

Implications Of Limited Liability Company After Being Declared Bankrupt

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Submission date: 10-Oct-2023 09:54AM (UTC+0800)

Submission ID: 2190916422

File name: JURNAL_SYNTAX_MEI_-_2023.pdf (148.87K)

Word count: 2918

Character count: 15655

Implications Of Limited Liability Company After Being Declared Bankrupt

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Keywords

Liquidation; Limited Liability Company; Bankruptcy.

ABSTRACT

Bankruptcy is a situation where a debtor is unable to pay his debts and can be billed. Companies that have been declared bankrupt in this case must be dissolved to change their legal entity status so as not to cause losses to related parties. A limited liability company that is declared bankrupt does not immediately stop and disband but still exists as a legal entity. Under certain circumstances, it continues to operate as usual, the limited liability company does not go bankrupt and can still carry out its business activities. This study formulates two problems, namely first, what is the process for dissolving a Limited Liability Company after being declared bankrupt? and second, what are the implications of a Limited Liability Company after being declared bankrupt? The type of research used in this case is normative juridical. Legal research conducted by reviewing the literature is referred to as secondary data. The results of this study are that liquidation is processed by first holding a General Meeting of Shareholders and the implication is that a Limited Liability Company after being declared bankrupt makes the company lose its right to manage and control the company's assets.

INTRODUCTION

The development of the business world today is very rapid. This is due to the increasing needs of the community, both needs in the form of services and goods (Rapaccini et al., 2020). Based on these increasing needs, it has encouraged business actors to establish legal entities to obtain income and profits (Pucciarelli & Kaplan, 2016). A legal entity is an entity other than humans who in this case can also act in law and have rights and obligations so that they can have legal interests towards other people or other entities (Sentosa, 2007). The legal entity referred to in this case is a Limited Liability Company which as a legal subject can perform legal actions (Wibisana, 2022).

Regarding Limited Liability Companies specifically have been regulated in Law Number 40 of 2007 concerning Limited Liability Companies. A Limited Liability Company according to Article 1 paragraph (1) of the PT Law is a legal entity that is a capital partnership, established

² under an agreement, conducting business activities with authorized capital which is entirely divided into shares and meets the requirements stipulated in this Law and its implementing regulations. As a legal entity that supports economic progress in Indonesia, we know that in business activities the act of lending and borrowing is something natural as capital and increasing profits (Hadrian, 2023). Of course, lending and borrowing activities will create risks if the company is unable to pay its debts. In this condition, the company is said to be bankrupt.

Bankruptcy is a situation where a debtor is unable to pay his debts and can be collected (Nuriskia & Novaliansyah, 2021). Companies that experience bankruptcy are generally unable to continue their business activities so in this case it will end up dissolving (Coad, 2014). In the Limited Liability Company Law, dissolution is regulated in Article 142 to Article 146. The company that will be dissolved no longer has any activities with exceptions in the framework of the settlement process or what is called liquidation.

Dissolution of a PT is a condition where the termination of business operations will be legal in the eyes of the law. The dissolution of a PT can be said to be the last step to overcoming the complicated situation related to the fate of the business. The dissolution must be managed to completion. So as not to change the legal status that will result in there still being a liability as long as the dissolution has not been carried out. The dissolution of a Limited Liability Company in this case gives birth to a consequence on the status of the legal entity it has. This is following Article 143 paragraph (1) of the PT Law which states as follows: *"The dissolution of the Company does not result in the Company losing its legal entity status until the completion of liquidation and the liquidator's liability is accepted by the GMS or the court."*

Based on these provisions, it can be seen that the PT Law indirectly confirms that dissolution must be carried out until completion to be free from all obligations that must be fulfilled as a legal entity that has debts to related parties.

Based on this background description, the author can formulate the following problems: (a) What is the liquidation process of a Limited Liability Company after being declared bankrupt? (b) What are the implications of a Limited Liability Company after being declared bankrupt?

METHODS

¹⁰ The type of research used is normative juridical. This research is legal research conducted by examining literature materials referred to as secondary data. This study is intended to see developments related to the law against limited liability companies declared in bankruptcy conditions and the implications after being declared bankrupt.

This research data is sourced from secondary data where this secondary ⁶ data consists of primary, secondary, and tertiary legal materials. The ⁴ primary legal materials used in this case are in the form of legislation, namely: (a) Law Number 40 of 2007 concerning Limited Liability Companies; (b) Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

¹² The primary legal material is supported by secondary legal material which is supporting legal material or provides an explanation of primary legal material (Benuf & Azhar, 2020). Secondary legal materials in this case are journals, articles, research results and others relevant to the topic discussed. Primary and secondary legal materials will be clarified with tertiary legal materials such as magazines, data from the internet, and others.

RESULTS

A. The Process of Dissolving a Limited Liability Company After Being Declared Bankrupt

Based on Article 1 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, bankruptcy is stated as follows:

"General confiscation of all assets of the Insolvent Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervising Judge as provided for in this Act."

Companies that have been declared bankrupt in this case must disband to be able to change their legal entity status so as not to cause losses related parties. Dissolution of a PT may occur due to several circumstances as mentioned in Article 142 paragraph (1) of Law Number 4 of 2007 concerning Limited Liability Companies ("UUPT"): (a) Based on the resolution of the General Meeting of Shareholders ("GMS"); (b) Because the period of establishment stipulated in the articles of association has expired; (c) Based on a court order; (d) With the revocation of bankruptcy based on a commercial court decision that has permanent legal force, the company's insolvent assets are not sufficient to pay the bankruptcy costs; (e) Because the bankrupt assets of the company that have been declared bankrupt are in a state of insolvency as stipulated in the Law on Bankruptcy and Suspension of Debt Payment Obligations; (f) Due to the revocation of the company's business license, it requires the Company to liquidate following the provisions of laws and regulations.

Regarding the provisions stipulated in the article related to court determinations, it can be explained that the revocation of bankruptcy is based on the decision of the commercial court which has permanent legal force. Then for letter (d), the Company's bankruptcy assets are not enough to pay bankruptcy costs. This is because the Company's bankrupt assets that have been declared bankrupt are in a state of insolvency. Insolvency is a condition of a debtor who must pay the amount of debt that exceeds the entire amount of his assets because his debt is greater than all assets owned (Kisman & Krisandi, 2019).

In a letter (e) caused by the revocation of the Company's business license, it requires the Company to liquidate by the provisions of laws and regulations. Liquidation is the process of dissolving the company as a legal entity which includes activities to make payments of obligations to creditors and distribution of remaining assets to shareholders (Persero) (Liesyowati & Darwati, 2023). In the case of dissolution of the company through a court determination in article 142 paragraph 3 further regulated in article 146 of the Law as follows:

The district court may dissolve the Company on (a) a prosecutor's application based on the reason that the Company violates the public interest or the Company commits acts that violate laws and regulations; (b) the application of the interested party based on the reason for the existence of a legal defect in the deed of incorporation; (c) the application of shareholders, Board of Directors or Board of Commissioners based on the reason that the Company is impossible to proceed.

In this case, during the process of dissolving the PT takes place, the company cannot take legal action, other than in the context of the liquidation process. For the company's liquidation process, the following are the stages: (a) The General Meeting of Shareholders (GMS) is held in advance with discussions related to the dissolution of the PT and the appointment of liquidators to carry out the responsibility of regulating and carrying out the liquidation process. (b) Notice of dissolution of the PT to creditors and other related parties. (c) Management and settlement of the company's assets. (d) The liquidator shall submit his accountability to the GMS. (e) The announcement by newspaper made by the liquidator and notifying the minister of dissolution. (f) Removal of the name of the PT from the register of the Company by the Minister. (g) The Minister announces in the State Gazette of the Republic of Indonesia (BNRI).

B. Implications of Limited Liability Company after being declared Bankruptcy

The dissolution of a PT certainly has implications for its legal entity status. The bankruptcy of a Limited Liability Company Legal Entity in Indonesia does not automatically terminate the company's operations (Adjie, 2018). The bankruptcy statement of the Limited Liability Company makes the company lose its right to manage and control the company's assets (Sikka & Stittle, 2019). This is following Article 143 paragraph 1 of the Law which states as follows: (1) The dissolution of the Company does not result in the Company losing its legal entity status until the completion of liquidation and the liquidator's accountability is accepted by the GMS or court. (2) From the time of dissolution in each exit letter of the Company, the word "in liquidation" is included after the Company's name.

The provisions of the article relate to Article 142 which states that one of the causes of the dissolution of the company is in a state of bankruptcy where bankruptcy can occur due to the revocation of bankruptcy based on a commercial court decision that has permanent legal force and has been declared insolvency. Regarding the implications of a Limited Liability Company after being declared bankrupt, the debtor will by law lose the right to manage assets that are included in the bankruptcy property (Anggraeni, 2021).

This is calculated from the moment the bankruptcy statement decision is determined. Bankruptcy is related to the operation or failure of a company after the bankruptcy decision, depending on the receiver's perspective on the company's business prospects in the future (Mai et al., 2019). This is possible because based on the provisions in Article 104 of the UUK and PKPU which reads: (1) Based on the approval of the temporary creditor committee, the receivership can continue the business of the debtor who is declared bankrupt even if the statement of bankruptcy judgment is filed for cassation or judicial review. (2) If a creditor committee is not appointed in bankruptcy, the receivership shall require the permission of the supervising judge to continue the business as referred to in sub-article (1).

Based on the provisions of this article, it can be concluded that the bankruptcy of a Limited Liability Company Legal Entity in Indonesia does not automatically eliminate its right to manage and control the company's assets because the bankruptcy of a limited liability company according to Indonesian law does not cause the termination of the company's operations. Not only that, the legal consequences of a bankruptcy statement decision change the debtor's legal status to be incompetent to carry out legal actions, and control, and manage his assets since the bankruptcy declaration decision is pronounced. The bankruptcy declaration resulted in the debtor's assets since the judgment was issued to be included in the bankruptcy estate (Hamonangan et al., 2021). Based on Article 21 of the Bankruptcy Law, all assets that existed at the time the bankruptcy declaration was decided, as well as all assets acquired by the debtor while the debtor was in bankruptcy.

In this case, with the declaration of bankruptcy of the company, the debtor no longer has the authority to manage and own its assets (Sukardi, 2021). However, this situation does not eliminate the authority of the debtor to carry out management as long as it brings benefits to the bankruptcy property. This is following Article 142 paragraph (2) of the Limited Liability Company Law.

CONCLUSION

Companies that have been declared bankrupt in this case must disband to be able to change their legal entity status so as not to cause losses to related parties. The dissolution of the PT takes place, the company cannot take legal action, other than in the context of the liquidation process. For the liquidation process of the company, it can be done in advance by the General Meeting of Shareholders (GMS), notification of the dissolution of the PT to creditors, management, and settlement of the company's assets, submission of its accountability by the liquidator, announcement through newspapers made by the liquidator and notifying the

Minister about the dissolution, deletion of the name of the PT, and finally an announcement in the State Gazette of the Republic of Indonesia (BNRI) made by the Minister.

In this regard, the implication of a Limited Liability Company that is declared bankrupt is that the debtor no longer has the authority to manage and own its assets. However, this situation does not eliminate the authority of the debtor to carry out management as long as it brings benefits to the bankruptcy property. This is following Article 142 paragraph (2) of the Limited Liability Company Law.

REFERENCES

- Adjie, H. (2018). Joint responsibilities of internal shareholders against credit agreements on limited company bankruptcy: Considering provisions of law of LLC. *Journal of Legal, Ethical and Regulatory Issues*, 21, 1–8.
- Anggraeni, M. D. (2021). Legal Considerations for Guarantee Personnels with Related to Debtor Property Limitations in the Financial Process. *European Journal of Research Development and Sustainability*, 2(1), 15–23.
- Benuf, K., & Azhar, M. (2020). Metodologi penelitian hukum sebagai instrumen mengurai permasalahan hukum kontemporer. *Gema Keadilan*, 7(1), 20–33.
- Coad, A. (2014). Death is not a success: Reflections on business exit. *International Small Business Journal*, 32(7), 721–732.
- Hadrian, E. (2023). Implications of Limited Liability Company After Being Declared Bankrupt. *International Journal of Social Service and Research*, 3(4), 911–914.
- Hamonangan, A., Lubis, M. A., Taufiqurrahman, M., & Silaban, R. (2021). Peranan Kurator Terhadap Kepailitan Perseroan Terbatas. *PKM Maju UDA*, 2(1), 20–34.
- Kisman, Z., & Krisandi, D. (2019). How to predict financial distress in the wholesale sector: Lesson from Indonesian Stock Exchange. *Journal of Economics and Business*, 2(3).
- Liesyowati, S. W., & Darwati, D. (2023). Liquidator Liabilities in Doing Management and Settlement of the Company's Assets. *3rd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2022)*, 572–580.
- Mai, F., Tian, S., Lee, C., & Ma, L. (2019). Deep learning models for bankruptcy prediction using textual disclosures. *European Journal of Operational Research*, 274(2), 743–758.
- Nuriskia, C. S., & Novaliansyah, A. Y. (2021). The Urgency of Regulations Revision Related to Filing Bankruptcy and Postponing Debt Payment Obligations Amid the COVID-19 Pandemic. *Lex Scientia Law Review*, 5(2), 105–122.
- Pucciarelli, F., & Kaplan, A. (2016). Competition and strategy in higher education: Managing complexity and uncertainty. *Business Horizons*, 59(3), 311–320.
- Rapaccini, M., Saccani, N., Kowalkowski, C., Paiola, M., & Adrodegari, F. (2020). Navigating disruptive crises through service-led growth: The impact of COVID-19 on Italian manufacturing firms. *Industrial Marketing Management*, 88, 225–237.
- Sentosa, S. (2007). Hukum Perusahaan Tentang Perseroan Terbatas. *Nuansa Aulia, Bandung*.

Sikka, P., & Stittle, J. (2019). Debunking the myth of shareholder ownership of companies: Some implications for corporate governance and financial reporting. *Critical Perspectives on Accounting*, 63, 101992.

Sukardi, D. (2021). The Legal Responsibility Of Debtor To Payment Curators In Bankruptcy Situation. *Jurnal Pembaharuan Hukum*, 8(2), 142–156.

Wibisana, A. W. (2022). Can business judgment rule be a justification reason in corruption cases in state-owned enterprises in the form of limited liability companies? *International Journal of Research in Business and Social Science (2147-4478)*, 11(6), 560–571.

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