

Analisa prinsip acquit et de charge direksi atas tanggung jawab perdata dan pidana dari perspektif undang-undang nomor 40 tahun 2007 tentang perseroan terbatas (Studi kasus 3g PT Indosat Mega Media = Board of directors civil and criminal liability due to acquit et de charge principle analysis by perspective of act no 40 of 2007 concerning limited liability company (Case study 3g PT Indosat Mega Media)

Setiawan Dwi Atmojo, author

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Abstrak

Undang-Undang No. 40 Tahun 2007 tentang Perseroan Terbatas menetapkan 3 (tiga) organ perseroan yaitu Rapat Umum Pemegang Saham, Direksi, dan Dewan Komisaris. Direksi berfungsi pada pokoknya untuk bertanggung jawab penuh atas pengurusan perseroan untuk kepentingan perseroan sedangkan Dewan Komisaris berfungsi melakukan pengawasan umum dan/atau khusus sesuai dengan Anggaran Dasar serta memberi nasihat kepada Direksi. Pada setiap masa akhir jabatannya, Direksi mempertanggung jawabkan pengurusan perseroan dalam Rapat Umum Pemegang Saham, yang memiliki kewenangan yang tidak diberikan kepada Direksi atau Dewan Komisaris dalam batas yang ditentukan Undang-Undang dan/atau Anggaran Dasar perseroan. Rapat Umum Pemegang Saham kemudian memberikan pelunasan dan pembebasan tanggung jawab (acquit et de charge) kepada Direksi jika tindakan kepengurusan perseroan telah tercermin dalam laporan keuangan.

Pada tahun 2006, PT Indosat Mega Media sebagai perseroan yang menyediakan jasa internet (Internet Service Provider) menyelenggarakan jasanya melalui jaringan bergerak seluler milik PT Indosat Tbk melalui perjanjian kerjasama broadband. Kerjasama ini telah dipertanggung jawabkan dalam Rapat Umum Pemegang Saham pada tahun 2011 dan telah mendapatkan acquit et de charge kepada Direksi yang diwakili oleh Indar Atmanto selaku Direktur Utama. Kejaksaan Agung sebagai aparat penegak hukum mendakwa Indar Atmanto telah menggunakan frekuensi 2.1 GHz (3G) untuk menyelenggarakan jasa internetnya sehingga mengakibatkan kerugian negara sedangkan telah diketahui Direksi telah mendapatkan acquit et de charge dari Rapat Umum Pemegang Saham. Permasalahan hukum timbul atas pertanyaan sejauh mana acquit et de charge melindungi Direksi secara perdata dan pidana.

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Act No. 40 of 2007 concerning Limited Liability Company establishes three (3) organs of the company i.e. General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners. Board of Directors take full responsibility for the management of the company for the benefit of the company, while the Board of Commissioners for performing general supervision and/or in accordance with the Articles of Association as well as giving advice to the Board of Directors. At the end of their period, the Board of Directors accountable to the shareholder or management in General Meeting of Shareholders, which has special authority which is not granted to the Board of Directors or Board of Commissioners within construed to the Act and/or the Articles of Association of the company. Afterward, General Meeting of Shareholders grant release and discharge of responsibility (acquit et de charge) to the company's Board of Directors if the duty has been reflected in the financial statements.

In 2006, PT Indosat Mega Media as an Internet Service Provider company, provide services through mobile

cellular network owned by PT Indosat Tbk through broadband cooperation agreements. This cooperation has been accountable to the General Meeting of Shareholders in 2011 and the Board of Directors, represented by Indar Atmanto as CEO, has gained acquit et de charge. Attorney General as law enforcement officers indicted Indar Atmanto has been using 2.1 GHz frequency (3G) to provide internet services, therefore, resulting state loss while it is known that the Board of Directors has been obtained acquit et de charge from the General Meeting of Shareholders. Legal problem arisen is how acquit et de charge could protect the Board of Directors from the liability of civil lawsuit and the criminal indictment.