UDC 34

LEGAL ANALYSIS OF BANKRUPTCY IN INDONESIA: LIMITED LIABILITY COMPANIES

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ABSTRACT
In general, 2 (two) areas of law—civil and criminal—are used to regulate the Limited Company's liability as a bankrupt debtor. These laws are Law Number 40 Year 2007 about Limited Company and Law Number 37 Year 2004 about Bankruptcy and the Postponement of Debt Payment Obligations. In the Limited Company's bankruptcy settlement, these two laws are inextricably linked. From a civil perspective, if the Limited Company's debt is less than its assets, the entire debt may be returned to the creditors to allow for the company to undergo rehabilitation. However, if the debt exceeds its assets, it is undoubtedly not possible to return the entire debt to the creditors in order to allow the curator to dissolve the business through liquidation. Regarding the criminal side, the corporate organs, the Board of Directors and the Commissioners, may face jail time as a form of liability. The issue raised in this study is that Multiple or Separate-Editors are not yet protected by law in the event that a company is declared bankrupt and unable to pay its debts in full, which could reflect Justice Value. This study employed a juridical-empirical research methodology, utilizing a sociological juridical approach (Socio-Legal Approach) in qualitative research. The study's findings suggest that the priority in getting their accounts repaid at this time belongs to the separate creditors in the company's bankruptcy.

KEY WORDS
LLC, bankruptcy, Indonesia, policies.

The laws governing Limited Liability Companies (PT) in Indonesia are governed by Law (No. 40 of 2007 in Lieu of Law No. Law No. 1 of 1995 concerning Limited Liability Companies (UUPT). It is thought that the development of UUPT is inextricably linked to the introduction of various regulations aimed at enhancing the country's economy (I.G. Rai Widjaya, 2003), particularly with the enactment of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which seeks to give Limited Liability Companies legal clarity in the event that debtors fail to fulfill their contractual obligations, resulting in losses for creditors.

It is undeniable that in order to survive and grow, both people and legal entities need the assistance of other parties. This is particularly true for limited liability companies, which are entities in their own right that work with other entities to improve their businesses. if required, when the business lacks the funds to finance its needs or operations, this can be accomplished by borrowing money from another party with debt collateral (Sutan Remy Sjahdeini, 2010). Alternatively, by entering into a cooperation contract to increase business capital.

When a Limited Liability Company tries to expand its finances by entering into agreements with other parties, whether they be cooperation agreements or debt agreements, things don't always go as planned and can lead to issues later on that could hurt other parties. For example, a Limited Liability Company may find itself unable to pay the agreed-upon amount out of cash, and the other party may be entitled to demand that the Limited Liability Company repay the money owed or settle its debt. Indeed, a company's incapacity to carry on with business operations is typically the root cause of its problems. A company's incapacity to continue operating will undoubtedly have a significant impact on the business as a whole. For instance, the company may find itself unable to make money, pay off debt, or continue operating as a legally recognized entity. Because the company's assets are less than its passive income, it is possible that this will damage the company's financial balance sheet and ultimately lead to the Limited Liability Company's bankruptcy (M. Hadi Shubhan, 2012).

When creditors discover that the debtor is unable to settle their debt, they will vie with one another to collect their receivables first by making the debtor turn over their goods as security. Debtors may also take actions that solely serve the interests of one or a few people at the expense of others. If other creditors with good intentions do not take possession of the debtor's property as payment for their debts, the creditor's actions or the debtor's treatment will undoubtedly create uncertainty for them and make it less likely that their debts will be repaid. This action is an example of the debtor treating the creditor unfairly. Institutions for bankruptcy can stop this from happening as a way for debtors to take responsibility.

In order to implement the principles of justice outlined in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, as well as withdrawal both before and after a Bankrupt Debtor files for bankruptcy, a Limited Liability Company must take on the role of a Bankrupt Debtor. Even if the Commercial Court establishes a Limited Liability Company, the Limited Liability Company will still be in charge of managing and operating all of the assets, allowing debtors to retain their assets as belonging to the company in ways that are illegal. Nonetheless, the Limited Liability Company's assets may be transferred to third parties by corporate actions directed by the Board of Directors. Because the debtor is deemed to have written off the debt, the implementation of a Limited Liability Company can therefore take the form of demands for imprisonment (criminal law aspect) in addition to the payment of debts to creditors (civil law aspect). company property used as loan collateral. As a result, debtors of limited liability companies who knowingly fail to repay their creditors may face civil and criminal penalties; these penalties may be aimed at the directors and commissioners of the limited liability company or at the company itself as manager of a Limited Liability Company.

METHODS OF RESEARCH

This qualitative research employs constructivism to paradigmatize both doctrinal and non-doctrinal approaches concurrently, in keeping with the study's objectives and issues. By taking these two approaches, inequality in the study of law is meant to be avoided. While law cannot always be purely juridical, it also cannot be separated from its normative roots, and it is not a socially or culturally isolated process.

RESULTS AND DISCUSSION

Different Reasons for the Limited Company's Bankruptcy

According to Law Number 40 of 2007, a Limited Liability Company is a capital partnership that is a legal entity that was created in accordance with an agreement, operates using authorized capital that is fully divided into shares, and satisfies the requirements outlined in this Law. According to the definition, a Limited Liability Company consists of five (five) elements: it is a business entity that operates under an agreement, has share capital that is divided into shares, and must comply with legal requirements. It seems reasonable to say that every person does not want to own a company, especially one in the form of a Limited Liability Company which he founded went bankrupt because it did not make any profit, especially since the purpose of establishing a business entity was to make a profit, so it can be said that the bankruptcy of a company is not due to the will of the company owner, but there are many things that cause bankruptcy.

When a business encounters environmental decline, low performance develops over time, and eventually the business loses money and resources due to the inability to maintain a healthy exchange between the input it receives and the output it produces, the business files for bankruptcy. Legal entities and people going through a natural process are similar. People go through a cycle known as the "product life cycle," which includes being born, growing up, becoming an adult, becoming old, and dying. Death is the only process that has no set time, but it must be. Businesses also start out, expand, mature, contract, and eventually go out of business or close. The sole distinction between companies and humans is that the latter are defined by their performance, whereas the former are determined by God (Suwarsono Muhammad, 2001).

In the business world, bankruptcies are common and can happen to any company, regardless of the different types of businesses that file for bankruptcy. It doesn't matter if a company has poor management or finances; even initially sound businesses can eventually fail. Not only can small and medium-sized businesses be affected by this incident, but big businesses like Enron, Daewoo, Polaroid, Manulife Indonesia Life Insurance, Telkomsel—despite the fact that it was eventually canceled—Medan Land Relations, and so forth can also be. To be sure, a businessman's inability to succeed in his endeavors is not a handicap; rather, it is just one aspect of business risk (Hilip Kotler, 2001).

Financial difficulties are a contributing factor in a company's failure because they make it difficult for the company to operate and manage itself effectively. However, financial difficulties may not always be the root of the problem. from a company's bankruptcy. Aside from that, bankruptcy is a state in which the debtor is unable to make any payments toward the obligations owed to creditors. The debtor's decreasing financial difficulties lead to the situation of not being able to pay regularly. The debtor is classified as an insolvent debtor due to his incapacity to repay the creditor. A debtor's failure to pay their debts can be caused by a variety of factors, the two main ones being internal and external factors. While external factors can come from external sources that are directly related to business operations or macroeconomic factors, internal factors are those that come from internal management within the company.

A company's inability to pay its debts (bankruptcy) can be caused by internal factors such as: (1) Ineffective management, which will result in ongoing losses and eventually make the company unable to pay its debts. (2) An imbalance between the amount of capital owned and the amount of receivables is the cause of this inefficiency, as are wasteful costs, a lack of management, and a lack of skills. Excessive debt will result in high interest expenses, which will lower profits and possibly result in losses. An excessively large account will also be harmful since an excessive number of assets are inactive and don't produce revenue. (3) Management-implied moral hazard. Bankruptcy may arise from fraud committed by management of the company. The company will suffer losses as a result of this fraud, which will ultimately lead to the company's bankruptcy. This fraud may manifest as dishonest management practices or misleading investors or shareholders with inaccurate information. One instance of a moral hazard situation in which management disobeys corporate management guidelines is the case of banks exceeding credit limits (Darsono, Ashari, 2004).

In the meantime, outside variables that can push a business into bankruptcy include: (1) Shifts in customer expectations that the business does not foresee, which makes customers leave and reduces revenue. In order to sustain this, businesses must constantly anticipate customer needs and develop products that meet those needs. (2) A shortage of raw materials as a result of suppliers' inability to supply enough of the materials needed for production. In order to reduce the risk of raw material shortages, businesses must always have positive working relationships with their suppliers and avoid relying solely on one source for all of their raw material needs. (3) In order to prevent debtors from cheating by ignoring their obligations, debtor factors must also be anticipated. Giving too many receivables to debtors with protracted payback terms will result in a large number of idle assets that don't generate revenue, which will cause the company to suffer significant losses. Businesses need to be aware of their own receivables and the status of their debtors in order to foresee this and take early action to safeguard company assets.

Taking a look at the different aspects mentioned above, it can be seen that a Limited Liability Company may become bankrupt due to financial difficulties, which lead to the company's inability to make debt payments. Peter J.M. Declercq said that the following requirements must be met by the bankruptcy petition: it must include all relevant facts and circumstances that would suggest the debtor has ceased making payments on his debts. This is the only item that is thought to be unpaid by the debtor (Peter J.M. Declercq, Netherlands Insolvency Law, 2022).

The Effect of the Law and Liability of the Limited Company Bankrupt

Declaring a Limited Liability Company (LLC) bankrupt is a simple process in Indonesia. The Limited Liability Company may be declared bankrupt if the conditions of Article 2 paragraph 1 of the UUKPKPU are satisfied, regardless of whether it has assets that can cover its debts or is insolvent for the total amount of debt it accrues. The bankruptcy laws in Malaysia, Singapore, and other countries do not set a debt ceiling, so filing for bankruptcy is easier for individuals or corporations, regardless of their legal status. The crucial point is that, in order for the Commercial Court to declare bankruptcy as the appropriate court, Article 2 Paragraph 1 must be satisfied with only minimal evidence. A company filing for bankruptcy has far-reaching legal ramifications, despite the ease with which a Limited Liability Company can file for bankruptcy. Assume the following scenario: a Limited Liability Company managed by the Directors as a Bankrupt Debtor forfeits the right to oversee and control the company's assets; all of the assets are seized for public use and are overseen by the Curator following the Commercial Court's declaration of the Limited Liability Company's bankruptcy (Zaeni Asyhadie, 2012).

Even after being declared bankrupt, limited liability companies still have more assets than debt. Naturally, it is easy to account for it by having the curator execute all of its debts to creditors; paying off the warrant is simple because the bankruptcy debtor's assets still need to be paid. After all debts have been settled, the Limited Liability Company must undergo rehabilitation before it can resume its regular business operations and avoid bankruptcy. But what if the debtor has insufficient assets to cover all of his obligations? In that case, the Limited Liability Company remains a bankrupt debtor and is still liable for its obligations. The special bankruptcy law in Indonesia is that the Bankrupt Debtor is still liable for the outstanding debts; unlike other nations, such as the United States, it does not acknowledge the lack of forgiveness for a company that cannot pay debts that have been declared bankrupt. According to C.J.H. Brunner and G.T. de Jong (2011), limited liability companies will still be held accountable in this case as bankrupt debtors for both civil and criminal offenses.

The obligation that results from a relationship is called liability. A legal relationship (rechtsverhouding) 15 between two (two) parties, namely one (one) party as the Debtor (schuldenaar) has accomplishments in the field of wealth (vermogen) and on the other hand, the hand as Creditor (schuldieser) has the right to demand fulfillment of achievements, is what causes the engagement, according to C.J.H. Brunner and G.T. de Jong14.

The legal relationship described in an agreement (agreement) is valid as an act for the party who made it, as stated in Article 1338 of the Civil Code. An agreement has the effect of granting the parties rights and obligations (achievements), with one party being required to carry out these obligations and the other party having the freedom to do so. As the party with the obligation, the Debtor bears the responsibility for achieving these goals. Accordingly, the existence of an agreement gives rise to responsibility (C.J.H. Brunner and G.T. de Jong, 2011). Thus, it can be concluded that in the absence of an agreement, there will never be any accountability or, conversely, the possibility of liability as a result of an engagement. In the meantime, the law and the agreement both influence the engagement itself.

The terms "schuld" and "haftung" are generally referred to as elements. Schuld is the duty owed by the debtor to the creditor. In the meantime, in the event that the goal is not fulfilled, the debtor is obligated to account for their assets as repayment (haftung). The debt in a debt and receivables agreement, for instance, is the amount owed by the debtor to the creditor. All debtors are required to provide a performance to the creditor; consequently, the debtor is also required to settle the debt. In the meantime, the debtor's wealth, or haftung, is what has to be repaid. The debtor is obliged to let the creditor take his assets in the amount of the debtor's debt to pay off the debt if the debtor fails to fulfill his obligation to pay off the debt(Ridwan Khairandy, 2013).

It is undeniable that every debtor is obligated to fulfill this obligation, which takes the form of liability, and that the creditor has the right to collect it due to the existence of the two components of this obligation, schuld and haftung. Therefore, it makes sense that haftung is closely related to material guarantees, which are covered both generally and specifically in

Articles 1131 and 1132 of the Civil Code. Article 1131 of the Civil Code states that every asset of the debtor, whether it be movable or immovable, current or future, is accountable for all obligations (all the roerende en onrorende goederen van den schuldenaar, zoo Selamat come on toekomstige, zijn voordeszefs). This is the fundamental haftung persoonlijke verbintenissen aansrakelijk) (Ali Rido, 1986).

Therefore, as the legal subject who possesses the right and obligation, the Debtor is the one who can bear the burden. Humans are not the only entities with rights and obligations in the legal system, as the legal subject encompasses both the person (persoon) and the legal board (recht persoon). Therefore, the debtor's civil liability serves as the foundation for the creditor's ability to compel the debtor to fulfill his obligation. The debtor's civil liability extends beyond simply turning over all of his debts to the creditor; in the event of bankruptcy, the legal limited company may be dissolved in accordance with Article 142, verse 1, letter e UUPT, provided the debtor does not turn over all of his debts and all of the company's assets to satisfy his debts.

By closely examining the provisions of these articles, it becomes clear that members of a Limited Liability Company's Board of Directors and Board of Commissioners may be sentenced to one year and four months in prison if they participate in or approve of actions that are detrimental to the Limited Liability Company and violate its articles of association. And if expenses or debts are incurred with the goal to defraud to lower the amount, both the directors and the board of commissioners of the company that are declared bankrupt may be penalized and prosecuted for a maximum of seven years. the creditors of Limited Liability Companies their rights for free or at prices significantly less than fair—a practice known as bankruptcy fraud, a subset of white crime.

Reconstruction of the legal bankruptcy in limited liability companies

Because this is directly related to the accountability of an activity that has been carried out by the limited liability legal entity, the author will first discuss the meaning of a Limited Liability Company as a legal entity before discussing the legal ramifications for a limited liability company in the event that it has been sentenced to bankruptcy. According to Article 1 Paragraph 1 of the Company Law, a limited liability company is recognized as a legitimate legal entity. Being a legal entity means that the business has assets of its own apart from the assets of its founders, shareholders, and administrators. In other words, the business can support its rights and obligations just like a person.

According to the Constitutional Court's Decision Number 67/PUU-XI/2013, workers' wages are now more valuable than separate creditors' in the event of bankruptcy. But this only pertains to the pay of employees. When it comes to claims made by employees for additional rights like severance pay, separate creditors continue to hold a superior position than workers' wages. This is in line with the ruling that established two new standards, according to which the wages of laborers who are in debt must be paid before those of any other kind of creditor, including state bills, auction houses, separate-creditor bills, and government-formed public bodies. All other bills, including claims for the rights of the State, auction houses, and government-formed public bodies, are subordinate to the payment of other workers' rights, with the exception of claims made by separate creditors.

The provisions outlined in Article 55 paragraph (1) of the Bankruptcy Law, which grants priority and a distinct position to separate creditors in obtaining repayment of their debts, are deemed to no longer apply to preferred creditors' claims in the form of workers' wages following the issuance of the Constitutional Court's decision Number 67/PUU-XI /2013. The terms of the decision made by the Constitutional Court have also been implemented to current bankruptcy procedures. Following the issuance of Constitutional Court Number 67 / PUUXI / 2013, workers' wages are now considered to be more valuable than those of separate creditors in the event of bankruptcy because they receive payment for their receivables in advance instead of bills from separate creditors.

If the curator executes the collateral, and a separate creditor fails to execute the collateral within the time frame allowed by PKPU and Article 59 paragraph (1) of the Bankruptcy Law, the curator is required by Article 59 paragraph (2) to demand that the collateral be turned over for sale without diminishing the separate creditor's rights regarding the proceeds of the collateral's sale.

In the event that a limited liability company's operations or business ventures proceed, the issue that arises is who will oversee the day-to-day operations of the business? Will the curator, who takes over the director's role in running the company's operations, manage the business exclusively? This will be a contradiction in and of itself because, in reality, the directors are the ones who are more familiar with the ins and outs of the business, the market, and the customers of the bankrupt company. In addition, the directors of the bankrupt company represent the company in exercising its rights by filing an application with the court, provided that there are sufficient grounds for doing so. in order to appoint a new curator or to replace the current curator.

After reading Article 16, Article 69, paragraph 1, Article 104 UUK & PKPU, it is clear that the curator, rather than the debtor (company), is the one with the authority to manage the company in the capacity of a director by continuing its operations while under bankruptcy. It is the curator's responsibility to run the business well. It is the curator's responsibility to evaluate his ability to handle bankruptcy assets in compliance with Indonesian curator and management standards, and to seek assistance in managing the business if needed. Since the curator now has management authority over the company instead of the directors, the duties, obligations, and responsibilities of the company directors are now the curator's to fulfill. This is the result of the curator becoming an additional director.In the event that a limited liability company files for bankruptcy, the judge will decide whether to grant the company's request for dissolution. This is because neither the bankruptcy nor limited liability company laws contain detailed regulations governing the legal dissolution of limited liability companies, unlike the Commercial Code, which specifies the grounds for a limited liability company's dissolution. The company was dissolved by law after its period of existence expired and losses that exceeded 75% of its capital were the cause of the dissolution. Nonetheless, dissolution by court order is recognized by Law No. 1 of 1995 concerning Limited Liability Companies, but dissolution by statute is not.

CONCLUSION

Due to its limited nature, a Limited Liability Company is highly sought after by the general public. It is a legal entity governed by Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). This organization, which is primarily responsible for its limited liability company, has an organ called the Board of Directors and the Board of Commissioners that oversees the limited liability company's operations. The Board of Directors and the Board of Commissioners work together with certain parties to enhance the company's operations as part of their duties, but occasionally this does not result in long-term advantages for the company. In order to leave open the chance that this Limited Liability Company will be declared bankrupt, leading the Commercial Court to declare this company bankrupt as well. In compliance with Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUKPKPU), a Limited Liability Company that files for bankruptcy as a debtor is obligated to repay all of its debts to creditors. There are two (two) ways to look at a Limited Liability Company's obligation as a bankrupt debtor: through the lens of criminal and civil law. When viewed through the lens of civil law, a Limited Liability Company that is declared bankrupt must repay all of its debts to its creditors. Should the Limited Liability Company's assets prove insufficient to cover these obligations, the Limited Liability Company may be dissolved following the revocation. declared first, and then asked to be dissolved by a curator's liquidation. However, in terms of criminal law, the Directors and the Board of Commissioners, as Company Organs, may be prosecuted and face imprisonment for a maximum of one year, four months, or seven years, should they be found guilty. It is demonstrable that being sued causes significant losses for its creditors.

Article 90 paragraph (2) UUPT states that management cannot be held jointly and severally liable for losses caused by negligence and can only be held accountable in the event that the company's assets are insufficient to cover losses resulting from bankruptcy. A bankrupt limited liability company's ability to continue operating is contingent upon the Curator and creditors' assessments of the bankrupt debtor's future business prospects. A limited liability company does not automatically dissolve upon filing for bankruptcy. Only a court order from creditors may request the dissolution of a limited liability company after the bankruptcy decision is read, on the grounds that the company cannot pay its debts after going bankrupt or that its assets are insufficient to pay off all of its debts once the bankruptcy declaration is revoked. The notion of business continuity, which states that bankruptcy does not automatically result in the dissolution of a company, is one of the principles of this law, and it is further supported by the explanations provided by UUK and PKPU. A limited liability company is a subject of law that bears independent liability for all legal actions it takes, whether or not the management—in this case, the company's directors—authorizes such actions. As a result, a limited liability company's actions must comply with the law. In light of this, it is important to highlight in the legislation the legal actions for which the directors of a limited liability company may be held liable in the event of bankruptcy. This makes it obvious what falls under the purview of the directors of the company and what is under the limited liability company. It is necessary to distinguish between the rights and obligations of individual bankruptcy subjects as subjects in order to prevent legal confusion. This distinction must be made between the legal subject in bankruptcy (the bankrupt debtor) and all of its legal ramifications, specifically the existence of regulations regarding the continuation or existence of the legal subject of the legal entity declared bankrupt. personal law combined with a legal entity's bankruptcy.

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