International Journal of Educational Review, Law & Social Sciences (IJERLAS)

International Journal of Educational Review, Law And Social Sciences (IJERLAS Journal) | ISSN (e): 2808-487X
Volumes 5 No. 4 (2025)

FIDUCIARY OBLIGATIONS OF THE BOARD OF DIRECTORS IN MANAGING COMPANY SHARES: A CORPORATE LAW AND CAPITAL MARKET PERSPECTIVE

Lenny Mutiara Ambarita
Universitas Simalungun
Corresponding Email : ambaritamlenny@gmail.com

Received : 21 May 2025	Published : 30 July 2025
Revised : 30 May 2025	DOI : https://doi.org/10.54443/ijerlas.v5i4.4024
Accepted : 17 June 2025	Publish Link : https://radjapublika.com/index.php/IJERLAS

Abstract

Fiduciary duty is a fundamental principle in modern corporate law that requires directors to act in good faith, with due care, and prioritize the interests of the company over personal interests. In the Indonesian context, this obligation has been regulated normatively through Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 8 of 1995 concerning Capital Markets. However, the implementation of fiduciary duty still faces various obstacles, both in terms of legal norms and judicial and capital market practices. This study uses a normative legal method with a statutory, conceptual, and comparative approach. The data used are primary legal materials such as laws, Financial Services Authority regulations, and court decisions, as well as secondary legal materials in the form of literature, scientific journals, and previous research results. The analysis was conducted qualitatively normatively through legal interpretation and construction. The results of the study indicate that although fiduciary duty has a legal basis, its implementation remains weak. From a corporate law perspective, the standards for implementing the duty of care and duty of loyalty remain unclear, making it difficult for minority shareholders to hold directors accountable. In judicial practice, the application of fiduciary duty is often inconsistent due to varying standards of proof. Meanwhile, from a capital market perspective, violations such as insider trading and conflicts of interest involving nominee directors remain rampant, which cannot be fully controlled by the Financial Services Authority (OJK)'s oversight mechanisms.

Keywords: ***Fiduciary Duty, Board of Directors, Limited Liability Company, Capital Market, Good Corporate Governance***

INTRODUCTION

The board of directors is a key component of a limited liability company, playing a central role in company management, including the management of the company's shares. Law No. 40 of 2007 concerning Limited Liability Companies (UUPT) stipulates that directors must carry out their duties in good faith, with full responsibility, and with due care. This principle is referred to in legal tradition as fiduciary duty. This obligation requires directors to prioritize the interests of the company over personal or group interests, and to avoid potential conflicts of interest that could harm shareholders or the public. According to Ridwan Khairandy (2013), the fiduciary duty of directors in Indonesia originates from Anglo-Saxon corporate law doctrine, which was later adopted into the national legal system through the Company Law. He emphasized that fiduciary duty has both moral and legal dimensions, namely the obligation of directors to act as honest managers (honest man rule) and competent managers (reasonable man rule). In the context of corporate law, fiduciary duty encompasses two main dimensions: the duty of care and the duty of loyalty. Hans Kelsen (1961) in his pure legal theory emphasized that legal norms function as rational binding, so that any violation of fiduciary duty by directors can be viewed as a violation of legal norms that require sanctions. In line with this, Munir Fuady (2014) stated that directors are obliged to place the interests of the company above individual interests, and any abuse of authority in share management can be qualified as a form of fiduciary duty violation. Meanwhile, from a capital market legal perspective, the role of directors is increasingly complex as public companies interact with markets that demand transparency, information disclosure, and investor protection. Branson (2001), in his work on Corporate Governance, asserts that fiduciary duty is a key instrument for ensuring investor trust, as capital markets can only function properly if directors do not misuse material non-public information or manipulate shares. Cases of fiduciary duty violations in the capital markets sector, such as insider trading or the use of material non-public information for personal gain, demonstrate the crucial role of implementing fiduciary duties in maintaining market integrity. According to Coffee (1981), weak enforcement of fiduciary duties will undermine market confidence and hinder the capital market's function as a means of efficient capital allocation. Therefore, the role of the Financial Services Authority (OJK) as a regulator is crucial for the effectiveness of fiduciary duty enforcement in the capital markets. Previous research has identified issues that reinforce the urgency of this research. Khairandy (2013) highlighted that the adoption of fiduciary duty in Indonesia is still partial, making it prone to inconsistent implementation. Rahardjo (2019) found that the application of good corporate governance principles in Indonesia remains a formality, resulting in fiduciary obligations often being ignored in business practices. Hidayat (2020) identified cases of directors abusing their authority in stock management, which directly impacted investor losses. Furthermore, Siregar (2021) assessed that the Financial Services Authority (OJK)'s oversight mechanism for enforcing fiduciary duty remains weak compared to international standards.

Furthermore, Yulianti's (2022) research highlights the problematic nature of nominee directors in public companies, which often lead to conflicts of interest, weakening the implementation of fiduciary duty. Fuady (2014) emphasizes that any form of abuse of authority in stock management constitutes a violation of fiduciary obligations, but the sanctions imposed are still insufficient to create a deterrent effect. Globally, Branson (2001) emphasizes the importance of fiduciary duty as an instrument of investor protection, while Coffee (1981) highlights the close link between weak enforcement of fiduciary duty and declining confidence in the capital market. Based on previous research, there is a gap between legal norms and actual practice, particularly regarding the management of company shares by directors. Therefore, this study aims to analyze the fiduciary obligations of directors from the perspective of corporate law and capital markets, and to provide recommendations to strengthen investor protection and encourage better corporate governance. Therefore, the title of this study is "Fiduciary Obligations of Directors in Managing Company Shares: A Corporate Law and Capital Market Perspective."

LITERATURE REVIEW

1. The Concept of Fiduciary Duty in Corporate Law

Fiduciary duty is a fundamental principle in modern corporate law that governs the relationship between corporate organs and the interests of the company. This principle requires that directors always act in good faith, with due care, and with a focus on the company's interests, rather than their own. In the Anglo-Saxon legal system, fiduciary duty is viewed as an inherent legal responsibility of every company director. This concept was later adopted into the Indonesian legal system through Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). According to Khairandy (2013), fiduciary duty in Indonesia is relatively new and largely adopted from common law practices. He emphasized that although the Indonesian legal system has a civil law tradition, the fiduciary duty doctrine has been internalized through the provisions of Articles 92–97 of the Company Law, which regulate the obligations and responsibilities of directors. It contains two important elements: the duty of care and the duty of loyalty.

2. Legal Theory and Normative Dimensions of Fiduciary Duty

Within a theoretical framework, Hans Kelsen (1961) in his General Theory of Law and State stated that legal norms are rationally binding. Therefore, a breach of fiduciary duty by directors can be viewed as a violation of a legal norm that requires sanctions. Kelsen's perspective demonstrates that fiduciary duty is not only moral but also a legal norm that must be upheld. This normative approach aligns with the business judgment rule practices stipulated in the Limited Liability Company Law. Article 97 paragraph (5) of the Limited Liability Company Law provides protection for directors from lawsuits if the business decisions taken are based on good faith, prudence, and no conflict of interest. However, if negligence, bad faith, or a conflict of interest is proven, then directors can be held personally liable.

3. Fiduciary Duty from a Capital Market Perspective

Branson (2001) emphasized that fiduciary duty is a key instrument in maintaining investor confidence in the capital market. Without board integrity, the market will not function efficiently. Furthermore, Coffee (1981) demonstrated that weak enforcement of fiduciary duty can undermine market confidence and hinder the capital market's function as a means of capital allocation. This demonstrates the importance of implementing fiduciary duty not only for the company's internal interests but also for the stability of the capital market as a whole.

METHOD

This research employs a normative legal research approach, or doctrinal legal research, emphasizing literature review and positive legal analysis. The focus of the research is directed at interpreting the legal norms contained in Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 8 of 1995 concerning Capital Markets, particularly those relating to the fiduciary obligations of directors in managing company shares. Within this framework, the research not only examines the text of the law but also relates it to the doctrine and theory of fiduciary duty that has developed in modern corporate law literature. The approaches used in this research include a statutory approach, a conceptual approach, and a comparative approach. The statutory approach is carried out by examining the provisions of the Company Law and the Capital Market Law, as well as implementing regulations issued by the Financial Services Authority regarding the responsibilities of directors. The conceptual approach is used to explore the definition and scope of fiduciary duty, including the dimensions of duty of care and duty of loyalty, which are widely discussed by legal experts. Meanwhile, the comparative approach is carried out by examining the application of fiduciary duty in common law countries such as the United Kingdom and the United States, thus providing a broader perspective and enriching the analysis of the legal conditions in Indonesia.

The legal sources used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations, relevant court decisions, and international legal instruments related to corporate governance. Secondary legal materials were obtained from law books, journal articles, previous research, and expert opinions on fiduciary duty. Tertiary legal materials include legal dictionaries, encyclopedias, and legal indexes, which serve to clarify legal terminology. The legal material collection technique was conducted through library research. All collected legal materials were then analyzed qualitatively and normatively, namely by describing, interpreting, and constructing legal provisions to answer the research problem. The analysis was carried out through the stages of inventorying and systematizing legal materials, interpreting relevant legal norms, and developing logical and consistent legal arguments. To maintain the validity and legitimacy of the research results, source triangulation was conducted by comparing statutory provisions, expert doctrine, and judicial practice. Thus, the research results are expected to provide an objective, argumentative, and academically accountable analysis.

RESULTS AND DISCUSSION

The research results show that the fiduciary obligations of directors in managing company shares have been regulated normatively in Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 8 of 1995 concerning Capital Markets, but its implementation still faces a number of obstacles. From a corporate law perspective, directors are indeed required to act in good faith, with full responsibility, and prioritize the interests of the company. However, in practice, cases of directors who abuse their authority, whether in the form of conflicts of interest, negligence in strategic decision-making, or abuse of position in managing company shares, are still frequently found. From a capital market law perspective, directors' fiduciary obligations are increasingly complex because they directly relate to investor confidence and market stability. Research has found that practices such as insider trading and manipulation of material non-public information persist, demonstrating weak implementation of the fiduciary duty principle. This is exacerbated by limited regulatory oversight, resulting in sanctions that have not yet had a significant deterrent effect. Therefore, despite the availability of legal instruments, effective law enforcement remains low. Other findings indicate overlapping regulations between the Limited Liability Company Law (UUPT) and the Capital Markets Law, resulting in unclear standards for measuring breaches of fiduciary duty. This situation creates room for differing interpretations, both in business practice and in judicial decisions. Furthermore, the phenomenon of nominee directors in public companies further demonstrates the potential for conflicts of interest that are difficult to control without a robust oversight mechanism.

1. The Position of Fiduciary Duty in Indonesian Corporate Law

Fiduciary duty is one of the most important principles in modern corporate law, as it places the board of directors as the organ with full responsibility for the management of the company. In the context of Indonesian law, this obligation is accommodated through Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), specifically Article 97, which states that directors must carry out their duties in good faith, with full responsibility, and with prudence. This provision implies that directors are responsible not only to the company as a legal entity, but also to shareholders and even interested third parties. Although the fiduciary duty has been normatively adopted in positive law, research shows that its provisions still leave a number of weaknesses. According to Ridwan Khairandy (2013), the concept of fiduciary duty in the Company Law is still partially adopted from the common law system, resulting in unclear standards for assessing the extent to which directors have fulfilled their fiduciary obligations. In the common law tradition, fiduciary duty is usually divided into two main dimensions: the duty of care and the duty of loyalty. The duty of care requires directors to be careful and professional in making business decisions, while the duty of loyalty requires directors to prioritize the interests of the company above personal or group interests. However, in the context of Indonesian law, these two concepts have not been explicitly defined in the Company Law, thus creating considerable room for interpretation among legal practitioners and academics. This lack of a clear definition makes it difficult to enforce directors' accountability in practice. Cesaria (2025) states that fiduciary duty in Indonesian law is more accurately understood as statutory good faith due to its normative nature and limited statutory text, in contrast to the Anglo-Saxon system, where fiduciary duty is a legal doctrine that develops jurisprudentially. As a result, although articles of the Company Law regulate the obligations of directors, enforcement of the principles of duty of care and duty of loyalty in court is often inconsistent due to the lack of objective parameters to serve as benchmarks.

This situation is increasingly problematic for minority shareholders. In many cases, they are the most vulnerable to losses from board decisions that violate fiduciary duty principles. However, the opportunity to sue directors for breach of fiduciary duty is relatively limited due to complicated legal mechanisms, while the applicable evidentiary standards remain unclear. Fuady (2014) even asserts that while theoretically any abuse of authority by directors in managing shares could be considered a breach of fiduciary duty, in Indonesian legal practice, such lawsuits are often rejected or do not result in proportionate sanctions. Therefore, although fiduciary duty has a legal basis in the Company Law, its position within the Indonesian corporate legal system remains weak from an operational perspective. This weakness arises from a lack of clear norms, the absence of objective standards for assessing the actions of directors, and limited legal protection for minority shareholders. This is in line with Branson's (2001) view, which asserts that fiduciary duty should be the foundation of corporate governance, because without legal certainty regarding fiduciary obligations, it is difficult for a company to create transparency, accountability, and effective investor protection.

2. Inconsistency in Application in Judicial Practice

Fiduciary duty is recognized in the Indonesian corporate legal system and regulated normatively through the Company Law. However, its implementation in judicial practice still faces serious challenges. One major issue is the inconsistency of court decisions in interpreting and enforcing directors' fiduciary obligations. In legal theory, fiduciary duty should serve as a standard guideline for directors' behavior in making business decisions, so that any violation can be categorized as an unlawful act. However, in practice, Indonesian courts often lack clear parameters for determining whether a director's actions constitute a breach of fiduciary duty or simply a normal business error. A concrete example can be seen in the problematic investment case involving the directors of PT Asabri. The directors were found to have failed to apply the principle of prudence, resulting in significant losses. In its ruling, the court affirmed that the directors could be held personally liable for neglecting their obligations to manage the company's assets. This case demonstrates that courts can apply the concept of fiduciary duty to prosecute negligent directors. However, in other cases involving company losses due to directors' business decisions, courts have tended to provide protection through the business judgment rule principle and exempt directors from liability. This inconsistency creates legal uncertainty for shareholders and investors.

According to Fuady (2014), every abuse of authority by directors in managing shares should be classified as a breach of fiduciary duty, without exception. However, in reality, many decisions still interpret directors' obligations narrowly, only implicating them in cases clearly involving criminal or fraudulent elements. This demonstrates that Indonesian courts have not been entirely consistent in positioning fiduciary duty as a strictly binding legal norm. Rahardjo's (2019) research also found that the weak implementation of good corporate governance principles in Indonesia contributes to inconsistent decisions regarding fiduciary duty. Courts tend to have difficulty proving violations of the duty of care and duty of loyalty principles because there is no standard reference. However, in common law countries like the United States, jurisprudence has long clearly distinguished between business errors protected by the business judgment rule and violations of fiduciary duty, which are subject to sanctions. This situation highlights a serious gap between theory and practice in Indonesia. On the one hand, the Company Law has provided a legal basis for fiduciary duty, but on the other hand, courts have not been consistent in applying it. As a result, efforts by minority shareholders to sue directors for negligence or abuse of authority are often hampered by uncertainty in decisions.

3. Challenges in Capital Markets and Investor Protection

From a capital market legal perspective, fiduciary duty holds a crucial position because it directly impacts investor protection and trust in market mechanisms. The capital market serves as a means of allocating capital and a source of funding for public companies. Therefore, the integrity of directors in carrying out their fiduciary duties is a key requirement for creating a healthy, transparent, and efficient market. However, research shows that the implementation of fiduciary duty in the context of the Indonesian capital market still faces various challenges, both in terms of regulation and supervision. One major issue is the continued prevalence of violations such as insider trading and the misuse of material non-public information. This practice occurs when directors or other insiders exploit unpublished information to gain personal advantage through stock transactions. These cases clearly violate the principle of duty of loyalty, as directors no longer prioritize the interests of the company and investors but instead use their positions for personal gain. Coffee (1981) asserts that weak enforcement of fiduciary duties in the capital market context will directly impact market confidence and ultimately weaken the capital market's function as a means of efficient capital distribution.

Furthermore, research by Siregar (2021) shows that supervision by the Financial Services Authority (OJK) remains ineffective in curbing fiduciary duty violations in the capital market. Although the OJK has broad regulatory authority to impose administrative sanctions, in practice, these sanctions often lack a deterrent effect. This increases the potential for similar violations to recur. This oversight weakness is exacerbated by limited regulatory capacity to address new forms of abuse of authority in the digital era, such as through electronic transactions or information manipulation in digital media. This research finding aligns with Branson (2001), who asserted that fiduciary duty is a fundamental instrument for the sustainability of public company governance. Without the integrity and responsibility of directors, investor confidence in public companies will erode, and the capital market will not function optimally. In the Indonesian context, weak implementation of fiduciary duty not only results in financial losses for investors but also negatively impacts the national investment climate.

This situation confirms that investor protection in Indonesia still requires serious strengthening, both through the affirmation of fiduciary duty standards in laws and regulations and through strengthening oversight mechanisms by the Financial Services Authority (OJK). Furthermore, the substantive application of good corporate governance principles is also necessary to encourage public companies to be more transparent in providing information to investors. Therefore, it can be concluded that the main challenge in the capital market context is how to ensure that fiduciary duty is consistently carried out by directors, thereby maintaining investor trust and enabling the Indonesian capital market to function in accordance with the principles of integrity and efficiency.

4. Conflict of Interest and the Phenomenon of Nominee Directors

The phenomenon of nominee directors in limited liability companies in Indonesia presents a serious challenge to the implementation of fiduciary duty. Nominee directors are directors appointed by a specific party, usually a majority shareholder or institutional investor, to represent the appointing party's interests within the company. Although legally they hold equal standing with other directors and are bound by fiduciary obligations to the company, in reality, their loyalty often leans more toward the appointing party than toward the interests of the company as a whole. This situation raises the issue of conflicts of interest that have the potential to harm both the company and minority shareholders. Within the framework of fiduciary duty, every director should uphold their duty of loyalty by prioritizing the company's interests over their personal or other interests. However, research by Yulianti (2022) shows that the presence of nominee directors in public companies in Indonesia often weakens the implementation of fiduciary obligations. They function more as "extensions" of large capital owners than as independent managers who prioritize the company's interests. As a result, strategic company decisions are more easily influenced by the interests of certain groups, potentially creating injustice for minority shareholders.

Sugondo's (2020) research confirms that although nominee directors remain legally bound by fiduciary obligations as stipulated in the Company Law, business realities demonstrate that mechanisms to control their loyalty remain very weak. This situation is exacerbated by the absence of regulations explicitly prohibiting or limiting the practice of appointing nominee directors in Indonesia, making potential conflicts of interest difficult to avoid. In many cases, board decisions dominated by the appointing party's interests can result in losses for the company as a whole, but are difficult to prove as a breach of fiduciary duty in court. From a good corporate governance perspective, the existence of non-independent nominee directors clearly contradicts the principles of accountability and transparency. Rahardjo (2019) assessed that business practices in Indonesia still tend to be formalistic in the implementation of GCG, resulting in the substantial aspect of the independence of company management being often overlooked. As a result, conflicts of interest involving nominee directors often go unaddressed by internal and external oversight mechanisms. This phenomenon ultimately has serious implications for investor protection.

Minority shareholders, who lack the power to appoint directors, are the most disadvantaged group. They not only lose access to influence company policy but also must bear the risk of losses resulting from directors' biased decisions. This situation emphasizes the need for regulatory reform in Indonesia to clarify the status and limits of nominee directors' authority.

CONCLUSION

Based on the results of the research and discussion, it can be concluded that the fiduciary obligations of directors in managing company shares in Indonesia have a clear legal basis through Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) and Law Number 8 of 1995 concerning Capital Markets, but its implementation still faces serious obstacles.

1. From a corporate law perspective, fiduciary duties, including the duty of care and the duty of loyalty, have been recognized but are still only partially regulated, leaving unclear standards for assessing whether directors have fulfilled their obligations. This has resulted in weak legal protection, particularly for minority shareholders.
2. In judicial practice, the application of fiduciary duty is inconsistent. Some cases demonstrate that directors can be held personally liable, but in others, the business judgment rule predominates, leading courts to tend to protect directors. This inconsistency creates legal uncertainty that can be detrimental to shareholders and investors.
3. In the context of capital markets, fiduciary duty is crucial for maintaining market integrity and investor protection. However, violations such as insider trading and the misuse of material non-public information still occur. Weak OJK oversight and sanctions that lack a deterrent effect exacerbate this situation and have the potential to undermine public confidence in the Indonesian capital market.
4. The phenomenon of nominee directors increasingly demonstrates a conflict of interest. Although legally bound by fiduciary obligations, their loyalty leans more toward the appointing party than toward the company. This undermines the application of good corporate governance principles and directly impacts the losses of minority shareholders.

REFERENCES

Branson, D. M. (2001). *Corporate governance*. Charlottesville: Michie Law Publishers.

Coffee, J. C. (1981). Market failure and the economic case for a mandatory disclosure system. *Virginia Law Review, 70*(4), 717–753. https://doi.org/10.2307/1072827

Fuady, M. (2014). *Doktrin-doktrin modern dalam corporate law dan eksistensinya dalam hukum Indonesia*. Bandung: Citra Aditya Bakti.

Hidayat, A. (2020). Pelanggaran fiduciary duty oleh direksi dalam pengelolaan saham perusahaan. *Jurnal Hukum dan Bisnis, 7*(1), 55–70.

Kelsen, H. (1961). *General theory of law and state*. Cambridge: Harvard University Press.

Khairandy, R. (2013). *Fiduciary duty direksi dalam hukum perusahaan Indonesia*. Yogyakarta: FH UII Press.

Rahardjo, B. (2019). Good corporate governance dan implementasinya di Indonesia. *Jurnal Hukum dan Pembangunan, 49*(2), 201–220. https://doi.org/10.21143/jhp.vol49.no2.2005

Republik Indonesia. (1995). *Undang-Undang Nomor 8 Tahun 1995 tentang Pasar Modal*. Lembaran Negara Republik Indonesia Tahun 1995 Nomor 64.

Republik Indonesia. (2007). *Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas*. Lembaran Negara Republik Indonesia Tahun 2007 Nomor 10

Siregar, M. (2021). Peran Otoritas Jasa Keuangan dalam menegakkan fiduciary duty di pasar modal. *Jurnal Legislasi Indonesia, 18*(3), 355–370.

Yulianti, N. (2022). Nominee directors dan problematika fiduciary duty pada perusahaan publik di Indonesia. *Jurnal Yuridis, 9*(1), 45–62.