

## The Responsibility of the President Director for Breaches of Fiduciary Duty (Case Study of PT Multidaya Teknologi Nusantara)

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**Abstract.** Fiduciary duty constitutes a core principle of corporate governance that obliges directors to exercise their powers in good faith, with loyalty, due care, and in the best interests of the company. This study examines the legal implications of fiduciary duty breaches and the scope of personal liability borne by the president director in the financial statement manipulation case involving PT Multidaya Teknologi Nusantara (eFishery). This research employs a normative legal methodology, combining statutory analysis with a case-based approach. The findings demonstrate that Gibran Huzaifah's falsification of financial statements satisfies the key indicators of fiduciary breach, namely the presence of bad faith, misrepresentation of material financial information, deviation from the duty of loyalty, and failure to exercise due care in managing the company. These factors directly undermine shareholder trust, distort corporate decision-making processes, and create measurable financial harm, thereby activating the application of fiduciary duty principles. In accordance with Article 97(2)-(3) of Law No. 40 of 2007 on Limited Liability Companies, such conduct constitutes both a violation of the duty of loyalty and the duty of care, rendering the president director fully personally liable for resulting losses. Furthermore, Article 1365 of the Indonesian Civil Code provides an additional basis for liability, as the manipulation constitutes an unlawful act causing damage to third parties.

**Keywords:** Board of Directors, Fiduciary Duty, Responsibility

**Abstrak.** Kewajiban fidusia merupakan prinsip inti tata kelola perusahaan yang mewajibkan direksi untuk menjalankan kekuasaannya dengan itikad baik, loyalitas, kehati-hatian, dan demi kepentingan terbaik perusahaan. Penelitian ini mengkaji implikasi hukum dari pelanggaran kewajiban fidusia dan ruang lingkup tanggung jawab pribadi yang ditanggung oleh direktur utama dalam kasus manipulasi laporan keuangan yang melibatkan PT Multidaya Teknologi Nusantara (eFishery). Penelitian ini menggunakan metodologi hukum normatif, yang menggabungkan analisis perundang-undangan dengan pendekatan berbasis kasus. Temuan penelitian menunjukkan bahwa pemalsuan laporan keuangan yang dilakukan Gibran Huzaifah memenuhi indikator utama pelanggaran fidusia, yaitu adanya itikad buruk, penyajian informasi keuangan material yang keliru, penyimpangan dari kewajiban loyalitas, dan kegagalan untuk menjalankan kehati-hatian dalam mengelola perusahaan. Faktor-faktor ini secara langsung merusak kepercayaan pemegang saham, mendistorsi proses pengambilan keputusan perusahaan, dan menciptakan kerugian finansial yang terukur, sehingga mengaktifkan penerapan prinsip-prinsip kewajiban fidusia. Sesuai dengan Pasal 97(2)-(3) Undang-Undang No. 40 Tahun 2007 tentang Perseroan Terbatas, tindakan tersebut merupakan pelanggaran terhadap kewajiban kesetiaan dan kewajiban kehati-hatian, sehingga direktur utama bertanggung jawab penuh secara pribadi atas kerugian yang ditimbulkan. Lebih lanjut, Pasal 1365 Kitab Undang-Undang Hukum Perdata memberikan dasar pertanggungjawaban tambahan, karena manipulasi tersebut merupakan perbuatan melawan hukum yang menimbulkan kerugian kepada pihak ketiga.

**Kata kunci:** Direksi, Kewajiban Fidusia, Tanggung Jawab

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## INTRODUCTION

In modern corporate governance, a company as a legal entity can only act through its management, particularly the board of directors, who are entrusted with the authority to make strategic and operational decisions on behalf of the corporation. This delegation of authority forms the legal and conceptual basis for the fiduciary duties owed by directors, requiring them to act in good faith, with due care, loyalty, and prudence in pursuing the best interests of the company. Breach of *fiduciary duty*, as well as other breaches of the law, gives the aggrieved party the right to and on his behalf to bring a lawsuit against the party who caused the loss.<sup>1</sup> Breach of *fiduciary duty* by the board of directors if three interests must be considered, namely:<sup>2</sup>

- 1) Interests of the company
- 2) The interests of the company's shareholders, predominantly minority shareholders, and
- 3) The interests of third parties in legal relations with the company, especially the interests of the company's creditors.

Indonesian corporate law codifies these obligations under Article 97 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies, establishing a normative standard by which directors must exercise responsible and transparent management. Failure to comply with these standards results in personal liability as stipulated under Article 97 paragraph (3). In addition to statutory provisions, the Business Judgment Rule serves as a doctrinal safeguard that protects directors from personal liability when they make informed and disinterested business decisions in good faith. The Business Judgment Rule reinforces the principle that courts should not interfere with legitimate business judgments unless actions involve fraud, gross negligence, or bad faith. Thus, the fiduciary duty regime and the Business Judgment Rule together construct a comprehensive legal framework that both empowers and constrains directors in executing their managerial functions.

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<sup>1</sup> Gunawan Widjaja *Tanggung Jawab Direksi Atas Kepailitan Perseroan*, (Jakarta: Djambatan, 2004): 43.

<sup>2</sup> *Ibid.*

One of Indonesia's aquaculture start-ups, PT Multiday Teknologi Nusantara, or better known as eFishery, is currently involved in a case of falsification of financial statements carried out by its president director. The series of events began in November 2024, when a whistleblower provided information to one of the board of directors members regarding inaccuracies in the company's financial statements.<sup>3</sup> In response to the report, eFishery's board of directors took a swift step by appointing *FTI Consulting*, an independent consulting firm, to conduct a forensic audit and assume interim management of the company in December 2024.<sup>4</sup>

A preliminary investigation conducted by *FTI Consulting* revealed significant discrepancies in eFishery's financial statements. One of the most striking findings was the alleged inflation of revenues by nearly \$600 million in the nine months ending in September 2024.<sup>5</sup> Reports circulating among investors indicate that revenue, which should have been only about \$157 million, reportedly reached \$752 million for the period. This alleged ballooning has reportedly been ongoing since 2018.<sup>6</sup> The company's internal reports even show that eFishery has continued to lose money since 2021.<sup>7</sup>

Various media outlets reported that Gibran Huzaifah admitted to manipulating eFishery's financial statements. This admission was reportedly conveyed in an exclusive interview with *Bloomberg News*. Gibran stated that he had two different financial statement documents. The first document is the original document for his team, while the second report is inflated to be deposited with investors. The falsification of financial statements was carried out as part of a "growth hacking"

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<sup>3</sup> Yimie Yong, <https://technode.global/2025/01/22/indonesias-efishery-unicorn-allegedly-faked-most-of-its-sales-report/>, was last admitted on April 25, 2025, at 10.10 WIB.

<sup>4</sup> Augustinusand Aprilia, <https://money.kompas.com/read/2025/01/23/093645726/startup-efishery-dibawah-gibran-huzaifah-diduga-rekayasa-laporan-pendapatan?page=all>, were last admitted on April 25, 2025, at 10.13 WIB.

<sup>5</sup> *Ibid.*

<sup>6</sup> The Editorial Team, <https://thefishsite.com/articles/details-of-efishery-allegations-emerge>, was last accessed on April 25, 2025 at 10.20 WIB.

<sup>7</sup> Yimie Yong, <https://technode.global/2025/02/26/softbank-temasek-among-efishery-investors-facing-near-wipeout-report/>, Last accessed on April 25, 2025 at 10:27 WIB.

initiative aimed at securing new funding. Gibran Huzaifah has carried out this systematic action since the end of 2018.<sup>8</sup>

Compounding the gravity of the matter, the President Director, Gibran Huzaifah, publicly admitted to orchestrating the manipulation of financial statements as a “growth hacking” strategy aimed at securing additional funding. His admission confirms a direct violation of fiduciary obligations, particularly the duty of good faith, loyalty, and responsible stewardship. These actions fall clearly outside the protective scope of the Business Judgment Rule, as the doctrine does not and cannot shield directors who engage in fraudulent or deceptive conduct. The contrast between the legal requirements imposed on directors and the factual misconduct exhibited in this case highlights a significant gap between *das Sollen* and *das Sein*, exposing weaknesses in the enforcement of fiduciary duties within Indonesia’s corporate governance environment.

This divergence raises critical questions about the robustness of legal accountability mechanisms and the practical limitations of both statutory fiduciary standards and the Business Judgment Rule in preventing managerial misconduct. The case of eFishery thus provides an essential context for examining the doctrinal boundaries of directors’ liability and the need for stronger oversight frameworks to ensure that the normative ideals of corporate governance are effectively realized in practice.

## METHODOLOGY

The type of research carried out is a type of normative legal research, namely, legal research that is carried out by researching library materials that use the object of study in the form of existing libraries, both in the form of books, magazines, and regulations that correlate with the discussion of the problem, so that this research is library *research*.<sup>9</sup> The approaches taken in this study are the *statute approach*, the conceptual

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<sup>8</sup> The Editorial Team, <https://www.bloombergtechnoz.com/detail/news/68446/reason for falsifying efishery-to-survive-survival report>, last accessed on April 25, 2025 at 10.37 WIB.

<sup>9</sup> Final Project Writing Guidebook Team, *Pedoman Penulisan Tugas Akhir Mahasiswa Program Studi Hukum Program Sarjana (PSHPS)*, (Yogyakarta: Fakultas Hukum Universitas Islam Indonesia): 9.

*approach*, and the case *approach*. The legal approach involves examining all laws and regulations related to the legal issues being researched.

This research draws upon primary legal materials, namely the Indonesian Civil Code and Law No. 40 of 2007 on Limited Liability Companies. Adopting a conceptual approach, the study not only examines the existing positive legal provisions governing the responsibilities of company directors but also explores the underlying legal concepts and doctrines that shape directors' obligations, particularly those about the fiduciary duty. Through this approach, the researcher analyzes scholarly perspectives and corporate law theories to delineate the meaning, scope, and boundaries of directors' liability in cases involving breaches of fiduciary duty. The discussion is further supported by a case study of PT Multiday Teknologi Nusantara, which illustrates the practical application of these principles.

### **Forms of Breach of Fiduciary Duty That Occurred in the Case of PT Multiday Teknologi Nusantara**

As a legal entity, the Company must carry out its legal acts through its management. Without a manager, the legal entity will not be able to function. The dependence between legal entities and management is the reason why a fiduciary duty relationship is established between legal entities and management, where management is a party trusted to act and use its authority solely in the best interest of the company.<sup>10</sup> The Company's Board of Directors as the *fiduciary duty* holder of the Company's shareholders, is fully responsible for the management and management of the Company for the benefit and purposes of the Company, and to carry out the duties and obligations given to it in good faith, in accordance with the provisions provided by the Company's Articles of Association and applicable laws and regulations.<sup>11</sup>

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<sup>10</sup> Ridwan Khairandy, *Hukum Perseroan Terbatas*, (Yogyakarta: FH UII Press, 2014): 257.

<sup>11</sup> Gunawan Widjaja and Ahmad Yani, *Seri Hukum Bisnis: Perseroan Terbatas*, (Jakarta: Raja Grafindo Persada, 2006): 113.

*Fiduciary duty* is a *mandatory element* in corporate law.<sup>12</sup> The competence and ability of the directors in managing the company are measured according to the standard of prudence and accompanied by good faith, which is solely intended for the benefit of the company.<sup>13</sup> *Fiduciary duty* reflects the position and profits of the directors from the company's success, which must be accompanied by equal responsibility. The higher the position and benefits received, the greater the obligation to maintain and direct the company correctly.<sup>14</sup> Paul L. Davies, in his book *Gower's Principles of Modern Company Law*, gives his opinion on the steps taken by directors to fulfill the principle of *fiduciary duty* to carry out their duties, as follows:<sup>15</sup>

*"In applying the general equitable principle to company directors, four separate rules have emerged:*

1. *That director must act in good faith in what they believe to be the best interest of the company;*
2. *That they must not exercise the powers conferred upon them for purposes different from those for which they were granted;*
3. *That they must not fetter their discretion as to how they shall act;*
4. *That, without the informed consent of the company, they must not place themselves in a position in which their interest or duties to other person are liable to conflict with their duties."*

The consequence of the *fiduciary duty* principle requires the board of directors to consider the impact of any decisions it makes on stakeholders, even though the board is not directly legally responsible to them.<sup>16</sup> The good faith of the board of directors will be evident if it prioritizes the interests of the company and its stakeholders.<sup>17</sup>

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<sup>12</sup> Munir Fuady, *Doktrin-Doktrin dalam Corporate Law dan Eksistensinya dalam Hukum Indonesia*, (Bandung: PT Citra Aditya Bakti, 2014): 59.

<sup>13</sup> Rachmadi Usman, *Dimensi Hukum Perusahaan Perseroan Terbatas*, (Bandung: P.T Alumni, 2004): 180.

<sup>14</sup> Michal Agmon, et.al, "A Duty to Diversify", *Vanderbilt Law Review* 57, no. 1 (2022): 100, <https://dx.doi.org/10.2139/ssrn.3974699>.

<sup>15</sup> Wayan Bimanda, "Penerapan Asas Fiduciary Duty dan Piercing The Corporate Veil Terhadap Tanggung Jawab Terbatas Direksi Suatu Perseroan Terbatas di Indonesia dan Amerika", *Unes Law Review* 6, no. 1 (2023): 1970, <https://doi.org/10.31933/unesrev.v6i1.958>.

<sup>16</sup> Ruth V. Aguilera, "Corporate Purpose in Comparative Perspective: The Role of Governance", *Strategy Science* 8, no. 2, (2023): 3, <https://doi.org/10.1287/stsc.2023.0198>.

<sup>17</sup> Athalia and Moody, "Penerapan Asas *Fiduciary Duty* Dalam Tanggung Jawab Direksi Pada Perseroan Terbatas", *Journal of Law Education and Business* 2, no. 1, (2024): 378, <https://doi.org/10.57235/jleb.v2i1.1670>.

Administratively, the limitations of breaches of good faith of the board of directors include the principles of openness, accountability, confidentiality, and prudence in carrying out their duties.<sup>18</sup>

A company's financial statements are two lists prepared by an accountant at the end of a specific accounting period.<sup>19</sup> The investigation's results revealed that the company had prepared two versions of financial statements, each prepared separately. The first report is internal and reflects the actual financial condition, characterized by losses and low income levels. The second report is prepared manipulatively to give the impression of positive economic performance to investors and other external parties. The dual reporting pattern has been implemented systematically since 2018.

The existence of two sets of inaccurate financial reports to stakeholders suggests a systematic effort to conceal the actual conditions within the company. The first financial statement is an accurate internal record, while the second financial statement is an inflated version specifically intended for investors.<sup>20</sup> Gibran Huzaifah explained the motivation behind the manipulation of the financial statements in an exclusive interview conducted by Bloomberg Technoz, which stated the following:<sup>21</sup>

"I asked fellow *startup founders* in Indonesia how they could get new funding. The methods I received were vague and limited to code, but the answer I received essentially involved falsifying numbers. They claim to manipulate a range of numbers, citing "growth hacking" initiatives that they implement, typically before the fundraiser. I know it's wrong. But when everyone is doing it and they're still fine and never getting caught, you're going to question whether the move was really wrong."

The act of manipulating reports clearly constitutes a serious breach of the fiduciary duty principle. This constitutes a fundamental breach of the duty of loyalty by the

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<sup>18</sup> Faisal Candra, "Akibat Hukum Pelanggaran Iktikad Baik Direksi Perseroan Terbatas: Sebuah Perbandingan Indonesia Dengan Belanda", *Dinamika*, 31, no. 1, (2025): 11271, <https://jim.unisma.ac.id/index.php/jdh/article/view/26600/20190>,

<sup>19</sup> Endah Wardani, et.al, "Pelanggaran Etika Dalam Rekayasa Laporan Keuangan Pada PT Dutasari Citra Laras ", *Journal of Regional Economics and Development* 1, no. 3 (2024): 2, <https://doi.org/10.47134/jred.v1i3.234>.

<sup>20</sup> Rahmad Budi and Beringin Kusuma, <https://www.kiroyan-partners.com/insights/hard-lessons-from-fisherys-fishy-business>, Last accessed on April 26, 2025 at 08.45 WIB.

<sup>21</sup> The Editorial Team, <https://www.bloombergtechnoz.com/detail-news/68446/alasan-gibran-palsukan-laporan-efishery-untuk-bertahan-hidup>, was last accessed on April 26, 2025 at 09.00 WIB.

board of directors. *The duty of loyalty* requires directors to always act in the best interest of the company and prioritize the company's interests above their own or those of other parties. Although Law No. 40 of 2007 concerning Limited Liability Companies does not explicitly use the terminology "*duty of loyalty*", this principle is firmly integrated in the obligation to act "in good faith" and "for the benefit of the company" as stipulated in Article 97 paragraphs (1) and (2) of Law No. 40 of 2007 concerning Limited Liability Companies.

The phrase "*bona fides*" in this context conveys the meaning of honesty, trustworthiness, and the absence of bad intentions or hidden motives that harm the company. Breach of the *duty of loyalty* occurs when directors fail to prioritize the company's interests above all else in every action and decision they make. Bernard S. Black affirmed that "*Decision-makers within the company should act in the best interests of the company, not their own*". The statement outlines the consequences for the board of directors to fulfill the responsibilities inherent in their leadership positions, particularly in strategic decision-making that drives the company's success, growth, and long-term sustainability. The implementation of this function requires the board of directors to consider holistically the impact of each policy and decision set on the overall interests and sustainability of the company. This consideration is crucial, given that the company's true interests lie in accurate reporting and responsible management, rather than pseudo-growth built on deception.

Article 97, paragraph (3) of the Limited Liability Company Law emphasizes that each member of the board of directors is fully personally responsible if he is guilty or negligent in carrying out his duties. This provision indicates that if directors are careless in their management, according to the law, a director is considered to have violated the duty of care or acted contrary to the "*prudential duty*".<sup>22</sup> *Duty of care* is a central component of *the fiduciary duty principle, in addition to the duty of loyalty*.<sup>23</sup> *The duty of care* entails consequences for directors who fail to act with due care, apply a high level of rigor in gathering the information used to make every business decision,

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<sup>22</sup> Yahya Harahap, *Hukum Perseroan Terbatas*, (Jakarta: Sinar Grafika, 2009): 379.

<sup>23</sup> Ridwan Khairandy, *Hukum Perseroan Terbatas*, (Yogyakarta: FH UII Press, 2014): 260.

and carry out their business management with reasonable care and prudence.<sup>24</sup> As Joshua Getzler affirmed, "*What is being sought from a fiduciary is a decent process of decision making rather than a defined or perspective result.*"

The statement emphasized that the primary focus of *fiduciary duty* does not lie in the final results of the decisions taken by the board of directors, but in the quality and integrity of the decision-making process itself. The emphasis on *fiduciary duty* demands proportionate attention to both aspects, namely, a transparent decision-making process and accountable results. The prudential action not only protects the directors as a party entrusted to carry out their duties in accordance with the principles of prudence and good faith, but also guarantees the protection of the rights and interests of stakeholders who are the object of management by the directors.

Falsifying financial statements or *committing fraud indicates a failure in risk management and constitutes a breach of the duty of care*. Breach of *duty of care* committed by Gibran Huzaifah as the president director while running the company's management is a form of non-compliance that cannot be justified, especially if the action is carried out with the knowledge that the basis for consideration is contrary to the provisions of the law and the company's articles of association. The consequences of awareness of potential breaches of the law suggest that there is an element of negligence or even intentionality that is contrary to the principles of prudence and good faith that directors are expected to uphold.<sup>25</sup>

As a result of the actions carried out by Gibran Huzaifah, PT Multidaya Teknologi Nusantara suffered losses totaling 9.8 trillion rupiah.<sup>26</sup> According to P. Lipton the actions that can be taken (*remedies*) by the company against the breach of *fiduciary duty*, as follows:<sup>27</sup>

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<sup>24</sup> *Ibid.*

<sup>25</sup> Yahya Harahap, *Op.Cit.*

<sup>26</sup> Editorial Team, <https://kanalpengetahuan.feb.ugm.ac.id/ekonomi-360/learning-from-the-case-of-fr-d-fishery/>, Last accessed on September 10, 2025, at 12.00 WIB.

<sup>27</sup> Jovanka Eugina, et.al, "Aspek Hukum Tanggung Jawab Dewan Komisaris Terhadap Direksi Yang Melakukan Pelanggaran *Fiduciary Duty* Sehingga Menyebabkan Kerugian Bagi Perseroan Terbatas Menurut Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas", *Lex Privatum* 9, no. 4, (2021): 70, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/33346>

- 1) Damages or *compensation*
- 2) Profits earned by members of the board of directors as a result of actions that benefit themselves unlawfully can qualify as *accounts of profits*. Certain situations demonstrate that breaches of fiduciary duty do not always result in direct material losses to the company. The absence of these elements of loss causes no legal basis for the company to file a compensation claim. However, personal profits obtained through breaches can still be requested to be returned to the company as a form of liability for violations of fiduciary obligations.
- 3) Application to cancel an agreement made by a member of the board of directors (*rescission of contract*)

The statement indicates that the concept of "loss" should be comprehensively applied in accordance with the principle of prudence and responsibility, as mandated by the board of directors in fulfilling the company's management function. Losses arising from *breach of fiduciary duty* are not limited to material losses, but also include immaterial losses. Immaterial losses may occur if the breach does not cause material losses directly to the company. The Director of Fisheries can be asked to take personal responsibility for recovering losses suffered by the company, such as declines in the company's reputation, loss of shareholder trust, and disruptions to the company's operational stability. Some of the immaterial losses obtained by PT Multidaya Teknologi Nusantara include:

- 1) Degradation of the company's image and reputation.

The damage to PT Multidaya Teknologi Nusantara's image and reputation due to fraudulent actions committed by Gibran Huzaifah has an impact on the company's business sustainability. The implications of these actions not only result in a decline in the company's financial and operational stability but also have the potential to create a negative long-term outlook for the entire Indonesian startup ecosystem.

- 2) Termination of employment of thousands of employees.

*The fraud* that occurred at PT Multiday Teknologi Nusantara had a significant impact on both employees and the company's overall operations. One of them is mass layoffs. The company announced that it will reduce its workforce by approximately 90%.<sup>28</sup>

3) Loss of investor confidence and valuation of companies.

*The fraud* that occurred at PT. Multiday Teknologi Nusantara has caused a domino effect, resulting in a decrease in investor confidence in the startup ecosystem as a whole. Foreign investors have become increasingly selective, withdrawing from investment opportunities in Indonesia due to concerns about transparency and accountability.

The actions of Gibran Huzaifah, as President Director of PT Multiday Teknologi Nusantara, in carrying out the above management functions and authorities, are taken to have been improper. These actions are categorized as management that is carried out in bad faith (*te kwader trouw, bad faith*).<sup>29</sup> Openness and accountability are the main principles that must be applied in the preparation of financial statements. This is because the level of trust that stakeholders, such as investors and creditors, have in financial statements is influenced by the transparency of these statements.<sup>30</sup>

**The Responsibility of the Main Director for the Occurrence of *Fiduciary Duty Breaches* in the Case of PT Multiday Teknologi Nusantara**

The Board of Directors is an organ entrusted with managing the company.<sup>31</sup> As long as the board of directors carries out its duties and obligations with full responsibility, the members of the board of directors still have limited responsibilities, which are a primary characteristic of a limited liability company.<sup>32</sup> On the other hand, because being a member of the board of directors entails occupying a position, the person

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<sup>28</sup> Kamila Meilina, <https://katadata.co.id/digital/startup/67ad8375557c8/manajemen-baru-efishery-phk-90-dari-1500-pekerja-imbas-dugaan-fraud>, Last accessed on November 12, 2025, at 12.00 WIB.

<sup>29</sup> *Ibid.*, p. 375.

<sup>30</sup> Charen Patricia, et.al, "Tanggung Jawab Hukum dalam Penyajian Laporan Keuangan: Perspektif Hukum Bisnis dan Akutansi", *Aladalah: Journal of Politics, Social, Law and Humanities* 3, no. 3, (2025): 219, <https://doi.org/10.59246/aladalah.v3i2.1304>.

<sup>31</sup> Rudhi Prasetya, *Perseroan Terbatas Teori dan Praktik*, (Jakarta: Sinar Grafika, 2011): 19.

<sup>32</sup> Adrian Sutedi, *Buku Pintar Hukum Perseroan Terbatas*, (Jakarta: Raih Asas Sukses, 2015): 12.

occupying that position must bear responsibility if their duties and obligations are neglected or if their authority is abused.<sup>33</sup> The responsibility of the board of directors must be carried out based on 3 (three) principles that are intertwined in one system, namely the principle of *fiduciary duty*, the principle of *duty of care and skill*, and the principle of *standard of care*.<sup>34</sup> The problem of directors who violate the principle of *fiduciary duty* and are proven to have caused adverse acts against the company can shift the burden of responsibility to the directors.<sup>35</sup> The responsibility of the board of directors can be classified into individual *liability* and *collective liability*, as expressed by Darian M. Ibrahim. Personal liability is inherent in members of the board of directors who violate the *duty of loyalty*, which includes actions without good *faith*, involvement in a *conflict of interest*, or self-interest. Joint liability arises when all members of the board of directors collectively fail to fulfill their duty of care, specifically the obligation to act carefully in accordance with the standard of conduct required for managing the company.<sup>36</sup> Law Number 40 of 2007 concerning Limited Liability Companies has classified similar matters to the responsibility of the board of directors for losses arising from negligence in carrying out the company's management duties. The classification is regulated as Article 97, paragraph (3) and paragraph (4), as follows:

1) Article 97 Paragraph (3)

"Each member of the Board of Directors is fully personally responsible for the Company's losses if the person concerned is guilty or negligent in carrying out his duties in accordance with the provisions as referred to in paragraph 2."

Full and personal liability (*individual liability*) is inherent in the board of directors if it is proven to have committed mistakes (*schuld, guilt, or wrongful acts*) or negligence (*culpa, negligence*) in the implementation of the company's management duties.

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<sup>33</sup> *Ibid.*

<sup>34</sup> Try Widiyono, *Direksi Perseroan Terbatas Keberadaan, Tugas, Wewenang, dan Tanggung Jawab*, (Bogor: Ghalia Indonesia, 2005): 38.

<sup>35</sup> Elvira Dewi and Arif Wicaksana, "Tanggung Jawab Direktur Utama Terkait Pelanggaran Prinsip Fiduciary Duty", *Trisakti Legal Reform* 4, no. 3, (2022): 692, <https://doi.org/10.25105/refor.v4i5.15132>.

<sup>36</sup> Darian M. Ibrahim, "Individual or Collective Liability for Corporate Director", *Iowa Law Review* 93, no. 06-25, (2008): 933-945, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=918119](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=918119).

Negligence in carrying out obligations or breaching prohibitions related to management functions, which results in losses for the company, is the basis for imposing personal liability against the directors concerned for such losses.

2) Article 97 Paragraph (4)

"If the Board of Directors consists of 2 (two) or more members of the Board of Directors, the responsibilities as intended in paragraph (3) apply jointly and severally to each member of the Board of Directors."

Collective *liability* for the company's losses is applied in cases where the members of the board of directors consist of 2 (two) or more people. The enforcement of the principle of joint responsibility aims to ensure that all members of the board of directors jointly participate in the management of the company, without questioning the scope of duties assigned to them, so that they are united and entirely responsible for safeguarding the company's interests.

In addition to the foregoing analysis on directors' liability, it is essential to emphasize that Indonesian company law incorporates the Business Judgment Rule as a doctrinal safeguard that may relieve directors from personal liability. The doctrine operates on the premise that directors should not be judicially second-guessed for bona fide business decisions, provided that such decisions are made in good faith, with due diligence, absent any conflict of interest, and in furtherance of the company's purposes and objectives, as codified in Article 97(5) of Law No. 40 of 2007 on Limited Liability Companies. Consequently, even where a business judgment ultimately results in corporate losses, directors may not be held personally accountable so long as the substantive and procedural requirements of the Business Judgment Rule are satisfied.<sup>37</sup> The protective ambit of the doctrine, however, is not absolute; it is expressly curtailed in situations involving misconduct, including the presence of a conflict of interest, bad faith, self-dealing, abuse of authority, or any decision taken *ultra vires* the scope of the directors' managerial powers.

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<sup>37</sup> Pria Dharsana, et.al, "Application of the Business Judgment Rule Doctrine in Indonesian Companies." Journal of Public Administration, Finance and Law, no. 27, (2023): 387, <https://doi.org/10.47743/jopafl-2023-27-30>.

The actions taken by Gibran Huzaifah have fulfilled the elements of accountability stipulated in Article 97 paragraph (3) of Law No. 40 of 2007 on Limited Liability Companies. The juridical consequence of satisfying these elements is the imposition of personal liability attached to the office of a director. Such liability arises from managerial irregularities, most notably through the falsification of financial statements, which constitutes a clear deviation from the standard of conduct required under Indonesian corporate law. The losses suffered by PT Multidaya Teknologi Nusantara and its investors may therefore be attributed to Gibran Huzaifah, in his capacity as President Director, rendering him personally accountable for breaches of his statutory duties.

When assessed through the lens of the Business Judgment Rule, the conduct at issue falls outside the scope of the doctrine's protective function. The Business Judgment Rule operates to shield directors from personal liability only where business decisions are made in good faith, with due care, and free from conflicts of interest, as codified in Article 97 paragraph (5). Falsifying financial statements is indicative of bad faith, lack of due care, and the presence of misleading or deceptive practices constitutes a fundamental violation of the core preconditions for invoking the Business Judgment Rule. Accordingly, the doctrine cannot be relied upon as a defense to exonerate Gibran Huzaifah from liability. Rather, the deliberate manipulation of company records represents a form of misconduct that firmly situates his actions within the exception to, rather than the protection of, the BUSINESS JUDGMENT RULE. In this context, personal accountability is not only legally justified but normatively required to preserve fiduciary integrity in corporate governance.

The actions of the President Director in presenting financial audit reports in a manner that does not accurately reflect the company's actual profit and loss can generally be considered a form of unlawful act. As Yahya Harahap, in his book entitled Limited Liability Company Law, states:<sup>38</sup>

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<sup>38</sup> Yahya Harahap, *Loc.Cit*, p. 375.

"Members of the board of directors who know that their actions are contrary to the provisions of laws and regulations, or who act imprudently or *carelessly* in carrying out the company's management obligations, can be considered as having committed an unlawful management act. These acts are included in the category of unlawful acts (*onrechtmatige daad, unlawful act*)."

In a broader legal perspective, a director's negligent or wrongful conduct in corporate management may also constitute an unlawful act (*onrechtmatigedaad*) as regulated under Article 1365 of the Indonesian Civil Code (KUHPerdata). Pursuant to this provision, external civil liability arises where the director's actions cause harm to third parties, for example through the falsification of financial statements, which demonstrably results in losses beyond the corporate sphere. Accordingly, Article 97(3) of the Company Law serves as the legal foundation for the company or its shareholders to pursue a claim for damages against a negligent director, whereas Article 1365 of the Civil Code provides the basis for third parties to seek compensation for their losses, consistent with the principle of *restitutio in integrum* restoring the injured party to the position they occupied before the wrongful act.

Unlawful acts have been regulated as Article 1365 of the Civil Code stipulates that everyone who causes unlawful acts is obliged to compensate for the losses arising from the mistake. The elements of illegal acts that must be proven based on Article 1365 of the Civil Code are the existence of an unlawful act, the existence of an element of error, the existence of an element of loss, and the existence of a causal relationship between the act and the loss.

The existence of these elements not only indicates the presence of actions that are contrary to the law but also reinforces the legitimacy of the claim for compensation for the resulting losses. To provide clarity based on the accountability in question, each element will be analyzed as follows:

### 1) Elements of unlawful acts.

The concept of unlawful acts is not limited to breaches of written law provisions, but also includes unwritten legal restraints. The four unlawful

behaviors are violating the rights of others, acting contrary to the legal obligations of the perpetrator, and behaving immorally and improperly by prioritizing one's own interests and disregarding the property of others in personal relationships.

The act of falsifying the company's financial statements, carried out by Gibran Huzaifah as the company's director, has been contrary to the provisions of Article 69, paragraph (3), and Article 97, paragraph (2), of Law Number 40 of 2007. The right to accurate financial information is a fundamental aspect of this right, particularly for third-party stakeholders such as investors and creditors, who rely heavily on accurate financial statements to make informed economic decisions. Therefore, the presentation of financial statements that do not accurately reflect the company's actual conditions constitutes a legal violation, as it meets the elements of unlawful acts as referred to in Article 1365 of the Civil Code.

## 2) Element of error.

As Article 1365 of the Civil Code has determined, for an act to be said to be an unlawful act, there must be an element of error. An act is considered by law to contain aspects of wrongdoing so that it can be held legally responsible if the following elements are met:<sup>39</sup>

- a. There is an element of intentionality.
- b. There is an element of negligence, *culpa*, and
- c. There is no justification or forgiving reasons, such as *overmacht*.

Based on the facts revealed, the act of manipulating financial statements carried out by Gibran Huzaifah as the President Director of PT Multidaya Teknologi Nusantara can be analyzed as an unlawful act that meets the elements of error as specified in Article 1365 of the Civil Code. The element of intentionality is fulfilled because the act is carried out consciously and deliberately, with the intention of creating an image of healthy financial performance to influence the decisions of investors and other external parties.

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<sup>39</sup> Munir Fuady, *Perbuatan Melawan Hukum (Pendekatan Kontemporer)*, (Bandung: PT. Citra Aditya Bakti, 2005): 12.

Awareness of the invalidity of the content of the report and the desire for the false report to remain reliable indicates an active intention to mislead third parties. This action also does not reflect the standard of prudence that a president director should maintain in managing the company, thereby also meeting the element of negligence. No justification or excuse can absolve one of responsibility for the act. With the fulfillment of the three aspects of the above error, Gibran Huzaifah can be held responsible based on unlawful acts due to deviations from the principles of honesty and good faith in the submission of financial information.

3) Elements of loss.

The concept of compensation in unlawful acts is determined with an estimate as much as possible to be returned to the position or circumstances before the occurrence of the illegal act (*restitutio in integrum*), while the losses in question are in the form of material losses (real losses suffered) and/or immaterial losses (losses for benefits or gains that may be received in the future). The difference between losses due to default and unlawful acts in default has sometimes determined the amount of compensation.

The legal facts are that the investor suffers direct losses that can be clearly quantified against the loss of all or most of the principal capital of the investment due to decisions based on fictitious valuations. Investors also suffer losses due to the loss of potential profits or opportunity costs that could have been obtained if the funds were invested in legitimate instruments. Meanwhile, Creditors suffer losses, especially in financial form such as non-fulfillment of loan payments along with interest according to the maturity.

4) The element of causal relationship between the act and the loss.

This element can be demonstrated through the direct cause-and-effect relationship between the manipulation of financial statements and the losses

suffered by investors and the company. There is a theory of causality in the scope of unlawful acts. The theory is explained as follows:<sup>40</sup>

- a) The theory of *Conditio Sine Qua Non* means that a person is always seen as responsible if their actions are detrimental.
- b) The theory of *Adequate Verorzung*, meaning "commensurate", is that an act is considered a legal cause if it can reasonably be expected to cause inevitable consequences
- c) The theory of *Toerkening naar Radelijkheid*, which emphasizes accountability based on feasibility.

The causal relationship between losses suffered by third parties, both investors and creditors, and the wrongful acts committed by the President Director of PT. Multidaya Teknologi Nusantara, Gibran Huzaifah, in the form of falsifying the presentation of audit results of financial statements, is a basic form of legal responsibility. Causality is an essential component in assessing the fulfillment of the elements of unlawful acts.

The fulfillment of the elements of unlawful acts as stipulated in Article 1365 of the Civil Code above provides a juridical basis to determine the liability of the President Director of PT Multidaya Teknologi Nusantara, Gibran Huzaifah, for breaches of the principle of *fiduciary duty*. Hence, the interaction between these two legal regimes is complementary rather than exclusionary. While Article 97 of the Company Law governs corporate regulatory liability the director's internal responsibility to the company Article 1365 of the Civil Code regulates civil tort liability toward external parties. Consequently, compensation arising from breaches of fiduciary duty may encompass both dimensions of liability concurrently. This analytical framework is grounded in the dual-liability theory, under which a company director may be held accountable internally to the corporation and externally to third parties who sustain losses as a result of unlawful acts committed in the course of corporate management.

Investors, as shareholders, can pursue either the litigation or non-litigation route to recover their losses. The non-litigation route can be taken by making a complaint in

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<sup>40</sup> Y. Sari Murti Widiyastuti, *Asas-Asas Pertanggungjawaban Perdata (Bagian Pertama)*, (Yogyakarta: Cahaya Atma Pustaka, 2024): 59 – 61.

advance at the General Meeting of Shareholders. If the effort to submit accountability through the General Meeting of Shareholders has not met the agreement, shareholders can pursue litigation in the form of a derivative lawsuit. As Article 61 of Law Number 40 of 2007 concerning Limited Liability Companies determines:

"Every Shareholder has the right to file a lawsuit against the company in the district court if they are harmed due to the company's actions that are considered unfair and without reasonable cause as a result of the GMS decision. The Board of Directors, and/or the Board of Commissioners."

Based on the quantity requirement as stipulated in Article 97 paragraph (6) of Law Number 40 of 2007 concerning Limited Liability Companies, the right to file a lawsuit with the court in the case of error or negligence in the management of the company committed by members of the board of directors is not granted to each shareholder. The substance of a derivative lawsuit requires that it can only be carried out by shareholders holding at least 1/10 percent of the shares, which can be interpreted to mean that shareholders holding less than 1/10 percent do not have the right to sue directors who commit negligence or error.

## CONCLUSION

Based on the analysis of the discussion above, the conclusion is as follows:

- 1) The form of breach of the fiduciary duty principle that occurs is a form of breach of the provisions of Article 97 paragraphs (2) and (3) of Law Number 40 of 2007 concerning Limited Liability Companies. First, the breach of Article 97 paragraph (2) occurred when Gibran Huzaifah, as a director, failed to put the interests of the company as the top priority in every action and decision. The act of manipulating financial statements carried out by Gibran Huzaifah as president director is directly contrary to the obligation of the board of directors to act honestly, which embodies the meaning of good faith. The form of breach in the reference is categorized as a form of breach of the *duty of loyalty component*. The second breach of Article 97 paragraph (3) occurred when Gibran

Huzaifah, in his position as president director, was aware of the potential for breaches of the law, indicating an element of *negligence* or even intentionality that is contrary to the principles of prudence and good faith that should be attached to the position of director. The act committed by Gibran Huzaifah as a director in carrying out the company's management is a form of non-compliance that cannot be justified, especially if the action is taken with knowledge that the basis for consideration is contrary to the provisions of the law and the company's articles of association. The breach in question is categorized as a form of breach of the duty of *care component*.

- 2) Based on Article 97 paragraph (3) of Law Number 40 of 2007 concerning Limited Liability Companies, Gibran Huzaifah can be held fully responsible personally for mistakes or omissions committed in his capacity as a director to cause losses to PT Multidaya Teknologi Nusantara. Generally, the negligence of directors in managing the company can be categorized as a form of unlawful competition, as stipulated in Article 1365 of the Civil Code. The responsibility for compensation in these provisions arises from irregularities in the company's management, particularly through the practice of falsifying financial statements that have actually caused losses to third parties. Article 97, paragraph 3 of Law No. 40 of 2007 concerning Limited Liability Companies serves as the basis for a lawsuit against PT. Multidaya Teknologi Nusantara is expected to demand compensation, represented by its shareholders. At the same time, Article 1365 of the Civil Code serves as the basis for a lawsuit to demand compensation for third parties, in accordance with the principle that it can be returned to the position or circumstances before the unlawful act occurred (*restitutio in integrum*).

Based on the analysis of the discussion above, the recommendations is as follows:

- 1) Given the seriousness of fiduciary duty breaches and their potential impact on both the corporation and third parties, the government should encourage companies to establish whistleblowing mechanisms administered by independent third parties. Such systems are essential for ensuring full

protection of whistleblowers, enabling them to report suspected violations without fear of retaliation. Independent management of these systems preserves anonymity, thereby fostering a safer environment for the disclosure of critical information related to fiduciary misconduct by directors.

- 2) Investors adversely affected by fiduciary breaches within PT Multiday Teknologi Nusantara may undertake several strategic measures to safeguard their rights. Initially, non-litigation measures should be pursued by requesting clarification and accountability from the board of directors through a General Meeting of Shareholders. If these efforts fail, investors may resort to judicial remedies by filing a derivative lawsuit pursuant to Article 61 and Article 97 paragraph (6) of Law Number 40 of 2007. Through such proceedings, investors may seek collective or individual compensation from directors proven to have violated their fiduciary duties and may request the annulment of contracts when investment decisions were induced by manipulated financial statements.

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This research is expected to provide significant theoretical and practical contributions. The findings have the potential to enrich the body of knowledge in corporate law, particularly concerning the doctrine of fiduciary duty and the responsibilities of corporate organs, especially the President Director, in the context of such breaches. Furthermore, the case study of PT Multiday Teknologi Nusantara is expected to serve as a precedent and a comparative reference for analyzing similar cases in the future. Practically, this study is anticipated to offer deeper insights for stakeholders, including regulators, legal practitioners, and business actors, regarding the scope and implications of the President Director's liability in cases of fiduciary duty breaches.

## **COMPETING INTEREST**

There are no conflicts of interest involved in the publication of this article.

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