

Legal Consequences of Limited Liability Companies Obtaining Bankruptcy Decisions

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Abstract. *The purpose of this study is to determine and analyze the Legal Consequences of Limited Liability Companies After Bankruptcy Decisions. This study uses a normative legal approach, with a descriptive analytical research method. Based on the study, it is concluded that bankruptcy decisions on Limited Liability Companies have broad impacts that include cessation of business activities, management and distribution of assets, obligations to creditors, and dissolution of the company. During the bankruptcy process, the role of the curator is very important in ensuring that all obligations are met fairly and in accordance with the law. Shareholders and managers must also pay attention to the legal impact of the bankruptcy process, including their possible legal liability.*

Keywords: *Bankruptcy; Consequences; Company; Liability.*

1. Introduction

Bankruptcy is the process of resolving debt problems from legal subjects, especially for legal entities in the form of companies. Bankruptcy is a legal solution that can be taken against the inability of the debtor (debtor) to fulfill his obligations to the creditor (debtor) within a predetermined time that is timely to fulfill his obligations to the creditor (creditor).¹

Bankruptcy was originally designed as a recovery effort for creditors, not debtors. However, as time went on, debtor rights were also recognized, including the right to declare bankruptcy voluntarily. Basically, bankruptcy law is a procedural law that regulates the procedures for the bankruptcy process, with the aim of restoring the rights of creditors who have been harmed by debtors who have difficulty paying off their debts.²

The change in bankruptcy law was made because previously it was too biased towards creditors and ignored the interests of debtors. This was due to the negative stigma that considered bankruptcy as a crime against property, where debtors were considered to have intentionally not paid their debts to creditors. However, over time, this view has changed. Bankruptcy is now seen more as a result of financial difficulties or mistakes in managing a business, rather than a crime. This change encouraged the birth of the concept of justice and fairness, which aims to balance the interests of Creditors, namely to obtain repayment of their receivables and the interests of Debtors who are experiencing financial difficulties so that

¹Avita Adriyanti, Fifiana Wisnaeni, Irma Cahyaningtyas, "Legal Consequences of Bankruptcy Against Individuals Who Have Family Relationships in Decision No. 74/pailit/2010/pn.niaga.jkt.pst. jo Decision No. 156 k/pdt.sus.2011", in NOTARIUS, Volume 14 Number 1 (2021), p. 171

² <https://e-journal.uajy.ac.id> accessed on August 1, 2024 at 19.00 WIB

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they have not been able to fulfill their obligations to Creditors.³

Since the enactment of the Bankruptcy Law until now, many controversies have emerged. Some of them include the issue of when a debt is due, the assessment of the second creditor, the legal status of a joint operation, the existence of an arbitration clause in the principal agreement that is the basis for the emergence of a debt that has matured, and the issue of novum submitted at the level of judicial review.

In the revised Bankruptcy Law, there is no clear distinction between legal subjects in bankruptcy (bankrupt debtors) and all its legal consequences. The law does not regulate the "continuation" or "existence" of a legal subject declared bankrupt. In general, the revised Bankruptcy Law still identifies individual bankruptcy as a personal legal subject that is equal to the bankruptcy of a legal entity.

Because it is felt that the regulated material still has various shortcomings and weaknesses, and is not in accordance with the needs and developments of law in society, the Government has decided to amend Law No. 1 of 1998 concerning Bankruptcy. In addition, with the limited nature of its legal entity, where the company's assets are separate from the assets of the shareholders and managers, in practice, the company is often used as a tool to avoid broader liability. This should be imposed and borne by parties who have caused losses. By utilizing the limited nature of liability, situations are often found where the company is used as a shield for Directors who do not act in good faith. Through the implementation of limited liability activities, with limited liability, the assets of Directors who act in bad faith seem to be untouchable.⁴

In the settlement of bankruptcy in the Commercial Court, of course, there are differences in terms of its authority. The Commercial Court only tries cases of bankruptcy declaration applications and Postponement of Debt Payment Obligations, it is also authorized to examine and decide other cases in the field of business whose determination is carried out by law. Thus, based on the article above, it is not only about bankruptcy and debt recognition but there are other cases in the business sector that have been determined by law, such as cases of Intellectual Property Rights (IPR).⁵

The implementation of the law in the courts is a form of performance of judges in implementing the law so that it can produce a decision to resolve the problem. Therefore, the decision of the court is the final resolution of a problem, it is expected to provide a just decision and also uphold the enforcement of the law. Every decision of the court judge is expected to reflect a justice that does not harm third parties. The concept of civil law emphasizes that in resolving a case, it must not cause harm to third parties who are not parties to the case.⁶

The inability of debtors and the delay in debt repayment will certainly cause and delay for creditors and/or banks because the money circulation cannot run well. This disruption can result in creditors not getting profit and can even cause quite large losses. To anticipate this,

³Ibid

⁴Gunawan Widjaja, *Director's Responsibility for Company Bankruptcy*, Jakarta: Raja Grafindo Persada, 2003, page 9

⁵Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Article 300 Paragraph (1).

⁶Yahya Harahap, *Op. Cit.*, p. 299

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creditors who want to get certainty of their money being returned can ask the creditor to enter into an agreement as a guarantee for debt repayment.⁷

The dissolution of a limited liability company due to bankruptcy is regulated in the Limited Liability Company Law, whereby from the time the company is declared bankrupt by the commercial court, the company is in an insolvent state and from that time the dissolution process can begin.⁸ The legal consequences of insolvency include the bankrupt's assets being immediately executed and divided unless there are certain considerations. It is regulated in Article 184 Paragraph 1 of Law Number 37 of 2004, which states that if in the receivables verification meeting no peace plan is offered, the peace is rejected based on a final decision, the bankrupt's assets are in a state of insolvency.⁹ To resolve debt problems fairly, quickly, openly and effectively, supporting legal instruments are needed. The principles of national law, whatever their origins, need to be strengthened for the sake of the continuity of national law.

The strengthening of legal principles can first be done in an effort to form national law through legislation. Bankruptcy legal institutions are one of the legal means whose purpose is to resolve debt disputes. This bankruptcy regulation is expected to protect the interests of related parties.¹⁰

In 2023, a company engaged in the hotel sector, namely PT. NAGOYA PLAZA was declared bankrupt by the Medan Commercial Court in the decision of case number 49 / Pdt.Sus-PKPU / 2023 / PN Niaga Mdn, where initially the former workers of PT. NAGOYA PLAZA demanded severance pay that had been agreed upon in the joint agreement, but after the due date PT. NAGOYA PLAZA did not carry out its obligations until the former workers filed a Request for Postponement of Debt Payment Obligations.

Based on the description above, this study aims to determine and analyze the legal consequences for limited liability companies after a bankruptcy decision.

2. Research Methods

This study uses a normative legal approach, with a descriptive analytical research method. The data used are primary and secondary data which will be analyzed qualitatively. Research problems are analyzed using the theory of Legal Certainty, Legal System, Progressive Legal Science.

3. Results and Discussion

In principle, before a bankruptcy declaration, the debtor's rights to take legal action regarding his/her assets must be respected. This must of course be done while still paying attention to the contractual rights and obligations of the debtor in accordance with the provisions of applicable laws and regulations.¹¹

Since the court pronounces a bankruptcy decision in a hearing open to the public against the debtor, the bankrupt's rights and obligations are transferred to the curator to manage and

⁷Oey Hey, "Fiducia as a Guarantee of the Elements of an Agreement" Jakarta: Ghalia Indonesia, 1985, p. 8

⁸Ibid, p. 219

⁹Loc. cit., p.209

¹⁰Mochtar Kusumaatmdja, "Legal Concepts in Development" Bandung, Alumni, 2006, p. 198

¹¹Imran Nating, The Role and Responsibilities of the Curator in the Management and Settlement of Bankrupt Assets, Jakarta: Raja Grafindo, Persada, 2004, page 39.

control his estate. However, the bankrupt still has the right to take actions on his assets, as long as the actions bring/provide benefits/advantages to his estate. On the other hand, actions that do not provide benefits to the estate do not bind the estate. To supervise the implementation of the settlement of bankrupt assets, in the bankruptcy decision, the Court must appoint a supervisory judge in addition to the appointment of the curator.¹²

The declaration of bankruptcy has a significant impact on the Debtor, the bankrupt's assets, and agreements made before and after the bankruptcy. The impact on the Debtor is the loss of civil rights to manage assets. The freezing of these rights applies from the time the bankruptcy decision is declared. This provision also applies to Debtor couples who are married in a community of property system. The Debtor's assets become a source that must be used to pay the Debtor's debts to his Creditors in accordance with the provisions of the agreement. The curator is the holder of mortgage rights, pledge rights, and collateral rights over other objects who has the right to execute these rights. The impact of bankruptcy on agreements made before and after bankruptcy is that, if there is a new reciprocal agreement or one that will be implemented, the Debtor must obtain approval from the curator. However, if the reciprocal agreement has been implemented, the Debtor needs to ask for certainty from the curator regarding the continuation of the agreement.

The legal consequences for Creditors are basically that their position is equal (*paritas creditorum*), so that they have the same rights to the results of the execution of the bankrupt estate according to the amount of their respective claims (*pari passu pro rata parte*). However, this principle can be excluded for groups of Creditors who have collateral rights to certain objects and for groups of Creditors whose rights are prioritized based on the Bankruptcy Law and other laws and regulations.

The consequences of bankruptcy only affect the debtor's assets, while the debtor remains not under guardianship. The debtor does not lose his ability to carry out legal acts relating to himself, unless the legal act is related to the management of the bankrupt's assets.

The debtor can still take legal action related to the assets that he will obtain, and the assets then become part of the bankrupt estate. However, from the date of the bankruptcy declaration decision, the debtor legally loses the right to control and manage his assets that are included in the bankrupt estate.

The basic principle of bankruptcy law is correct. After the bankruptcy statement decision is issued, the debtor loses the right to control and manage the assets included in the bankruptcy estate. The assets are then managed by a curator appointed by the court. However, the debtor can still perform several legal actions related to assets that are not yet part of the bankruptcy estate or assets obtained after the date of the bankruptcy decision, as long as the actions do not violate the provisions of the applicable bankruptcy law.

A debtor's obligation that is issued after a bankruptcy declaration decision has been made in a commercial court can no longer be paid from the bankrupt estate, unless the obligation

¹²Claudia Patricia Ningsih Togas, "Functions and Responsibilities of Supervisory Judges in Settlement of Bankrupt Estates" in *Lex Privatum*, Vol. III/No. 2/Apr-Jun/2015, page 114. <https://www.neliti.com/id/publications/154463/function-dan-respons-respons-hakim-pengawas-dalam-pengelesaian-harta-pailit>

benefits the bankrupt estate.¹³All obligations issued after the bankruptcy declaration decision generally cannot be paid from the bankrupt estate, unless the obligation provides direct benefits to the bankrupt estate. This ensures that the bankrupt estate continues to be used for the purpose of settling debts that existed before the bankruptcy decision.

Claims regarding rights and obligations related to the bankrupt estate must be filed by the curator, not the debtor. If such claims are filed or continued by the debtor, and such claims result in a penalty against the debtor, such penalty has no legal effect on the bankrupt estate. This keeps the bankrupt estate focused on the interests of fair debt resolution. Article 1 Number 1 of Law Number 37 of 2004 states that bankruptcy is a general seizure of all the assets of a bankrupt debtor, the management and disposal of which is carried out by a curator under the supervision of a supervising judge.

The bankruptcy process has 2 (two) phases or 2 (two) periods, namely: the conservatory phase and the insolvency phase or executor phase.¹⁴

1. The conservatorship phase, in the legal context, especially in civil law and civil procedure, refers to steps or actions taken to preserve the state of an object or right during a legal process. The purpose of this phase is to prevent damage, loss, or change that could be detrimental to the parties involved in the legal dispute.

2. Executor phase (Insolvency phase). This phase is the phase of auctioning assets to be distributed to creditors. This execution phase is carried out according to article 1135 of the Civil Code by auctioning bankrupt assets divided to creditors based on their size.

Medan District Court in Case Number 49/Pdt.Sus-Pkpu/2023/Pn Niaga Mdn which is tasked with examining and trying cases of applications for Postponement of Debt Payment Obligations (PKPU) at the first level, which has issued a bankruptcy decision to PT. NAGOYA PLAZA (Hotel Nagoya Plasa), a Limited Liability Company established under the laws in force in the Republic of Indonesia, having its address at Jalan Imam Bonjol, Lubuk Baja, Batam City, Riau Islands Province.

Initially, PT. NAGOYA PLAZA was a company that was running smoothly and making a profit, but in a difficult situation, on the grounds of company efficiency, PT. NAGOYA PLAZA terminated the employment relationship by agreeing to grant severance pay as stated in the Joint Agreement. After the due date, PT. NAGOYA PLAZA did not provide severance pay to the workers.

Initially, PKPU was a legal mechanism given to creditors (in this case former employees) to be submitted by creditors, employees who have rights in the form of severance pay that has not been paid. The main purpose of PKPU is to give time for the company to restructure its debt or reach an agreement with creditors.

In the decision of case number 49/Pdt.Sus-Pkpu/2023/Pn Niaga Mdn, the judge's considerations in his considerations stated:

¹³Article 25 of the Bankruptcy Law and Suspension of Debt Payment Obligations

¹⁴Man S. Sastrawidjaja, 2006, Bankruptcy Law and Suspension of Debt Payment Obligations, PT. Alumni, Bandung, p. 187.

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"that based on the report of the Supervising Judge, the report of the Management, statements from the Debtor and Creditors, there are no circumstances as referred to in Article 285 paragraph (2) letters a, b and c.

above, but based on the statement of the Management which was also confirmed by the Debtor's Attorney in the PKPU, it turns out that the management fees and service fees/fees of the Management have not been paid and no guarantee is given for payment, but based on a letter dated April 2, 2024 (PT Nagoya Plaza, Hj Deniari Alwi Hamu SE, MM) stated that we will submit a payment guarantee in the form of 1 (one) plot of land and building in the name of the shareholder with a Certificate of Ownership Number 29366 located in Makassar City in the name of Muhammad Alwi Hamu, but at the time of the trial the certificate was not submitted to the management and the management stated that they strongly objected to the statement. After the PKPU submission, the court gave the company time to prepare a peace plan and payment schedule agreed upon with the creditors, but the company could not reach an agreement within the specified time period, so that the decision of PT. NAGOYA PLAZA changed to a bankruptcy decision.¹⁵

Because the administration costs and fees for the Administrator's services have not been paid and there is no guarantee of payment, in accordance with the provisions of Article 285 paragraph (2) letter d of the Bankruptcy and PKPU Law, the Panel of Judges is required to reject the ratification of the peace agreement that has been approved by the Creditors with PT Nagoya Plaza (Debtor in PKPU) on April 1, 2024.

The statement refers to the process in bankruptcy law and Suspension of Debt Payment Obligations (PKPU) in Indonesia. Based on Article 285 paragraph (3) of the Bankruptcy and PKPU Law, if the peace agreement proposed by the Debtor in the PKPU process is rejected by the court, then the PKPU ends and the Debtor must be declared bankrupt along with all its legal consequences.

Furthermore, the bankruptcy decision is announced in the State Gazette of the Republic of Indonesia in two daily newspapers, as stipulated in Article 226 of the Bankruptcy and PKPU Law. The announcement is made no later than five days after the decision is received by the Supervisory Judge and Curator. This process aims to inform the public and Creditors regarding the bankruptcy status of the Debtor, so that Creditors can know the next steps in the bankruptcy process.

With the bankruptcy decision of case Number: 49/Pdt.Sus-Pkpu/2023/Pn.Niaga Mdn, all rights to manage the Debtor's assets will be under the control of the Curator, who is responsible for managing and distributing the Debtor's assets to Creditors in accordance with applicable provisions.

Based on Article 15 paragraph (1) of the Bankruptcy and PKPU Law, if a Debtor is declared bankrupt, then in the bankruptcy declaration decision a Curator must be appointed and a Supervisory Judge must be appointed. The Curator is tasked with managing and settling the bankrupt's assets, while the Supervisory Judge oversees the implementation of the Curator's duties.

¹⁵Decision on case number 49/Pdt.Sus-Pkpu/2023/Pn Niaga Mdn

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Based on the decision of the Commercial Court at the Medan District Court, on Wednesday, January 17, 2024, a postponement of the obligation to pay fixed debts for 60 (sixty) days has been granted to the Respondent, namely PT. Nagoya Plaza. Furthermore, taking into account the decision of the Commercial Court at the Medan District Court, on Monday, March 18, 2024, an extension of the postponement of the obligation to pay fixed debts for 19 (nineteen) days has been granted to the Respondent

Furthermore, by analogizing the provisions of Article 172 paragraph (2) of the Bankruptcy Law, Bankruptcy and PKPU, if the Debtor was previously in the PKPU process, then the Supervisory Judge and Administrator who have served in the PKPU process will be reappointed to become Supervisory Judge and Curator in the bankruptcy process. In other words, there is no need to appoint new officials, but rather the officials who have managed the PKPU will continue their duties in the bankruptcy process.

Regarding the Curator's service fee, it will be determined after the Curator completes his/her duties. This determination is made based on the guidelines stipulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 18 of 2021 concerning Guidelines for Service Fees for Curators and Administrators. These guidelines provide a framework for calculating and determining the amount of fees received by the Curator according to the complexity and results of his/her work in settling the assets of the Debtor who has been declared bankrupt.

Because PT Nagoya Plaza (Respondent in PKPU) was declared bankrupt, the Respondent is required to pay court costs. The amount of court costs will be determined in the court decision. The court decision is part of the decision that contains the court order, including the amount of court costs that must be borne by the Respondent in this bankruptcy case.

In accordance with Article 285 paragraph (2) and paragraph (3) of the Bankruptcy and PKPU Law, it explains that if the peace proposed in the PKPU process is rejected, the PKPU ends, and the Debtor must be declared bankrupt. Furthermore, the Debtor must undergo the bankruptcy process and all its consequences. Curator and Supervisory Judge in bankruptcy decisions. The Curator is tasked with managing and settling the bankrupt estate, while the Supervisory Judge supervises the progress of the process. Paragraph (3) of this article also gives the Supervisory Judge the authority to issue decisions required in the process of settling the bankrupt estate.

As a result of the bankruptcy decision of PT Nagoya Plaza, there was a takeover of asset management, which means that all of the Debtor's assets are under the management of the Curator. PT Nagoya Plaza lost control of its assets and is not allowed to take legal action against its assets.

The verdict of case number: 49/Pdt.Sus-Pkpu/2023/Pn.Niaga Mdn; namely: TO JUDGE:

1. Declaring that the suspension of debt payment obligations (PKPU) of PT Nagoya Plaza (Debtor in PKPU) has ended;
2. Declaring the Debtor (PT Nagoya Plaza) bankrupt with all legal consequences;
3. Appointing Dr. Fahren, SH, M.Hum, Commercial Judge of the Commercial Court at the Medan District Court as Supervising Judge;
4. Lift:

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a. Mr. SATRIA BRAJA HARIANDJA, SH, MH, with an office at Jl Sekip Mas No. A-12, Sekip Mas Complex, Medan 2018, Curator and Manager of the Indonesian Curator and Manager Association (AKPI) registered with the Ministry of Law and Human Rights of the Republic of Indonesia Number AHU-70 AH.04.03-2019, dated March 25, 2019.

b. Mr. DHARMA ANWAR DANI HUTAPEA, SH, with an office at Grand Galaxy Park, Ruko Rose Garden Block RRG 9 No. 2, Jl Jaka Setia, Pekayon Jaya, South Bekasi, Curator and Administrator of the Indonesian Curator and Administrator Association (AKPI) registered with the Ministry of Law and Human Rights of the Republic of Indonesia Number AHU-179 AH.04.03-2020, dated February 19, 2020.

as the Management Team in the a quo Debt Payment Suspension (PKPU) process, and as the Curator Team when the PKPU Respondent is in a state of Bankruptcy.

5. Determining the management fees and service fees of the Management Team will be determined in a separate determination in accordance with applicable legal provisions.

6. Determining bankruptcy costs and the Curator's service fees will be determined later after the Curator Team has completed its duties and the bankruptcy process ends.

7. Sentencing the Debtor (PT Nagoya Plaza) to pay the court costs for the application for postponement of debt payment obligations amounting to Rp.2,246,000. (Two million two hundred and forty six thousand rupiah).

PT Nagoya Plaza can no longer run its business activities because all its assets are used to pay Creditors. Debtor assets are sold to pay off existing debts.

Thus, the legal consequences for the Respondent in a PKPU depend on whether the PKPU ends with a peace agreement or with bankruptcy. If the PKPU fails, the Debtor will face significant legal impacts from the bankruptcy declaration.

Article 1 paragraph (1) of the Limited Liability Company Law states that a limited liability company is a legal entity. With the status of a legal entity, a company is considered a legal subject that has rights and obligations like an individual, and has assets that are separate from the assets of its founders, shareholders, and managers. In this case, we can see the existence of legal personality (*rechtspersoonlijkheid*) in a corporate or company legal entity. However, it does not explicitly provide a definition of what is meant by the legal entity.

Based on the theory of Legal Certainty, the order of priority in debt repayment is regulated, ensuring that creditors with collateral are paid before unsecured creditors. This clear rule of priority provides certainty to creditors about their position in the asset distribution process.

Legal certainty is very important in the context of bankruptcy because it ensures that the legal process related to bankruptcy is carried out in a predictable and fair manner. Legal certainty plays a role in providing clear rules regarding the management of the estate's assets, the priority of debt payments, the legal status of the company, the accountability of the management, and the rights of shareholders. By ensuring that all procedures and decisions are carried out in accordance with established rules, legal certainty helps to create fairness and stability in the bankruptcy process.

The legal system establishes the rights and obligations of all stakeholders in the bankruptcy process, including creditors, shareholders, and corporate directors. Certainty about these rights and obligations helps all parties understand their position and plan their steps. The legal

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system can include reforms and innovations in bankruptcy law to improve efficiency and fairness. These reforms may involve changes in bankruptcy procedures or better regulation of the rights and obligations of the parties involved.

Satjipto Rahardjo emphasized that the law must pay attention to the human and social dimensions. Satjipto Rahardjo always emphasized that the law should be able to provide happiness to the people and the nation.¹⁶

In bankruptcy, this means that the process must consider the social impact of legal decisions and pay attention to human welfare, such as fair compensation for employees and protection for small creditors.

Bankruptcy law can introduce mediation and negotiation mechanisms to resolve disputes amicably and find solutions that benefit all parties, in accordance with the principles of progressive law that are more humanistic. Progressive Law encourages continuous evaluation of legal practices to ensure that the law is effective and fair. In bankruptcy, this involves regular review of the effectiveness of the bankruptcy process and making necessary adjustments to correct weaknesses or imperfections.

4. Conclusion

Legal consequences for limited liability companies after bankruptcy decisions, bankruptcy decisions against Limited Liability Companies have broad impacts that include cessation of business activities, management and distribution of assets, obligations to creditors, and dissolution of the company. During the bankruptcy process, the role of the curator is very important in ensuring that all obligations are met fairly and in accordance with the law. Shareholders and managers must also pay attention to the legal impact of the bankruptcy process, including their potential legal liability.

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