



Civil Law Aspects; What is The Responsibility of The Board or Directors in The Case of Bankruptcy

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Abstract

The existence of a business entity in improving various economies of human life, as well as the state is indeed the most important aspect that must be developed to date, so the establishment of a limited liability company to provide more benefits in the world of national and international companies becomes a necessity that cannot be ignored. argue again for the continuation of human progress. This study uses a descriptive method with a qualitative approach and data triangulation analysis, the results of the study explain that a Limited Liability Company or what we often know as a PT, is a development of a business entity formed on the basis of providing initial capital consisting of several people in terms of technical implementation, the nature of the PT itself is already a legal entity and is formed with various advantages and conveniences for investors in investing their investment capital in a very broad scope, officially the Indonesian government issued a notice regarding the company contained in the Limited Liability Company Law which has been undergoing various reforms, as one of the government's efforts to improve the country's trade system so that it is of higher quality and able to provide various benefits and revenues for the Indonesian state.

Keywords: Law, Directors, Limited Liability Company

1. Introduction

As we know that the existence of a company for humans has many benefits, apart from being a driving force for the economy of a country, the company also functions as a center for human activities in meeting various needs of daily life, companies are often identified as a vehicle for channeling various energies. work that is ready to meet various targets and achievements owned by the company, if we examine more deeply the meaning of the word company itself, is an equivalent of the word trader or trading activity, which is carried out continuously and is open to the public in order to seek profit the big one (Kusumawardani, 2013; Widjajati, 2017).

Judging from the juridical aspect, there are two forms of business entities that are often found in various worlds and including in Indonesia itself, among which are, business entities that are legal entities such as limited liability companies (PT) and secondly, business entities that are not legal entities, (Partnership, Firm, and Limited

Liability Company), as explained above, a limited liability company or what we often know as a PT, is a business entity that has a legal entity, the existence of a limited liability company as a standard form of business entity. This, it turns out that it brings a lot of benefits and changes in moving various dimensions of life, especially in terms of improving the economy of a country, besides that PT is also very much in demand by various workers/employees because apart from their limited responsibilities (Yanuarsari, 2020; Achmad, 2021; Harahap, 2021). PT also makes it easy for the owner (shareholder) to transfer his company to anyone by selling all the shares he owns in the company, according to Suryadi (2014) that the company (corporation) is a business entity formed under the law, has a separate existence from its owners and can do business within certain limits as normal human beings.

Another advantage that PT has is that it is easier to collect various funds for initial capital, because most investors want the risk and cost as small as possible to establish cooperation through investment activities, while for business entities that do not have a valid legal permit, then The level of accountability is unlimited, meaning that if there is a claim from a third party against the company's mechanism, various personal assets can be used as financial guarantees, especially if the company's assets cannot pay off various arrears and debts related to company policies (Isfardiyana, 2015; Fikriya, 2020).

If we look at the business aspect of the company, the level of trust of investors will much prefer PT as a field to invest as much as possible, this is reinforced by a legal permit that has been indirectly recognized by the government as an asset that needs to be maintained in order to advance income and income of a country. With the various progress that has been shown by several business entities, especially to maintain the position of PT as one of the business entities that have the most significant impact on the state, the government moved quickly by issuing a provision regarding the legal aspects of a more comprehensive PT. -Law No. 40 of 2007, concerning Limited Liability Companies (UUPT), there are several reasons for the issuance of the Law, namely, Limited Liability Companies as one of the pillars of the development of the national economy need to be given a legal basis to further spur national development which is structured as a joint effort based on the principle of kinship. Besides that the government also wants to reform Law no. 1 of 1995, regarding limited liability companies, because it is seen that it is no longer in accordance with some existing provisions, it is appropriate to replace it with a new law that is more relevant and comprehensive.

As we know, with the issuance of a new law that regulates the technical and role of Limited Liability Companies in supporting various important elements in a company, indirectly the contents of the Act are to regulate various policies issued by each company. members of the board of directors, including in terms of accountability for all aspects within the company. In the event that the company's board of directors consists of two or more members, then the responsibility for the company's losses becomes a burden that must be borne jointly by each member of the board of directors.

In carrying out its various duties, the board of directors is given special authority, especially in the fulfillment of their rights and powers but with the consequence that all these actions and actions are part of the policies issued by the

company, besides that there is also legal protection given to the board of directors in terms of managing the company. Namely, in the form of waiving the company's legal responsibilities, in fact this issue has been decided a long time ago through the UPPT of 2007 and in UPPT Number 1 of 1995, the Board of Directors which is one of the organs in the PT, which carries out all the activities of the company and represents the company, both in inside and outside the court. Directors who represent the interests of PT and run PT, are fully responsible for the management of PT. With regard to the management of the Board of Directors, the Board of Directors has duties and responsibilities.

In more detail, we can conclude that a Limited Liability Company is a business entity that already has legal permits and state laws, PT provides opportunities for investors to be able to establish a cooperation through investment activities, besides that PT is also often referred to as a capital association. , where in the procedure, in formally establishing a PT, the legal aspect is that it will involve two or more people, as initial investors, when all have entered into various legal agreements, the capital that has been collected will be merged into a Limited Liability Company, then from In a PT, the association of capital will be more prominent, not the people. In a limited liability company, there must be a director or it can also be called as the manager and manager of various policies and rules concerning the company as a whole, so it can be said that the scope and role of a director is very broad, including as a permanent manager of the company, In the Limited Liability Company Law Article 1 point 1 it has been explained that a limited liability company is defined as a legal entity. This assertion is intended to clarify that a limited liability company is a legal subjectAs an artificial person.

2. Approach Method

This research uses descriptive analysis research using qualitative methods. Researchers also want to examine a phenomenon that discusses the Legal Aspects of Responsibilities of the Directors of a Limited Liability Company, qualitative research is aimed at a very detailed and detailed study where the results of the research are studied in depth and then interpreted clearly. There are two sources of data used in this study, where the data includes primary data and also secondary data, then the facts of the findings are described in a very easy form of discussion so that researchers can find a complex and structured understanding in a directed manner.

3. Result and Discussion

3.1 Limited Liability Company (PT) as a Legal Entity in Indonesia

As one of the business entities that has obtained legal certainty from the state and the law, the existence of a limited liability company in the scope of human life cannot be doubted, both in terms of quality and in terms of quantity. the wheels of the economy of a country, turning the cycle of human business capital and most importantly absorbing various workers to be directly functioned as the most important factor in the formation of a high-quality business system, in the corporate business world, limited liability companies are one of the goals of investors in investing a number of its valuable assets, in addition to having a valid and sovereign business license, another reason chosen in deciding to enter into a business

commitment with a limited liability company is the limited personal responsibility of people in the environment, including shareholders, members of the board of directors, and a member of the board of commissioners.

In principle, a limited liability company only gives responsibility to each party involved in the business field, it cannot be transferred and transferred even to the highest shareholder, in that context the role of a shareholder is only responsible for providing business capital, not covers all aspects that exist in the limited liability company, then in general the meaning implied in a limited liability company is that the responsibility of the shareholders is limited to the nominal shares they own. The mention of a limited liability company directly or indirectly has referred to the principle arising from the limited liability characteristics, in the Limited Liability Company Law no. 40 of article 7 paragraph (4), it is explained how the business entity gets its recognition as a business entity recognized by the state, the company obtains the status of a legal entity when its deed of establishment is ratified by the Minister of Law and Human Rights. , then even though the company has been established, the status of a legal entity does not yet exist.

In essence, a Limited Liability Company also has several rights and obligations to be obeyed and carried out in accordance with existing legal procedures, this is based on an effort to form an ideal business entity and provides many benefits and income for the company's cash. The existence of a limited liability company does not depend on the level of position of a certain person or party, whether as a shareholder, commissioner, or director or other position, meaning that even though there have been changes in leadership many times, the change will not affect the existence of the limited liability company as an independent company. autonomous, and dynamic, both in the eyes of the law and in the eyes of state laws.

According to Sutedi (2015), there are several legal elements in a limited liability company, among which are, having a separate wealth, it is obtained from the authorized capital provided by investors, the assets are deliberately formed to achieve a success and success in efforts to improve the nation's and state's economy, secondly there is a certain goal to be achieved together, the way a limited liability company achieves this goal is to equip itself with an organ called the board of directors, third, has its own interests, interests are rights subjective rights as a result of legal events, but can also mean a necessity or something important. This interest in a limited liability company is reflected in its rights to be able to sue and defend third parties in its legal relationship, then carry out a business activity, meaning that the limited liability company runs a company based on several legal provisions that have been set, and third parties have quality In attracting maximum profits and profits, and finally having authorized capital which is divided into several shares, shares in a limited liability company are divided into three types, namely, authorized capital, issued capital and paid-up capital.

In chapter 1 article 1 of the UPPT, regarding the general provisions and the definition of a limited liability company, it is a business entity that already has a legal license and forms a capital association which is established based on several open agreements, to carry out a business relationship, through the collection of initial capital as guarantee the fulfillment of several conditions contained in the Act and its implementing regulations (Indrapradja, 2020). The historical basis used in making

the Limited Liability Company Law of 2007 is that, as a substitute for the Limited Liability Company Law No. 1 of 1995, firstly, the Law which was formed for the first time, precisely in 1995, was no longer able to accommodate and develop various dynamics and economic problems that are experiencing a very rapid increase, then a new law was decided in the hope of creating a more advanced business and trade climate and being able to restore the national economic system to be more developed and bring changes to the lives of the wider community, then the formation of The new law is intended to attract more foreign investors in investing their various shares to establish a cooperation or investment in Indonesia, the next point is to create a more comprehensive legal protection for entrepreneurs, in protecting various the concept and practice of monopolies that can harm the nation and state, and the last one in the form of the 2007 draft law based on the national legislation program in 2005-2009, considering that the role of limited liability companies has become a priority for the government in assisting various state revenues and revenuesIndonesia.

The history of the Limited Liability Company (PT), began when the term used at that time was *Naamloze Vennootschap* or Corporate Limited before finally changing its name legally to a limited liability company until now, the meaning itself refers to the capital of PT which consists of the word "sero" holding shares or shares, or if they are combined into holders whose size is only limited to the value or nominal value of all the shares they own, this business entity is a capital partnership based on state law (Sjawie, 2017; Prasetyo, 2018), and based on an agreement to carry out a business activity, with authorized capital which is entirely divided into shares, while referring to the implementing regulations, there are several conditions that must be met to be recognized as a limited liability company (PT), including, in the form of a legal and sovereign legal entity with recognition from the state and the government subsequently owning capital initially formed in a capital association, the third point is established on the agreement of several parties, conducts a business activity, and finally fulfills several requirements that have been stipulated by the Limited Liability Company Law of the Republic of Indonesia, PT is a company which by law is declared a company with a legal entity in PT only organs that can represent PT or companies that run the company (Samosir, 2021).

As for the characteristics of a limited liability company (PT) as a state legal entity, including the PT has its own assets and own responsibilities. PT cannot act alone. PT consists of organs that will represent the PT. These organs consist of people or individuals who are capable of acting in law. Organs within the PT consist of, shareholders, the Board of Directors, and the Board of Commissioners.

3.2 Responsibilities of the Board of Directors in the Management of a Limited Liability Company

The Board of Directors is an organ or equipment for legal entities, just like humans have several important organs in their bodies such as eyes, heart, hands and so on, some of these important organs make a movement that is continued and desired by the human brain and then the movement makes a daily human activity, as well as in the case of a limited liability company, every movement of orders issued or desired by the legal entity itself, so that the Board of Directors is the personification of the legal entity itself. If we examine it more deeply, the authority that has been carried out by a director so far is due to an appointment by the temporary company

draft law as an organ of PT which has the authority to appoint directors in accordance with the provisions of article 94 paragraph (1) of the Company Law. This appointment is carried out unilaterally because the PT has an interest in accordance with the aims and objectives of the PT, namely representing the PT when holding meetings and other matters relating to a court (Lubis, 2018; Putra, 2021).

As for some of the obligations of a director within the scope of a limited liability company, among others, obligations that are directly related to the community, make a list of shareholders, report the budget of shares owned to PT, make an annual report and financial documents, and the last is to maintain all a list of minutes and documents of the financial and assets of the limited liability company.

Meanwhile, the rights of a director in the management of a limited liability company include, the right to represent the company when inside and outside the court, then the right to give written power of attorney to outside parties, the right to defend himself in several trial forums, one of which is in the GMS, the right to get a salary in accordance with applicable regulations and work agreements, and finally the right to submit several proposals to the district court so that the limited liability company is declared bankrupt after being approved by the GMS (Farachan&Budiharto, 2017; Ambarita, 2019). Meanwhile, in article 97 paragraph (1) of the Company Law, it is explained that the responsibility of a board of directors towards a limited liability company, as reads, first the board of directors is very responsible for the management of the company as stated in article 92 paragraph (1), the management as referred to in paragraph (1) must be carried out in good faith and full of responsibility (verse 2). Each member of the Board of Directors is personally responsible for the loss of the Company if the person concerned is guilty or negligent in carrying out his duties in accordance with the provisions as referred to in paragraph (2), the paragraph (3) reads. Then paragraph (4) states that in the event that the Board of Directors consists of 2 (two) or more members of the Board of Directors, the responsibilities as referred to in paragraph (3) apply jointly and severally to each member of the Board of Directors.

3.3 Responsibilities of Directors in Limited Liability Company Bankruptcy

In the Bankruptcy Law, article (1) paragraph (1) provides a definition of bankruptcy which is often faced by Limited Liability Companies, is a confiscation carried out in its entirety to the debtor, on all assets that are directly related to several assets of wealth and management. under the authority of a supervisory judge through a relevant court decision, upon the enactment of the bankruptcy status, Article 1131 of the Civil Law, which concerns all assets and assets of the company, is generally accepted without exception as collateral for all debts. their concurrent debts. Then what is the responsibility of a board of directors for the bankruptcy that occurs within the limited liability company, as we have previously known that the role of the board of directors is very important within the scope of the company, because in addition to being the representative of the limited liability company, the board of directors also has authority over the rights of management and management of the company. the responsibility of the company, in article 104 paragraph (1), it is explained that, the board of directors is not at all burdened with bankruptcy that occurs within the company, besides that the board of directors is also not entitled to appeal to the court before there is official authority from the GMS, as regulated in The

Law on Bankruptcy and Postponement of Debt Payment Obligations, contained in paragraph (2) describes that, in the event of bankruptcy in the company, the incident occurred due to the fault or negligence of the board of directors and the assets of the bankrupt were not sufficient to pay the entire liability of the company in bankruptcy (Gea et al, 2020).

Likewise in paragraph (4) states that, members of the board of directors are not charged or required for the bankruptcy that is befalling the company, as contained in article (2), if they can prove that the bankruptcy was not caused by fault or negligence, then the board of directors has tried to carry out management and management very well, full of prudence and based on a high sense of responsibility, everything has been in accordance with the procedures determined for the interests and prosperity of the company, furthermore it is not proven to have a special conflict of interest in the bankruptcy that is befalling the company and the last one has tried as hard as possible to prevent the company from all forms of bankruptcy threats (Raffles, 2020).

The mechanism that can be taken by the company in suing bankruptcy decisions in accordance with applicable legal provisions and among them are, a debtor has two or more creditors, then the debtor does not pay at least one debt that has fallen due and can be billed, then every application that has been submitted by the debtor or by a third party must be submitted through a lawyer, while some of the provisions of the bankruptcy application mentioned in Article 2 of the Bankruptcy Law are, a debtor (Article 2 paragraph 1 of the Bankruptcy Law) then a creditor or more (Article 2 paragraph 1 of the Bankruptcy Law) Prosecutor's Office (Article 2 paragraph 2 of the Bankruptcy Law) and the last one is Bank Indonesia (Article 2 paragraph 3 of the Bankruptcy Law). Meanwhile, based on article 188 paragraph (1) of the KUHD, there are four points regarding the decision regarding the end of a bankruptcy, among which are, the bankruptcy has been canceled, the bankruptcy has been revoked, there is a peace mechanism from several parties and the last is the strength of the distribution list made carried out by a limited liability company (Alfarizi et al, 2016).

So officially the position of the board of directors / limited liability company after obtaining a bankruptcy decision from the court, the status of the business entity is said to still exist, as long as the limited liability company has not been declared disbanded by the GMS, then the board of directors moves quickly to carry out various legal defenses that can decide on the bankruptcy decision, except for the defense related to the assets of the legal entity, furthermore the bankruptcy of the company does not have an impact on the legal entity, so that the limited liability company, which is represented by several organs of its directors, still has its authority based on sovereign law.

4. Conclusion

Limited Liability Company (PT) is a form of business entity that has been certified as a legal entity and has the protection of the state law, which is called the Limited Liability Company Law which was formed in 2007, in the Act also contains various policies issued by the Company. determined by the government to strengthen the existence of PT as one of the state assets that must receive various legal assistance, there are many benefits that can be obtained from the presence of the

company in human life, such as opening up the widest possible employment opportunities, channeling various workers, then bringing in investors to carry out a cooperation in the form of investment in order to obtain the maximum profit or profit, besides that limited liability companies also greatly impact the economic growth of a country, as well as strengthen trade and business competition both on a national and international scale, for that the Indonesian government is officially issued a special policy in regulating various mechanisms contained in the company, such as investment arrangements, company maintenance, company directors arrangements, to bankruptcy law regulations for companies, all of which are based on state laws and regulations, it cannot be denied that The formation of this company has a very central and important role in presenting various incomes and income for the continuation of the formation of a prosperous and prosperous country and providing benefits for the community, nation and state.

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