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Legal Consequences on Shareholders in Bankrupt Companies

by

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Abstract

The event of fluctuations in the exchange rate of the rupiah against foreign currencies, especially against the United States dollar was the commencement of the world economic crisis, causing alarm in the business world. The plummet in the value of the rupiah has worsened the quality of bank credit, resulting in increasingly limited sources of funds available to businesses. The undertakings of the business world are at a disadvantage in carrying out and developing their activities, especially the ability to meet debt repayment obligations or debtors owing to creditors. The selection of a limited liability company legal entity to run its business is due to several gains such as limited liability to shareholders, administrative requirements, and others. The management of the Company is the responsibility of the Board of Directors. Members of the Board of Directors personally bear the loss, if the Board of Directors consists of 2 (two) or more people, then the responsibility applies jointly and respectively. Members of the Board of Directors can be released from the responsibility for the loss if they can prove that the loss was not the result of their fault or negligence, and the Board of Directors has managed in good faith and carefully, has no conflict of interest, and has taken preventive measures. Shareholders, on behalf of the Company, may file a lawsuit through the court against a member of the Board of Directors who due to his/her mistake or negligence has caused losses to the company.

Keywords: Directors, company, bankruptcy, management, etc.

Introduction:

Shareholders are one of the most important structures in the company because economically, shareholders are the owners of a limited liability company. Although legally a limited liability company is the property of the limited liability company itself which has an independent position as the bearer of rights and obligations in the life of legal subjects.

The position of the General Meeting of Shareholders (GMS) in a Limited Liability Company (PT), Article 1 Paragraph (3) of the Limited Liability Company Law (UUPT) states that the General Meeting of Shareholders, hereinafter referred to as the GMS, is the organ of the

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company that holds the highest power in the company and holds any authority that is not delegated to the Board of Directors or the Board of Commissioners. It is said to have the highest power, meaning that the power beyond that of the commissioners and directors, so that the powers of the directors and commissioners are not part of the power of the GMS so that the GMS cannot interfere with the powers of the Directors and Commissioners.

The function of the commissioner as consulted in the Company Law is to oversee the policies of the board of directors in running the company and provide advice to the board of directors (Tumbuan, 2005). Article 98 paragraph (1) of the Company Law states that the commissioners are obliged to carry out their duties in good faith and full responsibility for the interests and business of the company. The company's interests are normatively not identical with the interests of the company's owners (shareholders). PT is a legal entity that incidentally is an independent legal subject that has assets and obligations that have interests that are not always identical with the interests of their owners. If the purpose of the company is to increase its wealth, then the interest of the owner is to earn income through the ownership of its shares based on the share price and dividends it receives (Shubhan, 2015).

Legal Consequences on Shareholders in Bankrupt Companies:

Article 3 paragraph (1) states that the shareholders are still responsible for the actions taken by the company if;

i. The requirements of the company as a legal entity have not been or are not fulfilled. According to the Company Law, a company's legal entity status is only obtained after the deed of establishment is approved by the Minister of Justice. As long as the PT status as a legal entity has not been obtained, the PT concerned is no different from a firm, limited partnership, or civil partnership, therefore all shareholders without exception are personally responsible for all engagements made by the PT. Based on Article 3 paragraph (2) letter a of the Company Law, before obtaining approval from the Minister of Justice or not meeting the requirements of the company as a legal entity, the responsibilities of the shareholders, the Board of Directors, and the Commissioners are changed to unlimited. This means that the shareholders, the Board of Directors and the Commissioners are personally responsible if the company suffers a loss, as long as it has not obtained the status of a legal entity (Hartanto, 2015). After obtaining the status as a legal entity or having been ratified by the Minister of Justice as a legal entity, the responsibilities of shareholders and commissioners are limited, while the responsibilities of the Board of Directors are not limited. Article 23 of the Company Law stipulates that as long as the registration and announcement as referred to in Article 21 and Article 22 have not been carried out, the Board of Directors is jointly and severally responsible for all legal actions taken.

ii. The shareholders concerned, either directly or indirectly, in bad faith take advantage of the company solely for their personal interests. The company referred to in this reason is a company that is a legal entity and only applies to shareholders with bad intentions who use the company for their personal interests. Whether or not there is bad faith in the shareholders must be proven.

iii. The shareholders concerned are involved in unlawful acts committed by the company. Personal liability here only applies to shareholders who are involved in legal actions carried out by the company. It is the company that commits an unlawful act, while the shareholders are only involved in the unlawful act, this must also be proven.

iv. The shareholders concerned, directly or indirectly, unlawfully use the company's assets, which results in the company's assets being insufficient to pay off the company's debts. In contrast to the reasons above, here the shareholders who commit acts against the law are the shareholders, by using the company's assets, resulting in the company's assets being insufficient to pay off the company's debts. In other words, the responsibility of the shareholders is residual, that the shareholders who commit acts against the law are only materially responsible after the assets of the PT are not sufficient to pay off the company's debts.

Article 3 Paragraph (2) of the Company Law states that in certain cases it is possible to eliminate the limited liability of the shareholder. Certain things are intended, among others, if it is proven that there has been an amalgamation of the company's assets so that the company is established solely as a tool used by shareholders to fulfill their personal goals (Munir, 2014). If the shareholders take the actions referred to in Article 3 Paragraph (2) of the Company Law, all engagements will become the personal responsibility of the shareholders.

Article 45 of the KUHD states the responsibility of the administrators is nothing more than to carry out the tasks assigned to them to the best of their ability; they are also because of all engagements from the company, with themselves not being bound to third parties. Meanwhile, if they violate any provisions in the deed, or regarding the changes which are later made regarding the terms of establishment, then for the losses that have been suffered by third parties, they themselves are also responsible for the whole thing.

The Company Law grants authority to shareholders using the residual concept (remaining theory), namely that the authority of shareholders is that the GMS has all powers that are not given to the directors or commissioners within the limits specified in the law or the articles of association.

The powers of the GMS are:

i. Appoint and dismiss the Board of Directors and Commissioners;
ii. Obtain all information relating to the interests of the company from the Board of Directors and/or Commissioners;
iii. Give approval to the Board of Directors to transfer or pledge all or most of the company's assets;
iv. Amend the provisions of the articles of association as long as they do not conflict with the applicable law;
v. Give a decision to file for bankruptcy of the company;
vi. Give approval to the Board of Directors regarding the planned merger or consolidation;
vii. Buyback of company shares;
viii. Determination of the addition or reduction of the company's capital;
ix. Approval of annual reports and ratification of annual calculations;
x. Determination of the use of profits;
xi. Dissolution of the company.

In connection with the authority of the GMS, it can be determined regarding the legal responsibilities of the shareholders. All actions of the GMS are the responsibility of the company itself. Supervising is an act of trying to make an activity carried out in accordance with what has been outlined or assessing whether it has been carried out as planned. Good supervision is a timely monitoring method that can detect deviations so that losses can be prevented or at least minimized. The bankruptcy of companies on a large scale can lead to total bankruptcy (Nating, 2004).

Bankruptcy law must contain three principles:

i. The main role of bankruptcy in the modern capitalist economy is to promote corporate reorganization. Bankruptcy law must allow sufficient time for the company to reform the company.
ii. Although there is no known universally applicable bankruptcy law and bankruptcy provisions have developed from time to time in line with changes in the political balance between actors in the structural transformation of the economy and the historical development of society, each bankruptcy law aims to balance several objectives including protecting creditors' rights and avoid premature liquidation.
iii. Bankruptcy law should not only pay attention to creditors and debtors but more importantly, pay attention to the interests of stakeholders, in this connection the most important thing is workers. In addition, it is also necessary to see whether bankruptcy has a broad impact on consumers or causes a bad economic dislocation.

For this loss, of course, stakeholders can ask for legal accountability to the commissioners and also to the Board of Directors (Novita and Husna, 2019). The difference with the Board of Directors in the framework of the Limited Liability Company Law is that the Board of Directors can work together because it is collegial in nature as described in the Elucidation of Article 83 Paragraph (1) of the Company Law. However, the nature of collegiality is limited by Article 85 Paragraph (2) of the Company Law which states that each member of the Board of Directors is personally responsible if the person concerned is guilty or negligent in carrying out his duties in accordance with the provisions referred to in Paragraph (1) of the Company Law. Meanwhile, the Board of Commissioners' responsibilities are always jointly or collectively, which means that a member of the Board of Commissioners cannot act alone apart from other members (Novita and Husna, 2014).

The criminal provisions that can be accounted for to the Commissioner in the bankruptcy of a PT are the same as the criminal provisions imposed on the Board of Directors of the company, namely Article 398 which reads "a management or commissioner of a limited liability company, Indonesian participating airline or cooperative association declared bankrupt or whose settlement has been ordered by the court, shall be punished by a maximum imprisonment of one year and four months:

i. If the person concerned helps or permits to perform acts that are contrary to the articles of association, which causes all or most of the losses suffered by the company, airline or association;
ii. If the person concerned with the intention of suspending the bankruptcy or settlement of a company, airline or association, helps or permits the borrowing of

money under onerous conditions, even though he knows that the bankruptcy or settlement cannot be prevented;

iii. If the person concerned can be blamed for not fulfilling the obligations as referred to in Article 6, the first paragraph of the Commercial Code and Article 27 paragraph (1) of the ordinance concerning Indonesian participating airlines, or that books and letters containing records and the writings which are kept according to the foregoing article, he cannot show it in an unaltered state.

Conclusion:

Shareholders are very important in a limited liability company. The shareholders with the most interest in PT are:

i. Obtaining an annual profit distribution called dividend in the event that the PT obtains a profit;
ii. If the PT enters the capital market, it will benefit if the stock exchange rate in the stock exchange increases (capital gain);
iii. Obtain the distribution of the remaining assets of the PT in the event that the PT dissolves.

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