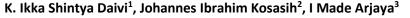
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Professional Liabilities of Legal Officer in Providing Legal Opinion to the Corporate Directors



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ABSTRACT: The legal officer must be neutral when providing legal opinions to the directors. Therefore, the liability for providing legal opinions belongs to the directors. The research objectives are to specifically analyse the position of a legal officer as an employee of a company; and analyse the professional liability of a legal officer in providing legal opinion to the company's directors. This research uses normative law research method with normative case studies in the form of legal behaviour products. While the approach method is a statutory approach. The legal officer is authorized in determining the measures to be taken by the company in accordance with the orders of the directors and applicable company regulations. The liability of the legal officer is limited to providing opinions in accordance with the duties and functions assigned by order of the directors in good faith and professionally.

KEYWORDS: Limited Liability, Legal Opinion, Legal Officer, Legal Behaviour, BoD

I. INTRODUCTION

Humans in social life have a certain role as a form of life association. Human position is determined by humans themselves for their existing capacities.¹ One of the purposes of humans or groups is to fulfill the needs of life. Therefore, they work, interact, and in the modern era, they form business groups called business entities. Business entities are divided into two types, those that are incorporated and non-incorporated. A business entity is an economic juridical entity that establishes a business to operate any type of commerce that is lasting and persistent, built up, working, and domiciled inside the region of Indonesia to obtain profit.²

It consists of a civil partnership, a firm partnership and a limited liability partnership. Legal forms of business entities are cooperatives and restricted liability companies. The most common form of business substance is the restricted liability company because the business risk for a limited liability company as a legal entity does not involve the personal assets of the shareholders unless otherwise stipulated by law or regulation. The presence of a Limited Liability Company (PT) as a business substance in daily life cannot be overlooked. Commerce practices conducted by commerce actors, be those traders, industrialists, investors, temporary workers, distributors, financiers, insurance companies, brokers, agents and so on are no longer separated from the presence of a limited liability company. The most well-known mode of doing commerce is employing a restricted liability company, whether on a small, medium or large scale.³

Companies have a great concern for the progress of the economy in a country, however, the development of the economic and business sectors in the current era, the competition implemented by each company is based on the individual profits of the companies. According to Law No. 40/2007 on Limited Liability Companies, a Limited Liability Company is a legitimate substance that is a capital association, built up based on an agreement to conduct commerce activities with authorized capital which is completely partitioned into shares and fulfills the requirements set in law and its implementing regulations.

Limited Liability Company is a business cooperation where the business activities are conducted by corporate officers, such as the directors, commissioners and the general meeting of shareholders. These entities are the ones who legally represent the company. All directors are entrusted with the full management of company for the interests and purposes of it, representing the company both inside and outside the court, in accordance with the law and the company's articles of association. The duties of the BOD are divided into two, which are (1) management duties are assigned by the Board of Directors of the Company's Chairman; (2) representation duties are assigned by the Board of Directors who represent the company both inside and outside the court. Directors are responsible as executives based on the principle of fiduciary duty. If the company operates defective and damages



to third parties or shareholders, then the BOD should be responsible. In this case, fiduciary duty is a duty that the director must assume with full responsibility for the interests (benefits) of other people or parties (the company).⁴

In general, Limited Liability Companies have problems related to the legal field, in this case the Division that is closely related to legal science is the legal division where someone who works in the legal division is called a legal officer position.⁵ A legal officer in a Limited Liability Company has important duties and functions. This position is expanding as legal expertise is needed in the company.

The duties of a legal officer in a Limited Liability Company consist of conducting legal audits, ensuring that the company is free from legal problems, providing legal opinions, preparing and reviewing legal documents, resolving legal issues as a mediator, managing legal documents, reporting on the progress of work in the legal field, providing advice or consideration, being a public speaker for the company, and representing the Board of Directors or the founder of the company.⁶

The company faced various problems, both internal and external. Internal issues mainly include employee demonstrations and disputes with the government over business license regulations. Companies often have to rely on legal officers to handle licenses from the government, as these documents are very important for establishing and operating a business. When the legal officer provides a legal opinion to the director, he/she acts like an advocate who provides legal advice. The legal opinion of the legal officer significantly affects the director's decision. In addition, the legal officer also drafts legal documents, such as agreements between customers and companies.

Depending on the legal officer, the legal opinion may turn out to be wrong and detrimental to the company, or mistakes may be made in legal documents and documents may disappear. Many companies now more often use legal consultants to provide legal opinions.

Legal opinion is a legal practitioner's response to a client's inquiries about a legal issue. If the legal opinion of a legal scholar is used by the judge as a basis for finding the law, then the legal opinion can already be referred to as doctrine.⁷

Based on the previous description, it is explained that legal opinion is a doctrine that is presented primarily for practical purposes. Doctrine is one of the legal sources. If legal opinion is the same as doctrine, then the position of legal opinion as a source of law is the subject of this research. This research aims to discuss the subject matter relating to the legal opinion. In performing a task there are always problems that occur and must be resolved immediately with speed and timeliness, this is the responsibility of someone who performs the task begins to speak.

II. RESEARCH METHODOLOGY

The position of a legal officer in a company is an employee in accordance with Law No. 13/2003 concerning Manpower. Regarding his status as an employee, the legal officer has duties and functions that are tasked with handling and managing all legal issues in the company and providing legal opinions. In his relationship as an employee, the legal officer serves as one of the main legal officers in the company, the legal officer is authorized to determine the actions that must be taken by the company in accordance with the orders of the Board of Directors and in accordance with the applicable company regulations. Legal officers are responsible for protecting the company from violations of the law, because as someone with a background in law education, legal officers must protect the company's position from criminal violations of the law.

Responsibility is inherent, which means that it has become part of human life, that every human being is loaded with responsibility, if studied, responsibility is an obligation that must be taken as a result of the actions of the party who acted. The responsibility for problems in the company still goes to the leadership. The responsibility of the legal officer is limited to providing opinions in accordance with the limits in accordance with the duties and functions given and has been performed with the orders of the Board of Directors in good faith professionally as a legal opinion provider. Therefore, the legal officer is not responsible to third parties but he/she is only responsible to the company.

III. DISCUSSION

A. The Position of Legal Officer as an Employee in a Company

1. Legal Officer as a Legal Profession in the Company

The legal officer has an important role in the company, because all matters that relate to company operations are highly dependent on documents, licenses, letters, and legal procedures that must be implemented if legal problems occur. Legal officer is an employee who is tasked with handling and managing all legal issues in the company. A legal officer must be able to ensure that the company is free from the risk of legal problems or ongoing legal problems, both internal and external.

In addition to the company's employees, the legal officer has a very important role in ensuring that the company operates properly and efficiently in legal terms. Legal officers help strengthen the company's position in the industry and ensure that companies stand on legal and ethical principles by providing legal assistance and helping companies address legal issues.

The position and function of the legal officer in a company, especially a company in the form of a Limited Liability Company (PT) is very important, because as we know that every company is inseparable from all kinds of problems, both from within the company (internal) and from outside the company (external). Therefore, legal officers are needed for the continuity of the company's business, but not all companies can assign legal positions in their companies.

2. The Definition and Regulation of Legal Officer in Positive Law

A legal officer is a person who works for a company or organization. His or her job is to handle various legal issues that the institution may possibly confront. The position of a legal officer is indeed very important for an agency, company or organization. The position of the legal officer in the company is very important, because a company will not avoid various problems, whether it is internal company problems or external company problems that occur within the company.

Potential legal problems can occur in companies due to internal and external factors, therefore strengthening legal advocacy management needs to be conducted. However, this regulation only discusses advocates, not legal officers, as stated in Article 1 Paragraph 1 and 2:

- 1) Article 1 Paragraph 1: "Advocate is a person whose profession is to provide legal services, both inside and outside the court who meets the requirements based on the provisions of this Law."
- 2) Article 1 Paragraph 2: "Legal services are services provided by an advocate in providing legal consultation, legal assistance, exercising power of attorney, representing, accompanying, defending, and committing other legal acts for the legal interests of the client."
- 3. The Relationship between Profession and Ethics Code

Ethics is defined as a compilation of principles or values related to morals or norms. The definition of ethics as a concept of value and a collection of principles defines ethics as a value system. Profession is a permanent job that is service occupation in its implementation by applying scientific knowledge in a particular field.

Regarding professional ethics and code of ethics, both of them are things that have a relationship, that the code of ethics is the actualization of these values from the ethical discussion of the legal profession. The legal profession must provide the main service to its "clients" based on moral values and justice, although in reality there are many deviations or violations, so it requires a legal order that will minimize these negative things, the legal order is realized by the existence of a code of ethics.

4. Legal Officer as a Legal Profession

Indeed, the all-encompassing role of the legal officer is one of assurance that the Limited Liability Company operates in accordance with the prevailing regulations. The Legal officer is a profession that is known as a special profession for graduates of law faculty. However, in medium-sized companies, the position of legal officer in a company is not only to manage the internal problems of the company, but also to manage the external problems of the company. However, in medium-sized companies, the legal officer handles all matters including legal documents and issues.

Being a legal profession, a legal officer is a job that focuses on a person with a law degree. Legal officers are tasked with providing legal opinions, handling documents and licenses, and handling legal matters for both civil and criminal matters. Required skills include a thorough understanding of the law, good analytical skills, effective communication, and the ability to work collaboratively with various parties both inside and outside the organization. Regarding the requirements and scope of work, a legal officer can be referred to as a legal profession. Currently, legal officers cannot be called a profession in general, but can only be called a special profession for law graduates.

5. Legal Officer as an Employee in a Company

A legal officer is tasked to maintain the company from legal issues that occur both internally and externally. Generally, legal officers can be hired directly by companies, agencies, and other types of firms. Commonly, they will report directly to an upper-level staff member, such as the chief legal officer. A legal officer is a permanent employee who is recruited by the company through a recruitment process like any other employee.

As an employee of the company, a legal officer's job is to assist in explaining legal regulations in a simpler and easier-tounderstand language. In addition, they are also tasked with helping the company to take strategic yet low-risk steps. A legal officer must always be updated with the latest legal regulations. It is important because government regulations and rules change frequently. If the company encounters a legal problem and needs to appear in court, the legal officer can attend but only helps to collect documents and explain the problem to the advocate because the legal officer is an employee, so the legal officer cannot represent the company in court.

6. The Structure of a Legal Officer in a Company

In general, legal officers in companies act as legal consultants. Companies often assign legal officers as expert staff of the Board of Directors. Because his position is directly under the Board of Directors, it is easy for the legal officer to coordinate with other

parts of the company, such as the company's personnel department, the company's marketing department, and the company's finance department. Therefore, the legal officer is able to support the legal needs of other divisions in the company.

Depending on the department, the legal officer can be positioned structurally in a department that has the same position as other departments in the company. In addition, companies can place this profession functionally whose position is directly under the Board of Directors.

7. The Position of Employees in the Company

Employees are one of the most important elements in a company. However, this is due to the role and function of employees in producing goods or services for the development of a company. Employees are the main wealth in a company, because without their participation, company activities will not be realized. Employees are people who sell services (mind or energy) and receive compensation whose amount has been determined in advance. The position of employees in the company is influenced by various factors, including roles, responsibilities, job status, and relationships with management. In general, employees can be grouped into several categories based on their status and role in the organization, namely Permanent Employees (PKWT); Contract Employees (PKWTT).⁸

8. The Rights and Obligations of a Legal Officer in a Company

Legal officers are responsible for managing all company documents, such as employment contracts, agreements, partnerships, and share certificates. They must write, review, and identify legal risks that could arise. Legal officers must regularly analyse company actions and decisions to detect potential legal issues. As employees of the company, legal officers have the same rights as other employees in accordance with Article 88 Paragraph (1) of Law No. 13/2003, which guarantees safety, occupational health, morale, and humane treatment. Currently, there is no specific law for legal officers, so the rules regarding this role are regulated by each company. The Legal Officer serves as the company's protector from external legal sanctions.

9. The Position of Legal Officer as a Company Employee in Providing Legal Opinions

The position of legal officer in a company has an important role. This is because everything related to the operation of a company is very dependent on documents, licenses, letters, and legal steps that must be taken in the event of legal problems. A Legal Officer is responsible for providing legal opinions to the company or organization in which they work.

These legal opinions can relate to various legal issues that the company faces, such as contracts, regulations, internal policies, disputes, or regulatory issues. In providing a legal opinion, a Legal Officer must carefully consider the relevant facts, applicable law, and underlying legal principles. The legal opinion provided must also be clear, accurate, and accountable. As an employee in providing a Legal Opinion, the Legal Officer must comply with applicable regulations, in good faith and made knowingly on behalf of the company.

10. The Legal Officer's Legal Relationship with the Company

A legal officer is an individual who is responsible for ensuring that a company or organization operates in accordance with applicable legal regulations. The legal officer's legal relationship with the company is very important because the legal officer has a strategic role in protecting the company from legal risks and ensuring regulatory compliance. Legal officers are responsible for ensuring that all company activities are in accordance with applicable legal regulations. They must understand and interpret regulations appropriately so that the company can avoid legal sanctions and litigation. Before being accepted to the company, the legal officer must have agreed to all employment contracts in the company where he/she works, so the legal relationship between the legal officer and the company is in the employment contract that was agreed upon at the beginning of the acceptance.

11. Legal Opinion as Legal Officer Assignment

Legal opinion is one of the many tasks usually assigned to a legal officer. A legal opinion is an analysis provided by a legal expert on a particular legal issue. This opinion may be provided based on the request of the company's management or other departments within the company. Legal opinions also help in the assessment of legal risks. Legal opinion has the function of providing input to the party receiving the legal opinion to serve as a guideline in addressing and finding the best way out or solution to a legal problem faced.

In providing a legal opinion, a legal officer must carefully consider the relevant facts, applicable laws, and underlying legal principles. The legal opinion provided must also be clear, accurate, and accountable. As an employee in providing legal opinions, the legal officer must comply with applicable regulations, in good faith and made consciously on behalf of the company.

12. The Professionalism of Legal Officers as Employees in Providing Legal Opinions

The professionalism of legal officers in providing legal opinions is very important as their legal opinions can have a significant impact on company decisions and operations. The following are some of the aspects of professionalism that a legal officer should possess in providing legal opinions. A legal officer must provide accurate and precise legal opinions based on a careful analysis of the relevant facts and law. A legal officer must operate in accordance with the ethical standards and code of conduct of the legal

profession. They must maintain confidentiality of information, avoid conflicts of interest, and handle all matters with integrity and professionalism.

B. The Legal Officer's Professional Liability in Providing Legal Opinion to the Corporate Directors

1. Civil Liability as a Scope of Work for Legal Officers

The legal liability for the acts committed by the legal officer in the discussion of this research is civil liability. A legal officer must ensure that all actions and transactions they perform are in accordance with applicable civil regulations, including contract law, property law, corporate law, and other relevant laws. Civil liability is one of the important aspects of a legal officer's job.

This civil liability regulates various matters relating to civil law, which is the law governing relationships between individuals, companies, or other entities in society. When an error is made by the legal officer in the course of his work, the legal consequences of the agreement made by the legal officer on behalf of the company, are binding on the company because the contract or agreement made by the legal officer is approved by the company, namely the board of directors and the board of commissioners, unless the agreement is made on behalf of the legal officer's personal name without the knowledge of the company, then the legal consequences are not on the company but on the legal officer concerned, but if the legal officer is on behalf of the company then the legal consequences remain with the company.

2. Strict Liability

One of the legal concepts adopted from the Anglo-Saxon legal framework is the concept of strict liability. The concept of strict liability is a form of civil liability that does not require the component of fault but only requires the component of loss as a condition for filing a claim for compensation for the illegal act model. The doctrine of strict liability developed in practice to overcome the restrictions of the doctrine of liability based on fault. Liability based on fault forces the burden of proof on the plaintiff, so it is regularly difficult for the plaintiff to demonstrate the presence of the illegal act.

3. Presumption of Liability

The presumption of liability principle is the principle that the defendant is continuously assumed to be liable. The word "presumed" in the principle of "presumption of liability" is important, because there is a possibility of the defendant exempting himself from liability, which is within the case where he can demonstrate that he has "taken" all essential measures to maintain a strategic distance from the loss.

4. Presumption of non-liability

Basically, there are several principles of liability in Indonesian law, one type of liability is the principle of presumption of nonliability which is the rule of presumption of non-liability is only known in a very constrained scope of consumer transactions, and such limitations are usually legitimized by general principles. An example of the application of this rule is in transportation law. Loss or damage to cabin baggage/hand luggage that is usually carried and directed by the passenger (customer) is the responsibility of the passenger. In this case, the carrier (commerce actor) cannot be liable.

5. Limitation of Liability

Limitation of liability is the principle relating to the business actor's attempt not to be responsible for certain matters, for example including a clause that "loss is borne by the owner (consumer)" or "goods that have been purchased cannot be returned." These are clauses that eliminate the responsibility of the business actor (extenuation clauses), which are known as standard clauses.

6. The Professionalism of Legal Liability

Responsibility is the characteristic of a civilized (cultured) human being. Professionals usually have ethical responsibilities and high-performance standards in implementing their work. Employees who are attached to the company will provide work performance that continues to increase due to dedication within themselves so that a sense of professional responsibility arises to continue working and contribute to the success of the company in achieving its goals. Employees in performing their duties must have agreed or agreed to do their work or duties with maximum effort in what is called Inspanning Verbintenis. Inspanning Verbintenis is an agreement or agreement to make maximum efforts in implementing whatever has been discussed.

7. The Principles of Professionalism in the Assignment of Legal Liability

Professionalism comes from the word professional which means doing a profession that is conducted properly and in accordance with the correct ethics and professional lines that apply to the profession. Shifting corporate responsibility can be an effective strategy to improve efficiency, increase focus on core business, or adjust to market and industry changes. A key principle in the transfer of legal liability is to ensure that all steps taken in the process comply with applicable laws and regulations.

Regarding professionalism, the legal officer in accordance with his duties, namely providing legal opinions to the company's Board of Directors, must be in accordance with applicable laws. The decision on whether or not to use the legal opinion remains in the hands of the Board of Directors as the head of the company, so in this case the Legal Officer is not responsible for the legal

opinion he provides to the Board of Directors. If the legal opinion is used by the Board of Directors and causes legal problems, then the responsibility for the error can be transferred to the Board of Directors (Article 1367 of the Civil Code).

8. The Implementation of Fault-Based Liability in the Legal Officer Profession

The application of fault-based liability in the legal officer refers to the principle of vicarious liability, which explains the liability of others. This principle originates from civil law in the common law system, namely the doctrine of respondeat superior which explains the relationship between employees/employees and superiors, in this case between the authorizer and the recipient of the power of attorney, which applies if a person who does something through another person, then the action is considered as an act committed by himself. The legal opinion provided by the legal officer is not binding on the legal officer. The term error in legal opinion does not exist, because an opinion is an individual's perspective or an individual's argument on a problem or something that is happening.

9. Directors as Leaders in Managing Corporate Liability

The Board of Directors is a strategic management unit that manages and leads the company to achieve its corporate goals. Directors are responsible for the long-term business strategies and policies of the company. They must ensure that the decisions taken support the growth and sustainability of the company. Directors have the responsibility to supervise the performance of senior management and ensure that the company is being operated efficiently and effectively. They should monitor the achievement of corporate objectives and evaluate the performance of key executives.

The BOD is completely responsible for the administration of the company. Each member of the BOD is completely and personally liable if he/she is guilty or negligent in performing his/her duties. In performing its duties, the BOD must comply with the company's articles of association and prevailing laws and regulations. In this regard, the BOD must perform its duties in good faith and with full responsibility.

10. The Concept of Vicarious Liability in Employment Relationship

This principle of vicarious liability explains the liability committed by others. This principle comes from civil law in the common law system, namely the doctrine of respondeat superior which explains the relationship between employees and superiors, in this case between the authorizer and the recipient of the power of attorney that applies if a person who does something through another person, then the act is considered as an act committed by himself. However, considering that there is no regulation that examines more deeply related to the explanation of the limitations in the application of the elements of Article 1367 of the Civil Code, confusion often arises from various parties in the process of resolving legal cases like this, especially when it involves work relations between employers and their subordinates.

11. Board of Directors as the Operational Movement of the Company

The Board of Directors is an organ of the company that is authorized and completely responsible for the administration of the company for the benefit of the company, in accordance with the aims and objectives of the company and represents the company, both inside and outside the court in accordance with the articles of association. In exercising its authority, the Board of Directors is actually only entitled and authorized to act on sake of and for the benefit of the company within the limits allowed by the prevailing laws and regulations and its articles of association. Any activity taken by the Board of Directors outside the authority granted is referred to as ultra vires action. The legitimate activities of the Board of Directors are considered ultra vires if they surpass the limits of authority expressed within the articles of association and laws and regulations.

12. The Board of Directors is Responsible for the Legal Officer's Performance

The BOD must perform their duties with full responsibility and in good faith. Directors are personally liable for the company's losses if they are guilty or negligent in carrying out their duties. Legal officer is an employee who works for a company or organization. His job is to handle various legal issues that the company may face. The responsibility of the Board of Directors on the performance of the legal officer is that the Board of Directors is responsible for supervising and evaluating the performance of the legal officer in fulfilling his duties. This includes ensuring that the legal officer understands and complies with all relevant policies, rules and regulations.

The Board of Directors has full responsibility for the legal opinion provided by the legal officer to the Board of Directors. The legal opinion provided by the legal officer is used or not used, the decision belongs to the Board of Directors, if the legal opinion is used and it causes a legal risk either loss or something else, the Board of Directors is responsible for it, because the legal officer is an employee who works under the orders of the Board of Directors.

IV. CONCLUSIONS

The position of a legal officer in a company is an employee in accordance with Law No. 13/2003 concerning Manpower. Regarding his status as an employee, the legal officer has duties and functions that are tasked with handling and managing all legal issues in the company and providing legal opinions. In his relationship as an employee, the legal officer serves as one of the main

legal officers in the company, the legal officer is authorized to determine the actions that must be taken by the company in accordance with the orders of the Board of Directors and in accordance with the applicable company regulations. Legal officers are responsible for protecting the company from violations of the law, because as someone with a background in law education, legal officers must protect the company's position from criminal violations of the law.

Responsibility is inherent, which means that it has become part of human life, that every human being is loaded with responsibility, if studied, responsibility is an obligation that must be taken as a result of the actions of the party who acted. The responsibility for problems in the company still goes to the leadership. The responsibility of the legal officer is limited to providing opinions in accordance with the limits in accordance with the duties and functions given and has been performed with the orders of the Board of Directors in good faith professionally as a legal opinion provider. Therefore, the legal officer is not responsible to third parties but he/she is only responsible to the company.

The legal officer is expected to review regulations for legal officers that directly regulate the position of legal officer in a company, to avoid a lack of norms for legal officers. Since the development of technology, the need for legal officers will increase, as indicated by the many specialized trainings on legal officers.

The Board of Directors should be expected that the company provides special requirements such as having more than 2 years of experience or being an advocate to recruit a legal officer in order to minimize the risks that occur to the business.

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