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Legal Responsibility of the President Director for Fictitious Loans Causing Bank Losses

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Abstract. Fictitious loans in the banking sector raise complex legal issues concerning the civil liability of directors and the mechanisms available for recovering corporate losses. Previous studies have examined directors' liability from separate legal perspectives but have not integrated fiduciary duty, unlawful acts, prudential banking principles, banking governance, and derivative lawsuits within a unified analytical framework. This study aims to analyze the civil liability of the President Director for fictitious loans causing losses to PT BPR Bank Jepara Artha and to examine derivative lawsuits as a legal remedy for enforcing such liability. This research employs normative legal research using statutory and conceptual approaches, with qualitative doctrinal analysis of legislation, judicial decisions, and legal doctrines. The findings demonstrate that the President Director's negligence constituted a breach of fiduciary duty, fulfilled the elements of unlawful acts under Articles 1365 and 1366 of the Indonesian Civil Code, and violated banking governance and prudential banking obligations, thereby giving rise to personal civil liability. Furthermore, the study finds that derivative lawsuits provide an appropriate legal mechanism for recovering corporate losses through shareholder action on behalf of the company. This study contributes to Indonesian corporate and banking law by proposing an integrated legal framework for assessing directors' civil liability and strengthening corporate governance in cases of fictitious loans.

Keywords: Directors' Responsibility, Fictitious Loans, Unlawful Acts, Legal Remedies.

Abstrak. *Kredit fiktif di sektor perbankan menimbulkan persoalan hukum yang kompleks terkait tanggung jawab perdata direksi serta mekanisme yang tersedia untuk memulihkan kerugian perseroan. Penelitian-penelitian sebelumnya telah mengkaji tanggung jawab direksi dari berbagai perspektif hukum secara terpisah, namun belum mengintegrasikan konsep *fiduciary duty*, perbuatan melawan hukum, prinsip kehati-hatian perbankan, tata kelola perbankan, dan gugatan derivatif dalam suatu kerangka analisis yang terpadu. Penelitian ini bertujuan untuk menganalisis tanggung jawab perdata Direktur Utama atas pemberian kredit fiktif yang mengakibatkan kerugian pada PT BPR Bank Jepara Artha serta mengkaji gugatan derivatif sebagai upaya hukum untuk menegakkan pertanggungjawaban tersebut. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan peraturan perundang-undangan dan pendekatan konseptual, serta dianalisis secara kualitatif melalui kajian doktrinal terhadap peraturan perundang-undangan, putusan pengadilan, dan doktrin hukum. Hasil penelitian menunjukkan bahwa kelalaian Direktur Utama merupakan pelanggaran terhadap *fiduciary duty*, memenuhi unsur-unsur perbuatan melawan hukum sebagaimana diatur dalam Pasal 1365 dan Pasal 1366 Kitab Undang-Undang Hukum Perdata Indonesia, serta melanggar prinsip tata kelola dan prinsip kehati-hatian perbankan, sehingga menimbulkan tanggung jawab perdata secara pribadi. Selain itu, penelitian ini menemukan bahwa gugatan derivatif merupakan mekanisme hukum yang tepat untuk memulihkan kerugian perseroan melalui tindakan pemegang saham yang bertindak untuk dan atas nama perseroan. Penelitian ini memberikan kontribusi terhadap pengembangan hukum perseroan dan hukum perbankan di Indonesia dengan menawarkan suatu kerangka hukum yang terintegrasi dalam menilai tanggung jawab perdata direksi serta memperkuat tata kelola perusahaan dalam kasus kredit fiktif.*

Kata Kunci: *Tanggung Jawab Direksi, Kredit Fiktif, Perbuatan Melawan Hukum, Upaya Hukum.*

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INTRODUCTION

Banks play a strategic role in economic development by serving as financial intermediaries that mobilize public funds and redistribute them through lending activities.[1] As institutions entrusted with managing public funds, banks are required to implement sound corporate governance, effective risk management, and prudential banking principles in every aspect of their operations.[2] This obligation is particularly significant for Rural Banks (Bank Perekonomian Rakyat/BPRs), whose primary function is to provide credit facilities that support regional economic growth and the development of micro, small, and medium-sized enterprises.[3] Failure to adhere to prudential banking principles may expose banks to substantial financial losses, erode public confidence, and ultimately threaten financial system stability.[4] Among the various forms of banking misconduct, fictitious loans represents one of the most serious violations because it involves the use of falsified identities, forged documents, or manipulated information to obtain credit facilities unlawfully.[5] Such practices not only inflict considerable financial losses but also reflect serious deficiencies in internal control systems, supervisory mechanisms, and banking governance.

The fictitious loans scandal involving PT BPR Bank Jepara Artha illustrates these concerns.[6] Between 2022 and 2023, the bank reportedly suffered losses of approximately IDR 272 billion arising from 38 fictitious loan accounts, ultimately resulting in financial distress and the revocation of its business licence by the Financial Services Authority (OJK).[7] This case represents one of the most significant fictitious loan scandals involving a rural bank in Indonesia and provides an important legal

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[1] Muhammad Djumhana, *Hukum Perbankan di Indonesia* (Bandung: Citra Aditya, 2000): 17.

[2] Rachmadi Usman, *Aspek-aspek Hukum Perbankan di Indonesia* (Jakarta: PT Gramedia Pustaka Utama, 2001): 18.

[3] See Article 5 paragraph (1) of Law Number 7 of 1992 concerning Banking.

[4] Firda Amelya Malik, et al., "Tanggung Jawab Bank Kepada Nasabah dalam Kasus Kredit Fiktif yang Melibatkan Pegawai Bank ", *ALADALAH: Jurnal Politik, Sosial, Hukum dan Humaniora 2*, (2024): 3.

[5] The Indonesian Bankers Association (IBI), and The Banking Professional Certification Institute (LSPP), *Mengelola Bank Syariah* (Jakarta: PT Gramedia Pustaka Utama, 2014): 71.

[6] Fahmi Ahmad Burhan, "Kronologis BUMD Bank Jepara Artha (BAJ) Bangkrut Hingga Dicabut Izinnya Oleh OJK", May 2024, Retrieved April 25, 2025, 18.00 WIB, https://finansial.bisnis.com/read/20240521/90/1767398/kronologis-bumd-bank-jepara-artha-baj-bangkrut-hingga-dicabut-izinnya-oleh-ojk.

[7] CNN Indonesia, "KPK Examines Acting Regent Investigates Fictitious Loans of BPR Bank Jepara Artha", January 2025, Retrieved May 12, 2025, 17.00 WIB, https://www.cnnindonesia.com/nasional/20250121102211-12-1189584/kpk-periksa-pj-bupati-usut-kredit-fiktif-bpr-bank-jepara-artha.

context for examining directors' civil liability for corporate losses. Beyond its financial implications, the case raises significant legal questions concerning the civil liability of the President Director, who bears primary responsibility for managing the bank and ensuring compliance with cacable legal and governance standards. In particular, the case invites examination of whether the President Director's conduct constituted a breach of fiduciary duty capable of giving rise to civil liability toward the company. Accordingly, fictitious loans has increasingly attracted scholarly attention from different legal perspectives.

Satria Alam (2023) examined the loss of directors' limited liability resulting from bad faith in fictitious loans practices,[8] whereas Gama Ariya Putra (2018) focused on directors' personal liability for losses arising from bank lending activities.[9] Meanwhile, Yudha Irawan (2018) analyzed directors' liability from the perspective of unlawful acts within corporate law,[10] while Firda Amelya Malik et al. (2024) examined banks' liability toward customers affected by fictitious loans involving bank employees.[11] Collectively, these studies demonstrate that directors' accountability in fictitious loans has been examined through various legal perspectives.

Although previous studies have significantly enriched the discussion on directors' liability in banking and corporate law, existing scholarship remains fragmented because each study focuses primarily on a particular legal dimension, such as personal liability, limited liability, unlawful acts, or customer protection. Consequently, existing scholarship has yet to establish an integrated legal framework that comprehensively explains the civil liability of a President Director by combining fiduciary duty, unlawful acts, prudential banking principles, banking governance, and derivative lawsuits within a unified analytical framework. To address this gap, the present study develops an integrated legal framework that synthesizes these legal

[8] Faris Satria Alam, "Hapusnya Tanggung Jawab Terbatas Direksi Akibat Itikad Tidak Baik dalam Penyaluran Kredit Fiktif pada Perusahaan Daerah Bank Perkreditan Rakyat", SALAM: Jurnal Sosial dan Budaya Syar-I 10, no. 3 (2023).

[9] Gama Ariya Putra, "Tangggung Jawab Pribadi Anggota Direksi Terhadap Munculnya Kerugian Bank Dalam Penyaluran Kredit (Studi Kasus Bank Papua)", Skripsi, (Yogyakarta: Universitas Islam Indonesia, 2018).

[10] Yudha Irawan, "Tanggung Jawab Pribadi Anggota Direksi atas Perbuatan Melawan Hukum yang Merugikan Perseroan Terbatas (Studi Kasus PT Magnus Capital)" Skripsi, (Yogyakarta: Universitas Islam Indonesia, 2018).

[11] Firda Amelya Malik, et al., "Tanggung Jawab Bank Kepada Nasabah dalam Kasus Kredit Fiktif yang Melibatkan Pegawai Bank ", *ALADALAH: Jurnal Politik, Sosial, Hukum dan Humaniora 1*, (2024): 3.

doctrines to provide a more comprehensive basis for assessing directors' civil liability and identifying appropriate mechanisms for corporate loss recovery arising from fictitious loans practices.

Based on this research gap, this study aims to argues that civil liability arising from fictitious loans cannot be adequately understood by relying on a single legal doctrine; instead, it requires an integrated legal framework that combines fiduciary duty, unlawful acts, prudential banking principles, banking governance, and derivative lawsuits. Furthermore, this study seeks to formulate a legal framework capable of strengthening corporate loss recovery while reinforcing shareholder protection through derivative litigation. By offering an integrated analysis of these legal doctrines, the proposed framework is expected to provide doctrinal guidance for courts, regulators, shareholders, and banking institutions in determining directors' civil liability and appropriate legal remedies in fictitious loans disputes.

METHODOLOGY

This study employs normative legal research. It adopts a statutory approach to examine the applicable legal framework governing the issues under investigation and a conceptual approach to analyze the legal doctrines of fiduciary duty, unlawful acts, prudential banking principles, banking governance, and derivative lawsuits as the analytical framework for assessing the civil liability of the President Director. The analysis focuses on the civil liability of the President Director in the fictitious loans case involving PT BPR Bank Jepara Artha. Primary legal materials consist of relevant legislation, including the Company Law, the Law on the Development and Strengthening of the Financial Sector, and Jepara District Court Decision Number 30/Pdt.G/2024/PN Jpa. Secondary legal materials include scholarly books, academic journal articles, conference papers, news reports, and previous studies relevant to the research topic. Tertiary legal materials consist of the Great Dictionary of the Indonesian Language (Kamus Besar Bahasa Indonesia), legal dictionaries, encyclopedias, and other reference materials supporting the interpretation of legal concepts. Legal materials were collected through a systematic review of legislation, judicial decisions, academic literature, and relevant documentary sources.[12] The collected legal materials were analyzed qualitatively through legal interpretation, systematic legal analysis, and doctrinal reasoning to identify the legal principles governing directors' civil liability and to formulate coherent legal arguments addressing the research questions. The findings are presented descriptively in a coherent and systematic manner to ensure a clear interpretation of the legal issues examined.

RESULT AND DISCUSSION

Legal Responsibility of the President Director for Fictitious Loans Causing Losses to PT BPR Bank Jepara Artha

The fictitious loan scandal involving PT BPR Bank Jepara Artha,[13] which resulted in losses of approximately Rp272 billion and ultimately led to the revocation of the bank's business licence by the Financial Services Authority (OJK),[14] raises a fundamental legal issue concerning the civil liability of the President Director. As the highest executive officer responsible for managing the bank, the President Director is entrusted with ensuring that lending activities comply with prudential banking principles, banking governance, and applicable laws and regulations.[15] Accordingly, the principal legal issue is not merely whether fictitious loans occurred, but whether the President Director's failure to discharge the legal duties attached to the office provides a sufficient legal basis for imposing civil liability for the resulting losses. Resolving this issue requires an integrated assessment of fiduciary duty, prudential

[12] Peter Mahmud Marzuki, *Penelitian Hukum*, 13 ed, (Jakarta: Kencana, 2017), 32.

[13] See Jepara District Court Decision Number 30/Pdt.G/2024/PN Jpa.

[14] CNN Indonesia, "KPK Examines Acting Regent Investigates Fictitious Loans of BPR Bank Jepara Artha", January 2025, Retrieved May 12, 2025, 17.00 WIB, https://www.cnnindonesia.com/nasional/20250121102211-12-1189584/kpk-periksa-pj-bupati-usut-kredit-fiktif-bpr-bank-jepara-artha.

[15] Rachmadi Usman, *Aspek-aspek Hukum Perbankan di Indonesia* (Jakarta: PT Gramedia Pustaka Utama, 2001): 18.

banking obligations, banking governance, and the doctrine of unlawful acts under Indonesian civil law.[16]

The concept of legal responsibility is closely related to the existence of legal obligations. Hans Kelsen explains that legal responsibility arises when a person who bears a legal obligation commits an act contrary to the law and consequently becomes subject to legal sanctions.[17] In civil law, liability generally arises either from contractual relationships or from unlawful acts causing damage to another person. As explained by Subekti, civil liability for unlawful acts is fundamentally based on fault,[18] while Munir Fuady classifies such liability into liability based on intentional acts, negligence under Article 1366 of the Indonesian Civil Code, and limited forms of strict liability.[19] Therefore, the assessment of the President Director's liability in this case cannot rely solely on the occurrence of financial losses but must determine whether the legal elements of unlawful acts have been fulfilled,[20] through the breach of duties imposed by corporate and banking law.

Within a limited liability company, the President Director occupies a fiduciary position requiring the management of the company in good faith, with due care, and in the best interests of the company.[21] This fiduciary obligation is reflected in Article 97 paragraph (2) of the Company Law, which requires every member of the Board of Directors to perform his or her duties in good faith,[22] and with full responsibility[23] In the banking sector, these obligations are further reinforced by prudential banking principles, banking governance regulations, and statutory duties designed to protect the soundness of banking institutions.[24] Consequently, where the President Director fails to prevent or adequately supervise fictitious loan practices that result in

[16] See Financial Services Authority Regulation of the Republic of Indonesia Number 1 of 2024 concerning the Quality of Assets of People's Economic Banks.

[17] Mahmul Siregar, Suhaidi, and Jelly Leviza, "Peranan Manajemen Risiko dalam Tugas dan Tanggung Jawab Direksi Bank Berdasarkan Peraturan Perundang-Undangan di Indonesia", *USU Law Journal 2* (2014): 171-172.

[18] Subekti, *Hukum Perjanjian* (Jakarta: *Intermassa*, 2008), 2.

[19] Munir Fuady, *Perbuatan Melawan Hukum (Pendekatan Kontemporer),* (Bandung: Citra Aditya Bakti, 2002), 3.

[20] Subekti and R. Tjitrosudibo, *Kitab Undang-Undang Hukum Perdata*, Forty-Third ed. (Jakarta: Pustaka, 2017).

[21] Ridwan Khairandy, *Hukum Perseroan Terbatas*. (Jakarta: FH UII Press, 2014), 258.

[22] See Article 97 paragraphs (1) and (2) of Law Number 40 of 2007 concerning Limited Liability Companies.

[23] Munir Fuady, *Perseroan Terbatas (Paradigma Baru)*, (Bandung: Citra Aditya Bakti, 2017), 82.

[24] Siti Hapsah Isfardiyana, "Tanggung Jawab Direksi Perseoran Terbatas dalam Palnggaran *Fiduciary Duty*", *PADJADJARAN Jurnal Ilmu Hukum 2*, no. 1 (2015): 170.

substantial losses to the bank,[25] the issue extends beyond ordinary managerial negligence and may constitute a breach of fiduciary duty capable of giving rise to civil liability under Article 1365 and Article 1366 of the Indonesian Civil Code.

The President Director occupies the highest executive position within the corporate structure and therefore bears primary responsibility for managing the company's affairs and safeguarding its interests. Under Indonesian company law, the relationship between the Board of Directors and the company is founded upon the doctrine of fiduciary duty, which requires every director to exercise managerial authority in good faith, with due care, and solely for the benefit of the company. This obligation is expressly reflected in Article 97 paragraph (2) of the Company Law and has become one of the fundamental principles governing directors' accountability in Indonesian corporate law.[26]

Fiduciary duty extends beyond the obligation to avoid intentional misconduct. It also requires directors to establish effective supervision, ensure compliance with applicable laws and internal policies, and implement prudent decision-making throughout the company's operations. In the banking sector, these obligations are considerably more stringent because directors are entrusted with managing public funds and maintaining financial system stability.[27] Consequently, the President Director is expected not only to formulate corporate policies but also to ensure that internal control mechanisms function effectively to prevent operational irregularities, including fictitious loans.

Accordingly, a director's failure to prevent or adequately supervise fictitious loan practices may constitute a breach of fiduciary duty where such omission demonstrates negligence in performing statutory and managerial obligations. Civil liability therefore arises not merely because the company suffers financial losses, but because the President Director has failed to exercise the standard of care, loyalty, and

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[25] Yolanda Simbolon, "The Principle of Fiduciary Duty in Single-Member Limited Liability Company", *Perspektif Hukum 24*, no. 1 (2024): 74.

[26] Ridwan Khairandy, *Hukum Perseroan Terbatas*. (Jakarta: FH UII Press, 2014), 258.

[27] Faisal Fajar Nugraha and Inda Rahadiyan, "The Responsibility of the President Director for Breaches of Fiduciary Duty (Case Study of PT Multidaya Teknologi Nusantara)", *Journal of Private and Commercial Law 2* (2025): 164

responsibility required by both company law and banking regulations.[28] This distinction is essential because Indonesian civil law imposes liability on directors only where corporate losses can be legally attributed to the breach of duties attached to their office.

The legal principles discussed above must be examined in light of the factual circumstances surrounding the fictitious loans case at PT BPR Bank Jepara Artha. According to the findings of the Financial Services Authority (OJK), the bank experienced losses amounting to approximately Rp272 billion arising from 38 fictitious loan accounts during the 2022–2023 period. These irregularities eventually led to the deterioration of the bank's financial condition, its designation as an unhealthy bank, and ultimately the revocation of its business licence. These facts indicate not merely operational failures but also serious deficiencies in corporate governance and internal supervision.[29]

As the President Director, JH occupied the highest managerial position responsible for directing, supervising, and ensuring that all lending activities complied with prudential banking principles and internal credit procedures. The authority attached to this position was not merely administrative but carried legal obligations arising from fiduciary duty, statutory provisions, and banking governance regulations. Consequently, the President Director was under a legal duty to establish effective internal control systems capable of preventing fictitious loans, verifying the legality of credit applications, and ensuring that lending decisions complied with applicable regulations.[30]

The occurrence of 38 fictitious loan accounts demonstrates that the internal control system failed to function effectively. Although fictitious loans may involve other employees or third parties, such involvement does not automatically eliminate the legal responsibility of the President Director. Indonesian company law does not impose liability merely because losses occur; rather, liability arises where the

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[28] M. Yahya Harahap, *Hukum Perseroan Terbatas*. (Jakarta: Sinar Grafika, 2016).
[29] Tb. Irman S, *Anatomi Kejahatan Perbankan*. (Bandung: MSQ Publishing, 2006), 78.
[30] Hikmal Y. Argiansyah, Silvia Rosiana, and Azkia N. Aulia, "Pertanggungjawaban Tindak Pidana Korupsi Kredit Fiktif pada Bank Perkreditan Rakyat Karya Remaja Indramayu", *Quantum Juris: Jurnal Hukum Modern 6* (2024).

director's failure to perform supervisory and managerial obligations substantially contributes to those losses. Therefore, the legal issue is whether JH exercised the degree of care, diligence, and supervision required by law throughout the lending process.

From the perspective of fiduciary duty, the available facts suggest that the President Director failed to exercise the duty of care required by both company law and banking regulations. The failure to detect systematic irregularities involving numerous fictitious loan accounts over an extended period reflects more than ordinary managerial error. Instead, it indicates a serious deficiency in supervision and risk management that may constitute a breach of fiduciary duty. This finding provides the legal foundation for assessing whether the President Director's conduct also satisfies the elements of unlawful acts under Articles 1365 and 1366 of the Indonesian Civil Code.[31]

The first requirement for establishing civil liability under Article 1365 of the Indonesian Civil Code is the existence of an act attributable to the defendant. Indonesian civil law recognises that an unlawful act may consist not only of positive conduct but also of omissions where a person fails to perform a legal duty imposed by law or by virtue of his or her position. Therefore, the legal assessment in this case does not focus solely on whether the President Director actively participated in the fictitious loan scheme, but also on whether he failed to perform the supervisory and managerial obligations attached to his office.

The factual circumstances demonstrate that PT BPR Bank Jepara Artha disbursed 38 fictitious loan accounts during the 2022–2023 period, causing losses of approximately Rp272 billion. These loans were approved through irregular procedures involving fictitious identities and improper credit documentation.[32] Such circumstances indicate that the lending process was not adequately supervised and that internal control

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[31] Febriadi and Dyah Ersita, "Tanggung Jawab Direksi Perseroan Terbatas atas Perbuatan Melawan Hukum di Indonesia ", *Rio Law Journal 5* (2024): 823.

[32] See Article 20 of the Financial Services Authority of the Republic of Indonesia Regulation Number 9 of 2024 concerning the Implementation of the Governance of People's Economic Banks and Sharia People's Economic Banks.

mechanisms failed to operate effectively. As the President Director, JH was legally responsible for ensuring that credit approval procedures, risk management, and internal supervision functioned in accordance with prudential banking principles.[33]

Accordingly, the unlawful act in this case is not limited to the existence of fictitious loans themselves, but also encompasses the President Director's omission in exercising effective supervision over banking operations. Such omission constitutes a legally relevant act because Indonesian civil law recognises negligence in performing statutory duties as capable of giving rise to civil liability where it results in losses to another party.[34]

Having established that the President Director owed fiduciary and statutory duties toward the company, the next issue is whether the conduct attributed to JH fulfils the legal requirements of an unlawful act under Articles 1365 and 1366 of the Indonesian Civil Code. This assessment is essential because civil liability does not arise solely from the occurrence of corporate losses but from the fulfilment of all legal elements prescribed by law.

Article 1365 of the Indonesian Civil Code first requires the existence of an act that can be legally attributed to the alleged wrongdoer. Indonesian civil law recognises that such an act is not confined to affirmative conduct but also encompasses omissions where a person fails to perform obligations imposed by law or by virtue of his office. Consequently, the legal issue in this case is not limited to determining whether the President Director personally created fictitious loan documents or directly approved every irregular credit facility. Rather, the central question is whether he failed to perform the supervisory and managerial duties that legally accompanied his position as President Director.[35]

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[33] See Financial Services Authority Regulation Number 12 of 2024 concerning the Implementation of Anti-Fraud Strategies for Financial Institutions.

[34] Gisni Halipah, et al., Tinjauan Yuridis Konsep Perbuatan Melawan Hukum dalam Konteks Hukum Perdata, *Jurnal Serambi Hukum 16*, no. 1 (2023): 140.

[35] See Article 29 of the banking section of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector.

The factual record demonstrates that PT BPR Bank Jepara Artha disbursed thirty-eight fictitious loan accounts during the 2022–2023 period, resulting in losses of approximately Rp272 billion and ultimately leading to regulatory intervention by the Financial Services Authority. These findings indicate that the bank's internal control mechanisms failed over a sustained period rather than through an isolated operational mistake. Considering that supervision of lending activities, implementation of internal controls, and compliance with prudential banking standards formed part of the President Director's statutory responsibilities, the prolonged occurrence of fictitious loans constitutes a legally relevant omission attributable to the President Director. [36]

Therefore, the act examined in this research is not the criminal conduct committed by individuals who falsified documents or identities, but the omission of the President Director in carrying out his supervisory obligations.[37] From the perspective of civil liability, this omission constitutes the relevant legal act for the purpose of Article 1365 because Indonesian tort law recognises negligence in the performance of statutory duties as an actionable form of unlawful conduct.[38]

Having established the existence of a legally relevant omission, the next issue is whether that omission can be characterised as an unlawful act. Indonesian civil law adopts a broad interpretation of unlawfulness, encompassing not only conduct that violates statutory provisions but also actions that infringe legal duties, violate the rights of others, contradict principles of good governance, or breach standards of propriety recognised within society.[39] Accordingly, the assessment of unlawfulness in this case cannot be confined to determining whether a specific statutory provision was formally violated. It must also consider whether the President Director failed to fulfil

[36] See Article 20 of the Financial Services Authority of the Republic of Indonesia Regulation Number 9 of 2024 concerning the Implementation of the Governance of People's Economic Banks and Sharia People's Economic Banks.

[37] Elena P. Lee, Gisella H. Xaviera, etc, " Hubungan Antara Pelanggaran Fiduciary Duty dan Personal Liability Direksi dalam Kepailitan Perseroan Terbatas", *JIM: Jurnal Ilmu Multidisiplin 4*, no. 5, (2025): 3810.

[38] Subekti and R. Tjitrosudibo, *Kitab Undang-Undang Hukum Perdata*, Forty-Third ed. (Jakarta: Pustaka, 2017).

[39] Abiyyu P. Syakir, Sodikin, "Penerapan Prinsip Fiduciary Duty untuk Mewujudkan Good Corporate Governance dalam Perseroan Terbatas", *Journal of Contemporary Law Studies 2*, no. 2 (2025): 174.

the legal obligations attached to his office under company law and banking regulations.[40]

Under Article 97 paragraph (2) of the Company Law, every director is required to perform his duties in good faith and with full responsibility for the interests of the company. This fiduciary obligation is reinforced within the banking sector by prudential banking regulations requiring directors to maintain effective governance, internal control systems, and risk management mechanisms. Consequently, compliance with fiduciary duty is not merely an ethical expectation but a statutory obligation forming part of the legal standard governing directors' conduct.[41]

The factual findings indicate that PT BPR Bank Jepara Artha experienced prolonged irregularities in credit disbursement involving fictitious loan accounts, deficiencies in verification procedures, and weaknesses in internal supervision. Such circumstances demonstrate that the internal governance system failed to operate consistently with the prudential standards required of banking institutions. From this perspective, the President Director's omission extends beyond ordinary managerial shortcomings and may be characterised as a breach of statutory duties governing corporate management and banking supervision.[42]

Therefore, the unlawfulness of the President Director's conduct derives not solely from the existence of fictitious loans themselves, but from the failure to fulfil legally imposed duties concerning prudential management, fiduciary responsibility, and corporate governance.[43] These breaches collectively satisfy the requirement that the relevant conduct be contrary to law within the meaning of Article 1365 of the Indonesian Civil Code.

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[40] Devy Pusposari and Sintya Purnama Dewi, "Profitabilitas, Likuiditas, Senioritas Direktur Utama dan Tax Avoidance Dengan Ukuran Perusahaan Sebagai Variabel Moderasi", *Jurnal KRISNA: Kumpulan Riset Akuntansi 16,* no. 1 (2024): 3.

[41] See Article 97 paragraphs (1) and (2) of Law Number 40 of 2007 concerning Limited Liability Companies.

[42] See Article 29 of the banking section of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector.

[43] Aufa Wira Prakarsa and Albertus Sentot Sudarwanto, "Doktrin Fiduciary Duty: Peranannya sebagai Pedoman Pengurusan Perseroan Terbatas oleh Direksi", *Al-Zayn: Jurnal Ilmu Sosial & Hukum 3*, no. 2 (2025): 245.

Derivative Lawsuits as a Legal Remedy for Recovering Losses Suffered by PT BPR Bank Jepara Artha

The preceding discussion establishes that the President Director may incur civil liability for breaching fiduciary duties and committing unlawful acts that caused substantial losses to PT BPR Bank Jepara Artha. However, establishing civil liability alone does not automatically restore the company's financial losses. The remaining legal issue concerns the mechanism through which those losses may be recovered, particularly after the revocation of the bank's banking licence. This issue becomes increasingly significant because the losses suffered belong to the company rather than to individual shareholders. Accordingly, an appropriate legal mechanism is required to enable the enforcement of directors' civil liability for the benefit of the company.

Under Indonesian company law, losses resulting from directors' unlawful acts primarily constitute losses suffered by the company as a separate legal entity rather than losses directly suffered by individual shareholders. Consequently, although shareholders may experience indirect economic consequences arising from the decline in the company's value, the legal right to seek compensation principally belongs to the company itself. This principle reflects the doctrine of separate legal personality, under which the company possesses its own rights and obligations independent of its shareholders. However, practical difficulties arise where the company is unable to effectively pursue legal action against the director responsible for the losses. In such circumstances, corporate law recognises an exceptional mechanism allowing shareholders to initiate legal proceedings on behalf of the company in order to protect corporate interests and recover losses that would otherwise remain uncompensated.[44]

A derivative lawsuit is a procedural mechanism that enables shareholders to bring legal action on behalf of the company where those responsible for managing the company fail or refuse to protect its interests. Unlike ordinary civil litigation, a derivative lawsuit does not seek compensation for losses personally suffered by

[44] Ridwan Khairandy, *Hukum Perseroan Terbatas*, 305.

shareholders but aims to recover losses sustained by the company itself.[45] Accordingly, the shareholder acts not for personal benefit but as a representative safeguarding the company's legal interests. This mechanism reflects the fundamental principles of corporate governance by ensuring that directors remain accountable for breaches of fiduciary duty even where the company is unable to effectively enforce its own rights.[46]

The relevance of a derivative lawsuit in this case is closely connected with the legal position of the Jepara Regency Government as the sole shareholder of PT BPR Bank Jepara Artha. Although the financial losses were directly suffered by the company as a separate legal entity, the Jepara Regency Government possesses a legitimate interest in ensuring that those losses are recovered because it holds all of the company's issued shares. In pursuing legal action, the Jepara Regency Government does not act in its capacity as a public authority but rather exercises its rights as the sole shareholder seeking to protect the company's interests.[47] Consequently, the derivative lawsuit serves as an appropriate procedural mechanism through which the shareholder may enforce the company's rights against a former President Director whose alleged breach of fiduciary duty caused substantial corporate losses.

The availability of a derivative lawsuit should not be understood merely as a procedural right of shareholders but as a corporate governance mechanism designed to prevent directors from escaping civil accountability where the company itself is unable to effectively enforce its rights. In the present case, the revocation of the bank's licence does not extinguish the company's legal interest in recovering losses allegedly caused by breaches of fiduciary duty. Instead, it reinforces the necessity of shareholder

[45] Munir Fuady, *Doktrin-doktrin Modern dalam Corporate Law dan Eksistensinya dalam Hukum Indonesia*, Second ed. (Bandung: Citra Aditya Bakti, 2010), 70.

[46] Taqiyuddin Kadir, "Gugatan Derivatif: Perlindungan Hukum Pemegang Saham Minoritas", *Jurnal Review Pendidikan dan Pengajaran 7*, no.1 (2024): 2886.

[47] See Article 50 paragraph (2) of Government Regulation Number 54 of 2017 concerning Village-Owned Enterprises.

intervention to ensure that the company's remaining legal rights are effectively protected.[48]

The application of a derivative lawsuit to the PT BPR Bank Jepara Artha case is justified by the nature of the losses and the alleged breach of fiduciary duty committed by the former President Director. As discussed in the previous section, the fictitious loan scheme resulted in losses amounting to approximately Rp272 billion through the disbursement of 38 fictitious loan accounts during 2022–2023. These losses were suffered directly by PT BPR Bank Jepara Artha as a corporate entity and ultimately contributed to the deterioration of its financial condition, the placement of the bank under special supervision, and the revocation of its banking licence by the Financial Services Authority (OJK). Since the losses constitute corporate losses rather than personal losses of shareholders, any legal action seeking compensation should principally be directed toward restoring the company's assets. Under these circumstances, a derivative lawsuit provides an appropriate procedural mechanism through which the Jepara Regency Government, acting as the sole shareholder, may seek to enforce the company's rights against the former President Director for the alleged breach of fiduciary duty and unlawful acts that caused the company's losses.[49]

The previous civil lawsuit filed against the former President Director was declared inadmissible by the Jepara District Court because of procedural deficiencies rather than a substantive assessment of liability.[50] Consequently, the decision does not negate the possibility of holding the former President Director civilly liable for losses suffered by the company. Instead, the decision illustrates the importance of selecting an appropriate procedural mechanism when pursuing corporate claims. From this perspective, a derivative lawsuit offers a more coherent legal framework because it is

[48] Imam Hakim Masyhuri, Wasiatun, and Sumriyah, "Efektifitas Perlindungan Hukum Pemegang Saham Dibawah 1/10 dalam Mekanisme Pelaksanaan Gugatan Derivative Action", *Deposisi: Jurnal Publikasi Ilmu Hukum 1*, no. 3 (2023): 76.

[49] Willa Wahyuni, "Tuntutan Ganti Rugi dalam Perbuatan Melawan Hukum, June 22, 2022, Retrieved June 3, 2025, 01:16 WIB, https://www.hukumonline.com/berita/a/tuntutan-ganti-rugi-dalam-perbuatan-melawan-hukum-lt62b2c95064cfa/.

[50] See Jepara District Court Decision Number 30/Pdt.G/2024/PN Jpa.

specifically designed to enable shareholders to enforce corporate rights where corporate management has failed or is unable to do so effectively. [51]

The recognition of derivative lawsuits as an appropriate legal remedy in cases involving fictitious loans strengthens the enforcement of fiduciary duties within Indonesian banking corporations. It reinforces the principle that directors cannot evade civil accountability merely because the company experiences institutional failure or the revocation of its banking licence. Furthermore, this approach enhances corporate governance by providing shareholders with an effective procedural mechanism to protect corporate assets and recover losses caused by directors' unlawful conduct. Accordingly, this study contributes to the development of Indonesian corporate and banking law by integrating fiduciary duty, unlawful acts, prudential banking principles, and derivative lawsuits into a coherent legal framework for directors' civil liability and corporate loss recovery.

The function of a derivative lawsuit extends beyond recovering financial losses. Within the banking sector, it also serves as a governance mechanism that reinforces directors' compliance with prudential banking principles and fiduciary obligations. Allowing shareholders to pursue corporate claims against directors strengthens accountability and discourages managerial misconduct that may threaten the stability of banking institutions. In this respect, derivative lawsuits complement prudential banking regulation by ensuring that directors who fail to discharge their governance responsibilities remain subject to effective civil enforcement. Accordingly, derivative lawsuits contribute not only to corporate loss recovery but also to the broader objective of promoting sound banking governance.

CONCLUSION

This study concludes that the civil liability of the President Director for fictitious loans causing losses to PT BPR Bank Jepara Artha arises from breaches of fiduciary duty and unlawful acts under Articles 1365 and 1366 of the Indonesian Civil Code, as well

[51] See Article 138 paragraph (1) letter b of Law Number 40 of 2007 concerning Limited Liability Companies.

as violations of prudential banking principles and banking governance obligations. The findings demonstrate that the President Director's negligence in supervising credit disbursement and ensuring compliance with applicable banking regulations fulfilled the legal elements of unlawful acts, thereby giving rise to personal civil liability for the losses suffered by the company.[52] Furthermore, this study concludes that a derivative lawsuit constitutes an appropriate legal remedy for enforcing such liability because it enables the sole shareholder, acting on behalf of the company, to pursue the recovery of corporate losses where the company's interests require effective legal protection.

This study contributes to the development of Indonesian corporate and banking law by proposing an integrated legal framework that combines fiduciary duty, unlawful acts, prudential banking principles, banking governance, and derivative lawsuits in assessing the civil liability of directors for fictitious loans causing corporate losses. This integrated approach fills an important gap in previous studies, which have generally examined these legal concepts separately. Practically, the findings underscore the importance of strengthening the implementation of fiduciary duties, internal banking governance, and prudential supervision while encouraging the effective use of derivative lawsuits to safeguard corporate assets and enhance directors' accountability. Accordingly, this framework is expected to provide guidance for shareholders, banking institutions, regulators, and courts in resolving future disputes concerning directors' civil liability arising from fictitious loan practices.

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[52] See Article 20 of the Financial Services Authority of the Republic of Indonesia Regulation Number 9 of 2024 concerning the Implementation of the Governance of People's Economic Banks and Sharia People's Economic Banks.

COMPETING INTEREST

There is no conflict of interest in the publication of this article.

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