conceptually, this framework positions business judgment protection not as an immunity for directors, but rather as a conditional defense that can be invoked when directors can justify the propriety of their decision-making process and their loyalty to corporate interests. Nevertheless, the application of this doctrine in Indonesia remains contested in academic and practical settings, especially given the civil law orientation of Indonesia's legal system. Courts may face interpretive challenges in determining when directors' conduct is protected as legitimate business discretion and when it crosses the threshold into actionable fault, negligence, or disloyalty.

These challenges become even more significant in disputes initiated by minority shareholders. Internal governance mechanisms such as oversight by the board of commissioners or corrective measures through RUPS are normatively intended to function as checks and balances. Yet in practice, they may fail, particularly where there is alignment or collusion between directors and controlling shareholders, or where the controlling shareholders dominate RUPS outcomes. When internal accountability mechanisms are ineffective, minority shareholders may rely on external enforcement through litigation. In modern corporate law, such litigation may take the form of direct action (where the shareholder sues for personal harm) or derivative action (where the shareholder sues on behalf of the company for harm suffered by the company). Derivative action is particularly important because corporate loss is typically suffered directly by the company as a separate legal entity, while shareholders experience indirect harm through the reduction of share value or diminished economic returns.

UUPT provides an explicit legal basis for derivative action by granting shareholders who meet a statutory threshold of voting shares the right to sue directors in the name of the company when directors' fault or negligence causes corporate losses. Despite the existence of this mechanism, Indonesian positive law still leaves several normative and practical issues insufficiently clarified. These include the legal meaning and boundaries of "fault" and "negligence," the standards for identifying and quantifying corporate losses, the evidentiary burden for establishing causal links between directors' conduct and corporate losses, and the judicial methodology for evaluating fiduciary breaches in light of business judgment protection. Such ambiguities may contribute to inconsistent judicial decisions and generate uncertainty for shareholders and directors alike, undermining both corporate accountability and investment confidence.

Accordingly, this research conducts a normative juridical analysis of Indonesian positive law governing minority shareholders' legal standing and authority to bring legal action

against directors for conduct that causes corporate financial losses. The study emphasizes civil liability and business law principles, focusing specifically on fiduciary duty particularly the duty of care and the duty of loyalty and the business judgment rule as a doctrinal framework limiting liability when directors act prudently and in good faith. The research does not address criminal liability, but concentrates on civil accountability mechanisms and the effectiveness of legal remedies available to minority shareholders. By analyzing statutory provisions, doctrinal concepts, and the structural dynamics of corporate governance, this study aims to contribute to the development of a more coherent and equitable legal framework for minority shareholder protection in Indonesia, while also providing practical insights that may inform legislators, regulators, legal practitioners, and corporate stakeholders in strengthening corporate governance and legal certainty.

In line with this focus, the study is directed toward two principal legal questions:

1. How does Indonesian positive law regulate the legal standing and authority of minority shareholders to sue directors?
2. What forms and standards of directors' civil liability apply to corporate financial losses?

Through these questions, the research seeks to clarify the scope of minority shareholders' rights, evaluate the adequacy of existing protections, and identify normative gaps that require reform to ensure balanced corporate governance and effective accountability.

B. Research Method

This study employs a normative juridical (doctrinal) legal research design, focusing on the examination of positive law norms and their application in practice. The research addresses two main issues: (1) the legal position and authority of minority shareholders to undertake legal actions against company directors; and (2) the forms and standards of directors' liability for corporate financial losses. The primary normative framework is anchored in Law No. 40 of 2007 on Limited Liability Companies (the UUPT), complemented by implementing regulations and governance-related rules (including relevant Financial Services Authority/OJK regulations), as well as pertinent court decisions.

To answer the research questions, the study adopts three mutually reinforcing approaches. First, the statutory approach (statute approach) is used to identify, systematize, and assess the coherence of legal norms contained in the UUPT, OJK regulations on corporate governance and investor protection, and other related regulations concerning corporate organs, directors' powers, and shareholder protection mechanisms. Second, the analytical approach is applied to clarify and assess key legal concepts and terminology (e.g., "fault/negligence," "corporate loss," "conflict of interest," and the standard of directors' prudence), and to interpret ambiguous or open-textured provisions using grammatical, systematic, historical, and teleological methods of legal interpretation. Third, the case approach is conducted through an in-depth review of

relevant final and binding court decisions, focusing on the courts' ratio decidendi to understand how legal norms are construed and applied, including evidentiary considerations, standards of review, and emerging jurisprudential trends in corporate disputes. Where available and relevant, the study also considers selected foreign decisions addressing comparable mechanisms (such as derivative actions) to enrich the analytical perspective.

In addition, the research incorporates a comparative legal study involving selected jurisdictions the United Kingdom, Singapore, Australia, and the United States to examine comparative models of minority shareholder standing, litigation mechanisms, and the doctrinal architecture of directors' accountability. The comparative analysis is conducted functionally to identify regulatory patterns and conceptual lessons that may inform policy recommendations in the Indonesian context.

The study relies on primary legal materials, including the 1945 Constitution, the UUPT, relevant OJK and other implementing regulations, and applicable court decisions; secondary legal materials, including legal textbooks, national and international journal articles, theses/dissertations, academic manuscripts and legislative background documents, research reports, and international governance materials (e.g., OECD principles); and tertiary materials as supporting references (legal dictionaries/encyclopedias and indexes). Data are collected through library-based research (systematic document review of legislation, doctrine, and jurisprudence).

Data are analyzed using qualitative legal analysis through:

1. inventorying and classifying legal materials;
2. constructing the legal issues and mapping relevant norms;
3. interpreting and testing normative coherence across instruments;
4. analyzing judicial reasoning (ratio decidendi) to evaluate consistency and practical standards applied by courts; and
5. drawing prescriptive conclusions by identifying normative gaps and formulating regulatory or doctrinal recommendations.

This methodological design aims to deliver a comprehensive assessment of minority shareholder protection and directors' liability under Indonesian positive law.

C. Results and Discussion

This study finds that Indonesian company law places the board of directors (Direksi) at the core of corporate management and representation, while simultaneously constructing directors as potential subjects of personal civil liability under specific conditions. Under Law No. 40 of 2007 on Limited Liability Companies (UUPT), corporate organs consist of the General Meeting of Shareholders (RUPS), the Board of Directors, and the Board of Commissioners. The Directors function as the management organ responsible for day-to-day administration and strategic decision-making, whereas the Commissioners perform supervisory functions and RUPS embodies the shareholders' ultimate corporate authority.

The Directors' position as an organ (rather than ordinary employees) carries a fundamental implication: directors act for and on behalf of the company, including in legal proceedings, as reflected in the statutory authority of representation.

The primary normative foundation for directors' civil liability is found in Article 97 UUPT, which systematizes directors' duties, the behavioral standard expected, the conditions triggering personal liability, and the scope of exculpation. The statute frames directors' obligations around management "for the interest of the company" and requires each director to perform their duties in good faith and with full responsibility. Personal civil liability arises where corporate losses are attributable to a director's fault or negligence, signaling a fault-based liability model rather than strict liability. When the board consists of more than one director, liability is constructed as joint and several, subject to the possibility of individualized exoneration where a director can prove the loss was not caused by their fault.

A significant finding concerns the statute's operationalization of a safe harbor, commonly understood doctrinally as the Indonesian formulation of the business judgment rule (BJR). Article 97(5) UUPT requires directors seeking exculpation to prove cumulatively that (i) the loss was not due to their fault or negligence, (ii) they acted in good faith and with due care for the company's interest and purposes, (iii) they had no direct or indirect conflict of interest, and (iv) they took steps to prevent the loss from arising or continuing. This cumulative structure positions BJR not as immunity, but as a conditional defense that depends heavily on the quality of the decision-making process and the absence of disloyal conduct.

The study also identifies that fiduciary duty, although not explicitly labeled as such in UUPT, is substantively embedded in the statutory language of good faith, responsibility, due care, and conflict-of-interest prohibitions. Doctrinally, fiduciary duty is best unpacked into (a) duty of care, requiring informed decision-making, prudent risk assessment, consultation with experts where appropriate, and documentation of deliberation; and (b) duty of loyalty, requiring directors to prioritize corporate interests and avoid self-dealing, misappropriation of corporate opportunities, and competing interests. The statutory framework supports this through obligations and prohibitions relating to disclosure of share ownership and misuse of corporate assets.

Regarding litigation structure, the study finds that shareholder claims against directors hinge on three core evidentiary axes: (i) fault/negligence, (ii) corporate loss, and (iii) causation linking the director's conduct to the loss. Causation analysis may draw on the "but-for" test and adequate causation concepts to distinguish factual causation from legal causation, particularly in complex settings where losses emerge from multiple causes (internal governance failures plus external market shocks). Importantly, the allocation of proof follows a two-stage pattern: shareholders bear the burden to establish a prima facie case of loss and a link to directors' acts or omissions, after which directors can invoke the statutory defense under Article 97(5) by proving the required exculpatory elements.

Finally, the study finds that the primary remedial outcome in directors' civil liability is damages aimed at *restitutio in integrum*, potentially complemented by restitutionary remedies (e.g., disgorgement of improper gains) and transaction unwinding where appropriate. Successful claims can have significant non-financial consequences: RUPS may remove directors, reputational harm may affect professional standing, regulatory implications may arise particularly for public companies, and directors may seek coverage under D&O insurance subject to typical exclusions for bad faith, fraud, and intentional illegality.

The results demonstrate a deliberate statutory attempt to balance two competing imperatives: director accountability and managerial discretion. On one side, Article 97 UUPT establishes a clear accountability framework by recognizing personal liability where corporate loss results from fault or negligence, complemented by joint and several liability to reflect the collegial nature of board management. On the other side, the BJR-style safe harbor aims to prevent courts and litigants from treating every negative business outcome as actionable mismanagement. This balance is normatively coherent, but its effectiveness depends on how courts and litigants operationalize three contested areas: the standards of fault/negligence, the construction of causation, and the practical application of business judgment protection.

First, the statutory terms "fault" and "negligence" are inherently open-textured. While doctrinal categories (intent, ordinary negligence, gross negligence) provide analytical guidance, judicial practice may diverge when evaluating directors' behavior under business uncertainty. A process-based assessment is therefore crucial: duty of care should be measured less by outcome and more by whether directors acted on an informed basis, deliberated rationally, assessed risks, and documented their reasoning. If courts shift toward an outcome-oriented approach, hindsight bias may emerge, undermining the protective function of BJR and producing over-deterrence encouraging directors to become excessively risk-averse and thereby harming corporate dynamism.

Second, causation is the technical pivot in most directors' liability claims. Corporate losses often arise from multi-factor chains (macroeconomic conditions, industry downturns, operational constraints, and management decisions). The adequacy of causation doctrine matters because it determines whether liability attaches to a director's wrongful contribution or unfairly converts directors into insurers of business performance. A careful differentiation between factual causation ("but-for") and legal causation (adequate causation/foreseeability) is essential. This is where expert evidence financial, forensic accounting, valuation becomes practically decisive. Without structured causation analysis, courts may reach inconsistent outcomes, reinforcing legal uncertainty for both shareholders and directors.

Third, the Indonesian formulation of BJR in Article 97(5) introduces a meaningful proof mechanism: directors must prove the exculpatory elements. This "defense-by-proof" design can support shareholder protection, particularly where informational asymmetry

prevents minority shareholders from accessing internal documents needed to demonstrate internal deliberations, conflicts of interest, or risk analysis. However, the cumulative conditions may be difficult to satisfy in practice unless companies maintain robust documentation practices (minutes, risk assessments, independent opinions). The statute therefore implicitly incentivizes governance infrastructure: documentation, disclosure discipline, and conflict-of-interest procedures become not only governance best practices but also litigation defenses.

The limits of BJR are equally important in practice and doctrine. The protective umbrella cannot logically extend to conflict-of-interest transactions, ultra vires acts, bad faith, or gross negligence. These boundary lines help ensure that BJR does not become a vehicle for shielding disloyalty or illegality. Yet, the study highlights that Indonesian adjudication may still face capacity challenges in distinguishing legitimate risk-taking from gross negligence, particularly in complex transactions or change-of-control contexts. Strengthening judicial understanding of corporate finance, decision processes, and governance standards alongside clearer jurisprudential guidance would improve consistency and predictability.

From a minority shareholder perspective, derivative suits operate as an external accountability mechanism where internal controls fail. Nonetheless, practical barriers remain: information access, litigation costs, and the challenge of proving corporate loss and causation. Even when a derivative suit succeeds, recovery typically accrues to the company rather than directly to the suing shareholders, which can weaken incentives unless procedural frameworks facilitate cost recovery or otherwise reduce enforcement burdens. In governance terms, however, derivative litigation can produce a deterrent effect and reinforce accountability norms, particularly when combined with regulatory expectations in public companies (transparency, fairness, independent oversight).

The broader implication is that directors' civil liability functions as an enforcement pillar of good corporate governance (GCG). The threat of personal liability encourages risk management systems, compliance architecture, stronger board oversight, and better transparency. At the same time, excessive liability risk especially if BJR is applied inconsistently can undermine long-term value creation by discouraging legitimate strategic risk-taking. The optimal outcome lies in a process-based judicial approach: enforcing fiduciary standards strictly where disloyalty, conflicts, illegality, or gross negligence exist, while respecting informed, good-faith business discretion in uncertain markets

D. Conclusion and Recommendations

This study addresses two core research questions concerning (i) the legal standing and authority of minority shareholders to pursue legal action against directors, and (ii) the scope and standards of directors' civil liability for corporate financial losses under Indonesian company law.

First, with respect to the legal position and authority of minority shareholders, the study

finds that Indonesian positive law primarily the Law No. 40 of 2007 on Limited Liability Companies (UUPT) provides a formal legal basis for shareholder enforcement through both derivative actions (Article 97(6)) and direct actions (Article 61(1)). However, the practical effectiveness of these mechanisms remains constrained by several significant barriers: the relatively high quantitative threshold requiring at least 10% of voting shares to bring a derivative claim; the lack of clear and detailed procedural rules governing derivative litigation; demanding evidentiary burdens; and limited access to internal corporate information that is often necessary to establish fault, causation, and loss. Given the structurally vulnerable position of minority shareholders within concentrated ownership structures, these constraints indicate the need for more effective repressive legal protection to strengthen directors' accountability.

Second, regarding directors' civil liability, the study concludes that Article 97 UUPT establishes a conditional framework of personal liability grounded in fiduciary principles, particularly the duty of care and duty of loyalty. Directors may be held personally liable where corporate losses are proven to result from their fault or negligence, with liability typically taking the form of damages aimed at restoring corporate losses. At the same time, the statutory formulation of the business judgment rule under Article 97(5) functions as an exculpatory mechanism that shields directors from liability when business decisions are made in good faith, with due care, without conflicts of interest, and accompanied by reasonable steps to prevent or mitigate losses. The interaction between fiduciary duties and the business judgment rule reflects an attempt to balance managerial discretion with the need for corporate accountability, although uncertainty in application may persist in the absence of clearer procedural and judicial guidance.

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